**UNEDITED VERSION**

CRC/C/GC/10
2 February 2007

Original: English

COMMITTEE ON THE RIGHTS OF THE CHILD
Forty-fourth session
Geneva, 15 January-2 February 2007

# GENERAL COMMENT No. 10 (2007)

# Children's rights in Juvenile Justice

## I. Introduction

1. In the reports they submit to the Committee on the Rights of the Child (hereafter: the Committee), States Parties often pay quite detailed attention to the rights of children alleged as, accused of, or recognized as having infringed the penal law, also referred to as 'children in conflict with the law'. In line with the Committee's guidelines for periodic reporting, the implementation of articles 37 and 40 of the Convention on the Rights of the Child (hereafter: CRC) is the main focus of the information provided by the States Parties. The Committee notes with appreciation the many efforts to establish an administration of juvenile justice in compliance with the CRC. However, it is also clear that many States Parties still have a long way to go in achieving full compliance with the CRC, e.g. in the areas of procedural rights, the development and implementation of measures for dealing with children in conflict with the law without resorting to judicial proceedings, and the use of deprivation of liberty only as a measure of last resort.

2. The Committee is equally concerned about the lack of information on the measures that States Parties have taken to prevent children from coming into conflict with the law. This may be the result of a lack of a comprehensive policy for the field of juvenile justice. This may also explain why many States Parties are providing only (very) limited statistical data on the treatment of children in conflict with the law.
The experiences in reviewing the States Parties' performances in the field of juvenile justice are the reason for this General Comment, by which the Committee wants to provide the States Parties with more elaborated guidance and recommendations for their efforts to establish an administration of juvenile justice in compliance with the CRC. This juvenile justice, which should promote inter alia the use of alternative measures such as diversion and restorative justice, will provide States Parties with possibilities to respond to children in conflict with the law in an effective manner serving not only the best interests of these children but also the short and long term interest of the whole society.

## II. The objectives of the present General Comment

3. At the outset, the Committee wants to underscore that the CRC requires States Parties to develop and implement a comprehensive juvenile justice policy. This comprehensive approach should not be limited to the implementation of the specific provisions contained in

articles 37 and 40 CRC, but should also take into account the general principles enshrined in articles 2, 3, 6 and 12 CRC, and all other relevant articles of the CRC, such as article 4 and 39. Therefore, the objectives of this General Comment are:

- To encourage States Parties to develop and implement a comprehensive juvenile justice policy to prevent and address juvenile delinquency based on and in compliance with the CRC, and to seek in this regard advice and support from the Interagency Panel on Juvenile Justice, with representatives of the OHCHR, UNICEF, UNODC and NGO's, established by ECOSOC Resolution 1997/30;

- To provide States Parties with guidance and recommendations for the content of this comprehensive juvenile justice policy, with special attention for prevention of juvenile delinquency, the introduction of alternative measures allowing for responses to juvenile delinquency without resorting to judicial procedures, and for the interpretation and implementation of all other provisions in articles 37 and 40 CRC;

- To promote the integration in a national and comprehensive juvenile justice policy of other international standards, in particular the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines).

## III. Juvenile Justice: the leading principles of a comprehensive policy

4. Before elaborating on the requirements of the CRC in more detail, the Committee will first mention the leading principles of a comprehensive policy for juvenile justice. In the administration of juvenile justice, States Parties have to apply systematically the general principles contained in articles 2, 3, 6 and 12 CRC, as well as the fundamental principles of juvenile justice enshrined in articles 37 and 40 CRC.

*4a. Non-discrimination (art. 2).* States Parties have to take all necessary measures to ensure that all children in conflict with the law are treated equally. Particular attention must be paid to de facto discrimination and disparities, which may be the result of a lack of a consistent policy and involve vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, children who are indigenous, girl children, children with disabilities and children who are repeatedly in conflict with the law (recidivists). In this regard, training of all professionals involved in the administration of juvenile justice is important (see below para. 33), as well as the establishment of rules, regulations or protocols which enhance equal treatment of child offenders and provide redress, remedies and compensation.

Many children in conflict with the law are further victims of discrimination, e.g. when they try to get access to education or to the labour market. It is necessary that measures are taken to prevent such discrimination, inter alia by providing (former) child offenders with appropriate support and assistance in their efforts to reintegrate in society, and to conduct public campaigns emphasizing their right to assume a constructive role in society (art. 40(1) CRC).

It is quite common that criminal codes contain provisions criminalizing behavioural problems of children, such as vagrancy, truancy, runaways and other acts, which often are the result of psychological or socio-economic problems. It is particularly a matter of concern that girls and street children are often the victim of this criminalization. These acts, also known as Status Offences, are not considered to be an offence if committed by adults. The Committee

recommends the States Parties to abolish the provisions on Status Offences in order to establish an equal treatment under the law for children and adults. In this regard, the Committee also refers to article 56 of the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines): "In order to prevent further stigmatisation, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person."
In addition, behaviour such as vagrancy, roaming the streets or runaways should be dealt with through the implementation of child protective measures including effective support for parents and/or other caregivers and measures which address the root causes of this behaviour.

*4b. Best interests of the child (art. 3).* In all decisions taken within the context of the administration of juvenile justice, the best interests of the child are to be a primary consideration. Children differ from adults in their physical and psychological developments, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment of children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice (repression/retribution) must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety.

*4c. The right to life, survival and development (art. 6).* This inherent right of every child should guide and inspire States Parties in the development of effective national policies and programmes for the prevention of juvenile delinquency, because it goes without saying that delinquency has a (very) negative impact on the child's development. Furthermore, this basic right should result in a policy of responding to juvenile delinquency in ways that support the child's development. The death penalty and a life sentence without parole are explicitly prohibited in article 37(a) CRC (see below paras. 27-28). The use of deprivation of liberty has (very) negative consequences for the child's harmonious development and seriously hampers his/her reintegration in society. In this regard, article 37(b) CRC explicitly provides that deprivation of liberty, including arrest, detention and imprisonment, should be used only as a measure of last resort and for the shortest appropriate period of time, so that the child's right to development is fully respected and ensured (see below para. 29).[1]

*4d. The right to be heard (art. 12).* The right of the child to express his/her views freely in all matters affecting the child should be fully respected and implemented throughout every stage of the process of juvenile justice (see below para. 23 under c). The Committee notes that increasingly the voices of children involved in the juvenile justice system are becoming a powerful force for improvements and reform, and for the fulfilment of rights.

*4e. Dignity (art. 40(1)).* The 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 UDHR 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 the CRC makes explicit reference, has to be respected and protected throughout the entire process of dealing with the child, from the first

[1] Note that the rights of a child deprived of his/her liberty, as recognized in the CRC, apply with respect to children in conflict with the law, and to children placed in institutions for the purposes of care, protection or treatment, including mental health, educational, drug treatment, child protection or immigration institutions.

contact with law enforcement agencies all the way through to the implementation of all measures for dealing with the child;

- Treatment that reinforces the child's respect for the human rights and freedoms of others. This principle is in line with the preamble's consideration 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 freedoms (see art. 29(1)(b) CRC and GC nr. 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) CRC (see below para. 23). 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 through to the implementation of all measures for dealing with the child. This principle 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 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 pre-trial 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 this 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 U.N. Study on Violence Against Children presented to the General Assembly of the Un in October 2006 (A/61/299).

The Committee acknowledges that the preservation of public safety is a legitimate aim of the justice system. However, the Committee is of the opinion that this aim is best served by a full respect for and implementation of the leading and overarching principles of juvenile justice as enshrined in the CRC.

## IV. Juvenile Justice: the core elements of a comprehensive policy

A comprehensive policy for juvenile justice must deal with the following core elements: the prevention of juvenile delinquency; interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings; the minimum age of criminal responsibility and the upper age limits for juvenile justice; the guarantees for a fair trial; and deprivation of liberty including pre-trial detention and post-trial incarceration.

## A. Prevention of juvenile delinquency

5. One of the most important goals of the implementation of the CRC is to promote the full and harmonious development of the child's personality, talents and mental and physical abilities (preamble and arts. 6 and 29 CRC). The child should be prepared to live an individual and responsible life in a free society (preamble and art. 29 CRC), in which he/she can assume a constructive role with respect for human rights and fundamental freedoms (arts. 29 and 40 CRC). In that regard parents have the responsibility to provide the child, in a manner consistent with the evolving capacities of the child, with appropriate direction and guidance in the exercise by the child of her/his rights recognised in the Convention. In the light of these and other provisions of the CRC, it is obviously not in the best interests of the child if he/she grows up under circumstances that may cause an increased or serious risk of becoming involved in criminal activities. Various measures should be taken for the full and equal implementation of the rights to an adequate standard of living (art. 27 CRC), to the highest attainable standard of health and access to health care (art. 24 CRC), to education (arts. 28 and 29 CRC), to protection from all forms of physical or mental violence, injury or abuse (art. 19 CRC), and from economic or sexual exploitation (arts. 32 and 34 CRC), and to other appropriate services for the care or protection of children.

6. As stated above, a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency suffers from serious shortcomings. States Parties should fully integrate into their comprehensive national policy for juvenile justice the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) adopted by the General Assembly of the United Nations on 14 December 1990 (Resolution 45/112).

7. The Committee fully supports The Riyadh Guidelines and agrees that emphasis should be placed on prevention policies facilitating the successful socialization and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. This means inter alia that prevention programmes should focus on support for particularly vulnerable families, involvement of schools in teaching basic values (including information about the rights and responsibilities of children and parents under the law), and extending special care and attention to young persons at risk. In this regard, particular attention should also be given to children who drop out from school or otherwise do not complete their education. The use of peer group support and a strong involvement of parents is recommended. The States Parties should also develop community based services and programmes, which respond to the special needs, problems, concerns and interests of children, in particular of children repeatedly in conflict with the law, and which provide appropriate counselling and guidance to their families.

8. Articles 18 and 27 CRC confirm the importance of the responsibility of parents for the upbringing of their children, but at the same time the CRC requires States Parties to provide the necessary assistance to parents (or other caretakers) in the performance of their parental responsibilities.
The measures of assistance should not only focus on the prevention of negative situations, but also and rather more on the promotion of the social potential of parents. There is a wealth of information on home and family-based prevention programmes, such as parent training, programmes to enhance parent-child interaction and home visitation programmes, which can start at a very young age of the child. In addition, Early Childhood Education has shown to be correlated with a lower rate of future violence and crime. At the community level, positive results have been achieved with programmes such as Communities that Care (CTC), a risk-focused prevention strategy.

9. States Parties should fully promote and support the involvement of children, in accordance with article 12 CRC, and of parents, community leaders and other key actors (e.g. representatives of NGOs, probation services and social work), in the development and implementation of prevention programmes. The quality of this involvement is a key factor in the success of these programmes.
The Committee recommends States Parties to seek support and advice from the Interagency Panel on Juvenile Justice in their efforts to develop effective prevention programmes.

**B. Interventions/Diversion (see also below Part E)**

10. Two kinds of interventions can be used by the State authorities for dealing with children alleged as, accused of, or recognized as having infringed the penal law: measures without resorting to judicial proceedings and measures in the context of judicial proceedings. The Committee reminds States Parties that utmost care must be taken to ensure that the child's human rights and legal safeguards are thereby fully respected and protected.

Children in conflict with the law, including the child recidivist, have the right to be treated in ways that promote the child's reintegration and the child's assuming a constructive role in society (art. 40(1) CRC). The arrest, detention or imprisonment of a child may be used only as a measure of last resort (art.37(b) CRC). It is therefore necessary – as part of a comprehensive policy for juvenile justice - to develop and implement a wide range of effective measures to ensure that children are dealt with in a manner appropriate to their well-being, and proportionate both to their circumstances and the offence. In particular, a variety of dispositions, such as care, guidance and supervision orders, counselling, probation, foster care, educational and training programmes, and other alternatives to institutional care have to be available (art. 40(4) CRC).

11. Interventions without resorting to judicial proceedings.
According to article 40(3) CRC, the States Parties shall seek to promote measures for dealing with children alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings, whenever appropriate and desirable. Given the fact that the majority of child offenders commit only minor offences, a range of measures involving removal from criminal/juvenile justice processing and referral to alternative (social) services (= diversion) should be a well established practice that can and should be used in most cases.

12. In the opinion of the Committee, the obligation of States Parties to promote measures for dealing with children in conflict with the law without resorting to judicial proceedings applies with respect to, but is certainly not limited to, children who commit minor offences, such as shoplifting or other property offences with limited damage, and first-time child offenders. Statistics in many States Parties indicate that a large part (and often the majority) of offences committed by children fall in these categories. It is in line with the principles set out in article 40(1) CRC to deal with all such cases without resorting to criminal law procedures in court. In addition to avoiding stigmatisation, this approach has good outcomes for both children and the interests of public safety, and has proven to be more cost-effective.
States Parties should make measures for dealing with children in conflict with the law without resorting to judicial proceedings an integral part of their juvenile justice system, and ensure that children's human rights and legal safeguards are thereby fully respected and protected (art. 40(3)(b) CRC).

13. It is left to the discretion of States Parties to decide on the exact nature and content of the measures for dealing with children in conflict with the law without resorting to judicial

proceedings, and to take the necessary legislative and other measures for their implementation.
Nonetheless, on the basis of the information provided in the reports from some States Parties, it is clear that a variety of community-based programmes have been developed, such as community service, supervision and guidance by e.g. social workers or probation officers, family conferencing and other forms of restorative justice including restitution to and compensation of victims. Other States Parties should benefit from these experiences. As far as full respect for human rights and legal safeguards is concerned, the Committee refers to the relevant parts of article 40 CRC and emphasizes the following:

- Diversion ( = measures for dealing with children alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings) should be used only when there is convincing evidence that the child committed the alleged offence, that he/she freely and voluntarily acknowledges responsibility, and that no intimidation or pressure has been used to get that acknowledgement and, finally, that the acknowledgement will not be used against him/her in any subsequent legal proceeding;

- The child must freely and voluntarily consent in writing to the diversion, a consent that should be based on adequate and specific information on the nature, content and duration of the measure, and on the consequences of a failure to cooperate, carry out and complete the measure. With a view to strengthening parental involvement, States Parties may consider requiring also the consent of parents, e.g. in particular when the child is below the age of 16 years;

- The law has to contain specific provisions indicating in which cases diversion is possible, and the powers of the police, prosecutors and/or other agencies to make decisions in this regard should be regulated and reviewed, in particular to protect the child from discrimination;

- The child must be given the opportunity to consult with legal or other appropriate assistance on the appropriateness and desirability of the diversion offered by the competent authorities, and on the possibility of review of the measure;

- The completion of the diversion by the child should result in a definite and final closure of the case. Although confidential records can be kept of diversion for administrative and review purposes, they should not be viewed as ‘criminal records’ and a child who has been previously diverted must not be seen as having a previous conviction. If any registration takes place of this event, the access to that information should be given exclusively and for a limited period of time, e.g. a maximum of one year, to competent authorities authorized to deal with children in conflict with the law.

14. Interventions in the context of judicial proceedings.
When judicial proceedings are initiated by the competent authority (usually the prosecutor’s office), the principles of a fair and just trial must be applied (see below Part D). At the same time, the juvenile justice system should provide for ample opportunities to deal with children in conflict with the law by using social and/or educational measures, and to strictly limit the use of deprivation of liberty, and in particular pre-trial detention, as a measure of last resort. In the disposition phase of the proceedings, deprivation of liberty must be used only as a measure of last resort and for the shortest appropriate period of time (art. 37(b) CRC). This means that States Parties should have in place a well trained probation service to allow for the maximum and effective use of dispositions such as guidance and supervision orders,

probation, community monitoring or day report centres, and the possibility of early release from a deprivation of liberty.

15. The Committee reminds States Parties that, pursuant to article 40(1) CRC, reintegration requires that no actions may be taken that can hamper the child's full participation in his/her community, such as stigmatization, social isolation, or negative publicity of the child. For a child in conflict with the law to be dealt with in a way that promotes reintegration requires that all actions should support the child becoming a full, constructive member of his/her society.

## C. Age and children in conflict with the law

16. The minimum age of criminal responsibility (MACR).

The States Parties reports show the existence of a wide variety of minimum ages of criminal responsibility. They range from a very low level of age 7 or 8 to the commendable high level of age 14 or 16. Quite a number of States Parties use two minimum ages of criminal responsibility. Children in conflict with the law who are at the time of the commission of the crime of an age at or above the lower minimum age but below the higher minimum age are assumed to be criminally responsible only if they have the required maturity in that regard. The assessment of this maturity is left to the court/judge, often without the requirement of involving a psychological expert, and results in practice in the use of the lower minimum age in cases of serious crimes. The system of two minimum ages is often not only confusing but leaves much to the discretion of the court/judge and may result in discriminatory practices.
In the light of these wide range of minimum ages for criminal responsibility the Committee feels the need to provide the States Parties with clear guidance and recommendations regarding the minimum age of criminal responsibility.

Article 40 (3) CRC requires that States Parties shall seek to promote inter alia (see under a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law, but does not mention a specific minimum age in this regard.
The committee understands this provision as an obligation for States Parties to set a minimum age of criminal responsibility (MACR). This minimum age means the following:

- children who commit an offence at an age below that minimum cannot be held responsible in a penal law procedure. Even (very) young children do have the capacity to infringe the penal law but if they commit an offence when below the MACR the irrefutable assumption is that they cannot be formally charged and held responsible in a penal law procedure. For these children special protective measures can be taken if necessary in their best interest;
- children at or above the MACR at the time of the commission of an offence (or: infringement of the penal law) but younger than 18 years (see also hereafter para. 19 – 21) can be formally charged and subject to penal law procedures. But these procedures, including the final dispositions, must be in full compliance with the principles and provisions of the CRC as elaborated in this General Comment.

Rule 4 of the Beijing Rules recommends that the beginning of that MACR shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity. In line with this rule the Committee has recommended States Parties not to set a MACR at a too low level and to increase an existing low MACR to an internationally acceptable level. From these recommendations, it can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States Parties are recommended to increase their lower MACR to

the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.

17. At the same time, the Committee urges States Parties not to lower their MACR to the age of 12. A higher MACR, for instance 14 or 16 years of age, contributes to a juvenile justice system which, in accordance with article 40(3)(b) CRC, deals with children in conflict with the law without resorting to judicial proceedings, providing that the child's human rights and legal safeguards are fully respected. In this regard, States Parties should inform the Committee in their reports in specific detail how children below the MACR set in their laws are treated when they are recognized as having infringed the penal law, or are alleged as or accused of having done so, and what kinds of legal safeguards are in place to ensure that their treatment is as fair and just as that of children at or above the MACR.

18. The Committee wants to express its concern about the practice of allowing exceptions to a MACR which permit the use a lower minimum age of criminal responsibility in cases where the child, for example, is accused of committing a serious offence or where the child is considered mature enough to be held criminally responsible. The Committee strongly recommends that States Parties set a MACR that does not allow, by way of exception, the use of a lower age.

19. If there is no proof of age and it cannot be established that the child is at or above the MACR, the child shall not be held criminally responsible (see also below para. 22).

20. The upper age limit for juvenile justice.

The Committee also wants to draw the attention of States Parties to the upper age limit for the application of the rules of Juvenile Justice. These special rules for juvenile justice – both in terms of special procedural rules and in terms of rules for diversion and special dispositions – should apply, starting at the MACR set in the country, for all children who, at the time of their alleged commission of an offence (or act punishable under the criminal law), have not yet reached the age of 18 years.

21. The Committee wants to remind States Parties that they have recognized the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in accordance with the provisions of article 40 CRC. This means that every person under the age of 18 years at the time of the alleged commission of an offence must be treated under the rules of juvenile justice.

The Committee therefore recommends States Parties which limit the applicability of their juvenile justice rules to children under the age of 16 (or lower) years, or that allow by way of exception that 16 or 17 year old children are treated as adult criminals, to change their laws with a view to achieve a non-discriminatory full implementation of their juvenile justice rules to all persons under the age of 18 years.

The Committee notes with appreciation that some States Parties allow for the application of the rules and regulations of juvenile justice to persons age 18 and older , usually till the age of 21, either as a general rule or by way of exception.

22. Finally, the Committee wants to underscore the fact that using age limits one way or another, which is the case for all States Parties, makes the full implementation of article 7 CRC requiring inter alia that every child shall be registered immediately after birth very crucial. A child without a provable date of birth is extremely vulnerable for all kinds of abuse and injustice regarding family, work, education and labour, and particularly within the juvenile justice system. Every child must be provided with a birth certificate free of charge whenever he/she needs it to prove his/her age. If there is no proof of age, the child is entitled

to a reliable medical or social investigation that may establish his/her age and, in the case of conflict or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt.

## D. The guarantees for a fair trial

23. Article 40(2) CRC contains an important list of rights or guarantees that are all meant to ensure that every child alleged as or accused of having infringed the penal law receives a fair treatment and trial. Most of these guarantees can also be found in article 14 ICCPR, which the CCPR Committee elaborated and commented on in its General Comment nr. 13 (1984) which is currently in the process of being reviewed. However, the implementation of these guarantees for children does have some specific aspects which will be presented in this section. Before doing so, the Committee wants to emphasize the following: the key condition for a proper and effective implementation of these rights or guarantees depends on the quality of the persons involved in the administration of juvenile justice. Training of all these professionals, such as police officers, prosecutors, legal or other representatives of the child, judges, probation officers, social workers and others, is crucial and should take place in a systematic and ongoing manner. These professionals should be well informed about a child's and more in particular on an adolescent's physical, psychological, mental and social development, and about the special needs of the most vulnerable children, such as children with disabilities, displaced children, street children, refugee and asylum-seeking children, and children belonging to racial, ethnic, religious, linguistic or other minorities (see above para. 4 under a). Because girls are a distinct minority of children in conflict with the law, special attention must be devoted to the particular needs of the girl child, e.g. in relation to prior abuse and special health needs. Professionals and staff should act under all circumstances in a manner consistent with the child's dignity and worth, which reinforces the child's respect for the human rights and fundamental freedom of others, and which promotes the child's reintegration and the child's assuming of a constructive role in society (art. 40(1) CRC).
All the guarantees recognized in article 40 (2) CRC , dealt with hereafter, are minimum standards, meaning that States Parties can and should try to establish and observe higher standards, e.g. in the areas of legal assistance and the involvement of the child and her/his parents in the judicial process.

*23a. No retroactive juvenile justice (art. 40(2)(a)*).
Article 40(2)(a) CRC affirms that the rule that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time it was committed is also applicable to children (see also art. 15 ICCPR). It means that no child can be charged with or sentenced under the penal law for acts or omissions which at the time they were committed were not prohibited by national or international law. In the light of the fact that many States Parties have recently strengthened and/or expanded their criminal law provisions to prevent and combat terrorism, the Committee recommends the States Parties to ensure that these changes do not result in retroactive or unintended punishment of children.
The Committee also wants to remind States Parties that the rule that no heavier penalty shall be imposed than the one that was applicable at the time when the criminal offence was committed, as expressed in article 15 ICCPR, is in the light of article 41 CRC, applicable to children in the States Parties to the ICCPR. No child shall be punished with a heavier penalty than the one applicable at the time of his/her infringement of the penal law. But if a change of law after the act provides for a lighter the penalty, the child should benefit from this change.

*23b. The presumption of innocence (art. 40(2)(b)(i)).*

The presumption of innocence is fundamental to the protection of the human rights of children in conflict with the law. It means that the burden of proof of the charge(s) brought against the child is on the prosecution. The child alleged as or accused of having infringed the penal law has the benefit of doubt and is only guilty as charged if these charges have been proven beyond reasonable doubt. The child has the right to be treated in accordance with this presumption and it is the duty of all public authorities or others involved to refrain from prejudging the outcome of the trial.

States Parties should provide information about child development to ensure that this presumption of innocence is respected in practice. Due to the lack of understanding of the process, immaturity, fear or for other reasons, the child may behave in suspicious manner, but authorities must not assume that the child is guilty without evidence proven beyond a reasonable doubt.

*23c. The right to be heard (art. 12).*

Article 12(2) CRC requires that a child is provided with the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriative body in a manner consistent with the procedural rules of national law.

It is obvious that for a child alleged as, accused of or recognized as having infringed the penal law, the right to be heard is fundamental for a fair trial. It is equally obvious that the child has the right to be heard directly and not only through a representative or an appropriate body if it is in her/his best interests. This right of the child must be fully observed in all stages of the process, starting with pre-trial stage when the child has the right to remain silent, as well as the right to be heard by the police, the prosecutor and the investigating judge. But it also applies in the stage of adjudication and disposition, and in the stage of implementation of the imposed measures.

In other words, the child must be given the opportunity to express his/her views freely, and those views should be given due weight in accordance with the age and maturity of the child (art. 12(1) CRC), throughout the juvenile justice process. This means that the child, in order to effectively participate in the proceedings, must be informed not only about the charges (see below para. 23 under e), but also about the juvenile justice process as such and about the possible measures. The child should be given the opportunity to express his/her views concerning the (alternative) measures that may be imposed, and the specific wishes or preferences he/she may have in this regard should be given due weight. Alleging that the child is criminally responsible implies that he/she should be competent and able to effectively participate in the decisions regarding the most appropriate response to allegations of his/her infringement of the penal law (see below para. 23 under d). It may go without saying that the judges involved are responsible for and make the decisions. But to treat the child as a passive object does not recognize his/her rights or contribute to an effective response to his/her behaviour. This also applies to the implementation of the measure imposed. Research shows that an active engagement of the child in this implementation will in most cases contribute to a positive result.

*23d. The right to effective participation in the proceedings (art 40(2)(b)(iv)).*

A fair trial requires that the child alleged as or accused of having infringed the penal law be able to effectively participate in the trial, and therefore needs to comprehend the charges, and possible consequences and penalties, in order to direct the legal representative, to challenge witnesses, to provide an account of events, and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. Article 14 of The Beijing Rules provides that the proceedings should be conducted in an atmosphere of understanding to allow the child to

participate and to express herself or himself freely. Taking into account the child's age and maturity may also require modified courtroom procedures and practices.

*23e. Prompt and direct information of the charge(s) (art.40(2)(b)(ii)).*

Every child alleged as or accused of having infringed the penal law has the right to be informed promptly and directly of the charges against him/her. Prompt and direct means as soon as possible, and that is when the prosecutor or the judge initially takes procedural steps against the child. But also when the authorities decide to deal with the case without resorting to judicial proceedings, the child must be informed of the charge(s) that may justify this approach. This is part of the requirement of article 40(3)(b) CRC that legal safeguards should be fully respected.

The child should be informed in a language he/she understands. This may require a presentation of the information in a foreign language but also a 'translation' of the formal legal language often used in criminal/juvenile charges into a wording that a child can understand.

Providing the child with an official document is not enough and an oral explanation may often be necessary. The authorities should not leave this to the parents or legal guardians or the child's legal or other assistance. It is the responsibility of the authorities (e.g. police, prosecutor, judge) to make sure that the child understands each charge they bring against him/her.

The Committee is of the opinion that provision of this information to the parents or legal guardians should not be an alternative to communicating this information to the child. It is most appropriate if both the child and the parents or legal guardians receive the information in such a way that they can understand the charge(s) and the possible consequences.

*23f. Legal or other appropriate assistance (art. 40(2)(b)(ii)).*

The child must be guaranteed legal or other appropriate assistance in the preparation and presentation of his/her defence. The CRC does require that the child is provided with assistance, which is not necessarily under all circumstances legal but it must be appropriate. It is left to the discretion of States Parties how this assistance is provided but it should be free of charge. The Committee recommends the State Parties to provide as much as possible for adequate trained legal assistance, such as expert lawyers or paralegal professionals. Other appropriate assistance is possible (e.g. social worker), but that person must have sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law.

As required by article 14(3)(b) ICCPR, the child and his/her assistant must have adequate time and facilities for the preparation of his/her defence. Communications between the child and his/her assistance, either in writing or orally, should take place under such conditions that the confidentiality of this communication is fully respected in accordance with the guarantee provided for in article 40(2)(b)(vii) CRC, and the right of the child to be protected against interference with his/her privacy and correspondence (art. 16 CRC).

A number of States Parties have made reservations regarding this guarantee (art. 40(2)(b) (ii) CRC), apparently assuming that it requires exclusively the provision of legal assistance and therefore by a lawyer. That is not the case and such reservations can and should be withdrawn.

*23g. Decisions without delay and with involvement of parents (art. 40(2)(b)(iii)).*

Internationally there is a consensus that for children in conflict with the law the time between the commission of the offence and the final response to this act should be as short as possible. The longer this period, the more likely it is that the response loses its desired positive, pedagogical impact, and the more the child will be stigmatized.

In this regard, the Committee also refers to article 37(d) CRC, where the child deprived of liberty has the right to a prompt decision on his/her action to challenge the legality of the deprivation of his/her liberty.
The standard 'prompt' is even stronger - and justifiably so given the seriousness of deprivation of liberty - than the standard 'without delay' (art. 40(2)(b)(iii) CRC), which is stronger than the standard 'without undue delay' of article 14(3)(c) ICCPR.
The Committee recommends the States Parties to 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 adjudication and disposition by the court or other competent judicial body.
These time limits should be much shorter than the ones for adults. But at the same time, decisions without delay should be the result of a process in which the human rights of the child and legal safeguards are fully respected.
In this decision-making process without delay, the legal or other appropriate assistance must be present. This presence should not be limited to the trial before the court or other judicial body, but also applies to all other stages of the process, beginning with the interviewing (interrogation) of the child by the police.
Parents or legal guardians should also be present at the proceedings because they can provide general psychological and emotional assistance to the child. The presence of parents does not mean that parents can act in defence of the child or be involved in the decision-making process.
However, the judge or competent authority may decide, at the request of the child or of his/her legal or other appropriate assistance or because it is not in the best interests of the child (art. 3 CRC), to limit, restrict or exclude the presence of the parents from the proceedings.
The Committee recommends States Parties to explicitly provide by law for the maximum possible involvement of parents or legal guardians in the proceedings against the child. This involvement shall in general contribute to an effective response to the child's infringement of the penal law.
To promote parental involvement, parents must be notified of the apprehension of their child as soon as possible.
At the same time, the Committee regrets the trend in some countries to introduce the punishment of parents for the offences committed by their children. Civil liability for the damages caused by the child's act can, in some limited cases, be appropriate, in particular for the younger children (e.g. below 16 years of age). But criminalizing parents of children in conflict with the law will most likely not contribute to them becoming active partners in the social reintegration of their child.

*23h. Freedom from compulsory self-incrimination (art. 40(2)(b)(iv)).*

In line with article 14(3)(g) ICCPR, the CRC requires that a child is not compelled to give testimony or to confess or acknowledge guilt. This means in the first place - and self-evidently - that torture, cruel, inhuman or degrading treatment in order to achieve an admission or a confession constitutes a grave violation of the rights of the child (art. 37(a) CRC) and is wholly unacceptable. No such admission or confession can be admissible as evidence.
But there are many other less violent ways to coerce or to lead the child to a confession or a self-incriminatory testimony. The term 'compelled' should be interpreted in a broad manner and not be limited to physical force or other clear violations of human rights. The age of the child, the child's development, the length of the interrogation, the child's lack of understanding, the fear of unknown consequences or of a suggested possibility of imprisonment, may lead him/her to a confession that is not true. That may become even more

likely if rewards are promised such as: “You can go home as soon as you have given us the true story”, or lighter sanctions or release are promised.
The child being questioned must have access to a legal or other appropriate representative, and must be able to request that their parent(s) be present during questioning. There must be independent scrutiny of the methods of interrogation to assure that the evidence is voluntary and not coerced, given the totality of the circumstances, and is reliable. The court or other judicial body, when considering the voluntariness and reliability of an admission or confession by a child, must take into account the age of the child, the length of custody and interrogation, and the presence of legal or other counsel, parent(s), or independent representatives for the child.
Police officers and other investigating authorities should be well trained to avoid interrogation techniques and practices that result in coerced or unreliable confessions or testimonies.

*23i. Presence and examination of witnesses (art. 40(2)(b)(iv)).*

The guarantee in article 40(2)(b)(iv) CRC underscores that the principle of equality of arms (i.e. under conditions of equality or parity between defence and prosecution) should be observed in the administration of juvenile justice. The phrase “to examine or to have examined” refers to the fact that there are distinctions in the legal systems, particularly between the accusatorial and inquisitorial trials. In the latter, the defendant is often allowed to examine witnesses although he/she rarely uses this right, leaving examination of the witnesses to the lawyer or, in the case of children, to another appropriate body. However, it remains important that the lawyer or other representative informs the child about the possibility to examine witnesses and to allow him/her to express his/her views in that regard, views which should be given due weight in accordance with the age and maturity of the child (art.12 CRC).

*23j. The right to appeal (art. 40(2)(b)(v)).*

The child has the right to appeal against the decision by which he is found guilty of the charge(s) brought against him/her and against the measures imposed as a consequence of this guilty verdict. This appeal should be decided by a higher, competent, independent and impartial authority or judicial body, in other words, a body that meets the same standards and requirements as the one that dealt with the case in the first instance. This guarantee is similar to the one expressed in article 14(5) ICCPR. This right of appeal is not limited to the most serious offences only.
This seems to be the reason for quite a number of States Parties to make a reservation regarding this provision in order to limit this right of appeal by the child to the more serious offences and/or sentences to imprisonment. The Committee reminds States Parties to the ICCPR that a similar provision is made in art. 14(5) of the Covenant. In the light of art. 41 CRC, it means that this article should provide every adjudicated child with the right to appeal. The Committee recommends States Parties with a reservation to the provision in article 40 (2) (b) (v) to withdraw it.

*23k. Free assistance of an interpreter (art. 40(2)(vi)).*

If the child cannot understand or speak the language used by the juvenile justice system, he/she has the right to free assistance of an interpreter. This assistance must not be limited to the trial in court but be available at all stages of the juvenile justice process. It is also important that the interpreter has been trained to work with/for children, because their use and understanding of their mother tongue might be different from that of adults. Lack of knowledge and/or experiences in that regard may impede the child’s full understanding of the questions raised, and interfere with the right to a fair trial and to effective participation. The condition starting with ‘if’, “if the child cannot understand or speak the language used”, means that a child of e.g. foreign or ethnic origin who – besides his/her mother tongue –

understands and speaks the official language, does not have to be provided with the free assistance of an interpreter.
The Committee also wants to draw the attention of States Parties to children with speech impairment or other disabilities. In line with the spirit of article 40 (2) (vi) and in accordance with the special protection provided to children with disabilities in article 23 the Committee recommends States Parties to ensure that children with speech impairment or other disabilities are provided with adequate and affective assistance by well trained professionals, e.g. in sign language, in case they are subject to the juvenile justice process ( see also in this regard General Comment No 9 of the Committee on The Rights of Children with Disabilities, in particular para. ….; CRC/GC/9/2006).

*23l. Full respect of privacy (arts. 16 and 40(2)(b)(vii)).*

The right of the child to have his/her privacy fully respected in all stages of the proceedings reflects the right to protection of privacy enshrined in article 16 CRC. 'All stages of the proceedings' includes from the initial contact with law enforcement (e.g. a request for information and identification) up until the final decision by a competent authority or release from supervision, custody or deprivation of liberty. It is in this particular context meant to avoid harm caused by undue publicity or by the process of labelling. No information shall be published that may lead to the identification of a child offender because of its effect of stigmatisation, and possible impact on their ability to obtain an education, work, housing or to be safe. It means that a public authority should be very reluctant with press releases related to offences allegedly committed by children and limit them to very exceptional cases. They must take measures to guarantee that children are not identifiable via these press releases. Journalists who violate the right to privacy of a child in conflict with the law should be sanctioned with disciplinary and when necessary (e.g. in case of recidivism) with penal law sanctions.
In order to protect the privacy of the child, most States Parties have as a rule – sometimes with the possibility of exceptions – that the court or other hearings of a child accused of an infringement of the penal law should take place behind closed doors. This rule allows for the presence of experts or other professionals with a special permission of the court. Public hearings in juvenile justice should only be possible in well-defined cases and at the written decision of the court. Such a decision should be open for appeal by the child.
The Committee recommends all States Parties to introduce the rule that court and other hearings of a child in conflict with the law should be conducted behind closed doors. Exceptions to this rule should be very limited and be clearly stated in the law.
The verdict/sentence should be pronounced in public at a session of the court in such a way that the identity of the child is not revealed. The right to privacy (art. 16 CRC) requires all professionals involved in the implementation of the measures taken by the court or another competent authority to keep all information that may result in identification of the child confidential in all their external contacts. Furthermore, the right to privacy also means that the records of child offenders shall be kept strictly confidential and closed to third parties except for those directly involved in the investigation, adjudication and disposition of the case. With a view to avoiding stigmatisation and/or prejudgements, records of child offenders shall not be used in adult proceedings in subsequent cases involving the same offender (see The Beijing Rules, rules 21.1 and 21.2), or to enhance such future sentencing. The Committee recommends States Parties to introduce rules which would allow for an automatic removal from the criminal records the name of the child who committed an offence upon reaching the age of 18, or for certain limited, serious offences where removal is possible at the request of the child, if necessary under certain conditions (e.g. not having committed an offence within two years after the last conviction).

## E. Dispositions (see also above Part B)

24. Pre-trial alternatives. The decision to initiate a formal criminal law procedure does not necessarily mean that this procedure must be completed with a formal court sentence for a child.
In line with the observations made above in Part B, the Committee wants to emphasize that the competent authorities - in most States the office of the public prosecutor – should continuously explore the possibilities of alternatives to a court conviction. In other words, efforts to achieve an appropriate conclusion of the case by offering measures like the ones mentioned above in Part B should continue. The nature and duration of these measures offered by the prosecution may be more demanding, and legal or other appropriate assistance for the child is then necessary.
The performance of such a measure should be presented to the child as a way to suspend the formal criminal/juvenile law procedure, which will be terminated if the measure has been carried out in a satisfactory manner.
In this process of offering alternatives to a court conviction at the level of the prosecutor, the child's human rights and legal safeguards should be fully respected. In this regard, the Committee refers to the recommendations set out above in para. 13, which equally apply here.

25. Dispositions by the juvenile court/judge. After a fair and just trial in full compliance with article 40 CRC (see above Part D), a decision is made regarding the measures which should be imposed on the child found guilty of the alleged offence(s). The laws must provide the court/judge, or other competent, independent and impartial authority or judicial body, with a wide variety of possible alternatives to institutional care and deprivation of liberty, which are listed in a non-exhaustive manner in article 40(4) CRC, to assure that deprivation of liberty be used only as a measure of last resort and for the shortest possible period of time (art. 37(b) CRC).
The Committee wants to emphasize 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 age, lesser culpability, circumstances and needs of the child, as well as the various and in particular 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) CRC (see above para. 4).The Committee reiterates that corporal punishment as a sanction is a violation of these principles and of article 37 under a prohibiting all forms of cruel inhuman and degrading treatment or punishment (see also General Comment No 8 (2006) on The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment). In cases of severe offences by children, dispositions proportional to the circumstances of the offender and (the gravity) the offence may be considered, including considerations of the needs of public safety and sanctions, but in cases of children such considerations must always be outweighed by the need to safeguard the well-being and the best interests of and to promote the reintegration of the young person.
The Committee notes that if a penal disposition is linked to the age of a child, and there is conflicting, inconclusive or uncertain evidence of the child's age, the child shall have the right to the rule of the benefit of the doubt (see also above paras. 19 and 22).
As far as alternatives to deprivation of liberty/institutional care are concerned, there is wide variety of experiences with the use and implementation of such measures. States Parties should benefit from this experience, and develop and implement these alternatives adjusted to their own culture and tradition. It goes without saying that measures amounting to forced labour or to torture or inhuman and degrading treatment must be explicitly prohibited and those responsible for such illegal practices should be brought to justice.
After these general remarks, the Committee wants to draw the attention to the dispositions prohibited under article 37(a) CRC, and to deprivation of liberty.

26. Prohibition of the death penalty. Article 37(a) CRC reaffirms the internationally accepted standard (see e.g. art. 6(5) ICCPR) that the death penalty cannot be imposed for a crime committed by a person who at that time was under 18 years of age. Although the text is clear, there are States Parties that assume that the rule only prohibits the execution of persons below the age of 18 years. However, under this rule the explicit and decisive criteria is the age at the time of the commission of the offence. It means that a death penalty may not be imposed for a crime committed by a person under 18 regardless his/her age at the time of the trial or sentencing or of the execution of the sanction.
The Committee recommends the few States Parties that have not done so yet to abolish the death penalty for all offences committed by persons below the age of 18 years and to suspend the execution of all death sentences for those persons till the necessary legislative measures abolishing the death penalty for children have been fully enacted. The imposed death penalty should be changed to a sanction that is in full conformity with the CRC.

27. No life imprisonment without parole. No child who was under the age of 18 at the time he or she committed an offence should be sentenced to life without the possibility of release or parole. For all sentences imposed upon children the possibility of release should be realistic and regularly considered. In this regard, the Committee refers to article 25 CRC providing the right to periodic review for all children placed for the purpose of care, protection or treatment. The Committee reminds the States Parties which do sentence children to life imprisonment with the possibility of release or parole that this sanction must fully comply with and strive for the realization of the aims of juvenile justice enshrined in article 40(1) CRC. This means inter alia that the child sentenced to this imprisonment should receive education, treatment, and care aiming at his/her release, reintegration and ability to assume a constructive role in society. This also requires a regular review of the child's development and progress in order to decide on his/her possible release. Given the likelihood that a life imprisonment of a child will make it very difficult, if not impossible, to achieve the aims of juvenile justice despite the possibility of release, the Committee strongly recommends the States Parties to abolish all forms of life imprisonment for offences committed by persons under the age of 18.

## F. Deprivation of liberty including pre-trial detention and post-trial incarceration

28. Article 37 CRC contains the leading principles for the use of deprivation of liberty, the procedural rights of every child deprived of liberty, and provisions concerning the treatment of and conditions for children deprived of their liberty.

*28a. Basic principles.*
The leading principles for the use of deprivation of liberty are: (a) the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; and (b) no child shall be deprived of his/her liberty unlawfully or arbitrarily.
The Committee notes with concern that, in many countries, children languish in pre-trial detention for months or even years, which constitutes a grave violation of article 37(b) CRC.
An effective package of alternatives must be available (see above Part B), in order for the States Parties to realise their obligation under article 37(b) CRC to use deprivation of liberty only as a measure of last resort. The use of these alternatives must be carefully structured to reduce the use of pre-trial detention as well, rather than 'widening the net' of children sanctioned. In addition, the States Parties should take adequate legislative and other measures to reduce the use of pre-trial detention. Use of pre-trial detention as a punishment violates the presumption of innocence. The law should clearly state the conditions that are required to be

met in order to place or keep a child in pre-trial detention, in particular to assure the child's appearance at the court proceedings and if the child is an immediate danger to self or others. The duration of pre-trial detention should be limited by law and be subject to regular review, e.g. every month. The Committee recommends the State Parties to ensure that a child can be released from pre-trial detention as soon as possible, if necessary under certain conditions. Decisions regarding pre-trial detention, including its duration, should be made by a competent, independent and impartial authority or judicial body, and the child should be provided with legal or other appropriate assistance.

*28b. Procedural rights (art. 37(d)).*

Every child deprived of his/her liberty has the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his/her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Every child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of (the continuation of) this deprivation of liberty within 24 hours. The Committee also recommends the States Parties to ensure by strict legal provisions that the legality of a pre-trial detention is reviewed regularly, preferably every two weeks. In case a conditional release of the child, e.g. by applying alternative 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 thirty days after his/her pre-trial detention takes effect. The Committee , conscious of the practice of adjourning courts hearings (often more than once), urges the States parties to introduce the legal provisions necessary to ensure that the court/juvenile judge or other competent body makes a final decision on the charges not later than 6 months after they have been presented.

The right to challenge the legality of the deprivation of liberty includes not only the right to appeal, but also the right to access the court, or other competent, independent and impartial authority or judicial body, in cases where the deprivation of liberty is an administrative decision (e.g. police, prosecutor, other competent authority). The right to a prompt decision means that a decision must be rendered as soon as possible, e.g. within or not later than two weeks after the challenge is made.

*28c. Treatment and conditions (art. 37(c)).*

Every child deprived of liberty shall be separated from adults. A child deprived of his/her liberty shall not be placed in an adult prison or other facility for adults. There is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate. The permitted exception to the separation of children from adults stated in article 37(c) CRC, "unless it is considered in the child's best interests not to do so", should be interpreted narrowly; the child's best interests does not mean for the convenience of the States Parties. States Parties should establish separate facilities for children deprived of their liberty, which include distinct, child-centred staff, personnel, policies and practices.

This rule does not mean that a child placed in a facility for children has to be moved to a facility for adults immediately after he/she turns 18. Continuation of his/her stay in the facility for children should be possible if that is in his/her best interest and not contrary to the best interests of the younger children in the facility.

Every child deprived of liberty has the right to maintain contact with his/her family through correspondence and visits. In order to facilitate visits, the child should be placed in a facility that is as close as possible to the place of residence of his/her family. Exceptional circumstances that may limit this contact should be clearly described in the law and not left to the discretion of the competent authorities.

The Committee draws the attention of States Parties to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty adopted by the General Assembly on 14 December 1990 (Resolution 45/113). The Committee urges the States Parties to fully implement these Rules [while also taking into account as far as relevant the Standard Minimum Rules for the Treatment of Prisoners; see Rule 9 of the Beijing Rules]. In this regard, the Committee recommends the States Parties to incorporate these Rules into their national laws and regulations, and to make them available in the national or regional language to all professionals, NGOs and volunteers involved in the administration of juvenile justice.
The Committee wants to emphasize that inter alia the following principles and rules need to be observed in all cases of deprivation of liberty:

- Children should be provided with a physical environment and accommodations which are in keeping with the rehabilitative aims of residential placement, and due regard must be given to the needs of the child for privacy, sensory stimuli, opportunities for association with peers, and participation in sports, physical exercise, the arts, and leisure time activities;

- Every child of compulsory school age has the right to education suited to his/her needs and abilities, and designed to prepare him/her for return to society; in addition, every child should, when appropriate, receive vocational training in occupations likely to prepare him/her for future employment;

- Every child has the right to be examined by a physician upon admission to the detention/correctional facility and shall receive adequate medical care throughout his/her stay in the facility, which should be provided, where possible, by health facilities and services of the community;

- The staff of the facility should promote and facilitate frequent contacts of the child with the wider community, including communications with his/her family, friends and other persons or representatives of reputable outside organisations, and the opportunity to visit his/her home and family;

- Restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment. Staff of the facility should receive training on the applicable standards and members of the staff who use restraint or force in violations of the rules and standards should be punished appropriately;

- Any disciplinary measure must be consistent with upholding the inherent dignity of the juvenile and the fundamental objectives of institutional care; disciplinary measures in violation of article 37 CRC must be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned;

- Every child should have the right to make requests or complaints, without censorship as to the substance, to the central administration, the judicial authority or other proper independent authority, and to be informed of the response without delay; children need to know about and have easy access to these mechanisms.

- Independent and qualified inspectors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative; they should place special emphasis on holding conversations with children in the facilities, in a confidential setting.

## V. The organisation of Juvenile Justice

30. In order to ensure the full implementation of the principles and rights elaborated on in the previous paragraphs, it is necessary to establish an effective organization for the administration of juvenile justice, and a comprehensive juvenile justice system. As stated in article 40(3) CRC, States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children in conflict with the penal law.
What the basic provisions of these laws and procedures are required to be, has been presented in this General Comment above. More and other provisions are left to the discretion of States Parties. This also applies to the form of these laws and procedures. They can be laid down in special chapters of the (general) criminal and procedural law, or be brought together in a separate act or law on juvenile justice.
A comprehensive juvenile justice system further requires the establishment of specialized units within the police, the judiciary, the court system, the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child.

31. The Committee recommends the States Parties to establish juvenile courts either as separate units or as part of existing regional/district courts. Where that is not immediately feasible for practical reasons, the States Parties should ensure the appointment of specialized judges or magistrates for dealing with cases of juvenile justice.
In addition, specialized services such as probation, counselling or supervision should be established together with specialized facilities including e.g. day treatment centres and, where necessary, facilities for residential care and treatment of child offenders. In this juvenile justice system, an effective coordination of the activities of all these specialized units, services and facilities should be promoted in an ongoing manner.
From many of the States Parties reports it is clear that non-governmental organisations can and do play an important role not only in the prevention of juvenile delinquency but also in the administration of juvenile justice. The Committee therefore recommends States Parties to seek the active involvement of these organisations in the development and implementation of their comprehensive juvenile justice policy and to provide them with the necessary resources for this involvement.

## VI. Awareness raising and training

32. Children who commit offences are often subject to negative publicity in the media, which contributes to a discriminatory and negative stereotyping of these children and often of children in general. This negative presentation or criminalization of child offenders is often based on misrepresentation and/or misunderstanding of the causes of juvenile delinquency and results regularly in a call for a tougher approach (e.g. zero-tolerance, three strikes and you are out, mandatory sentences, trial in adult court and other primarily punitive responses).
To create a positive environment for a better understanding of the root causes of juvenile delinquency and a rights based approach of this social problem, the States Parties should conduct, promote and/or support educational and other campaigns to raise awareness of the

need and the obligation to deal with children alleged of violating the penal law in accordance with the spirit and the letter of the CRC. In this regard, the States parties should seek the active and positive involvement of members of parliament, NGO's and the media, and support their efforts for improvement of the understanding of a rights based approach to children who have been or are in conflict with the penal law.
It is crucial that children, in particular those who have experiences with the juvenile justice system, are involved in these awareness-raising efforts.

33. It is essential for the quality of the administration of juvenile justice that all the professionals involved, including in law enforcement and judiciary, receive appropriate training to inform them about the content and the meaning of the provisions of the CRC in general and those directly relevant for their daily practice in particular. The training should be organised in a systematic and ongoing manner and not be limited to information about the relevant national and international legal provisions. It should include information on inter alia the social and other causes of juvenile delinquency, the psychological and other aspects of the development of children [ with special attention to girls and children belonging to minorities or indigenous peoples] , the culture and the trends in the world of young people, the dynamics of group activities, and the available measures to deal with children in conflict with the penal law, in particular measures without resorting to judicial proceedings (see above Section IV, Part B).

## VII. Data collection, evaluation and research

34. The Committee is deeply concerned about the lack of even basic and disaggregated data on inter alia the quantity and the nature of offences committed by children, the use and the average length of duration of pre-trial detention, the number of children dealt with by the use of measures without resorting to judicial proceedings (diversion), the number of convicted children and the nature of the sanctions imposed on them. The Committee urges the States Parties to systematically collect disaggregated data relevant for the information on the practice of the administration of juvenile justice, and necessary for the development, implementation and evaluation of policies and programmes aiming at the prevention and at effective responses to juvenile delinquency in full accordance with the principles and provisions of the CRC.

35. The Committee recommends the States Parties to conduct regular evaluations of their practice of juvenile justice, in particular of the effectiveness of the measures taken, including measures concerning discrimination, reintegration and recidivism, and preferably carried out by independent academic institutions. Research, e.g on the disparities in the administration of juvenile justice which may amount to discrimination, and developments in the field of juvenile delinquency, such as effective diversion programmes or newly emerging juvenile delinquency activities, will indicate critical points of success and concern. It is important that children are involved in this evaluation and research, in particular those who have been in contact with (parts of) the juvenile justice system. The privacy of these children and the confidentiality of their cooperation should be fully respected and protected. In this regard, the Committee refers the States Parties to the existing international guidelines for the involvement of children in research.

---