



CHILDREN'S RIGHTS IN JUVENILE JUSTICE

AMNESTY INTERNATIONAL'S OBSERVATIONS TO THE UNITED NATIONS
COMMITTEE ON THE RIGHTS OF THE CHILD ON DRAFT GENERAL
COMMENT NO. 24 (201X)

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Amnesty International welcomes the call for comments on the revised Draft General Comment No. 24 (201x), replacing General Comment No. 10 (2007)- Children’s rights in juvenile justice. The comments below should not be seen as an exhaustive list of issues but rather include certain suggestions on how to strengthen the provisions of the draft General Comment. The structure of this document follows the outline of the draft General Comment.

I. INTRODUCTION

Amnesty International suggests that the second sentence of paragraph 2 be strengthened so as to reflect the full legal obligation to comply with the CRC. **“However, States parties must serve this aim subject to their obligations to respect and implement** the principles of juvenile justice as enshrined in the Convention on the Rights of the Child (hereafter CRC).”

As regards paragraph 4, “several declarations and guidelines” lacks clarity. We suggest replacing it with **“several instruments”**.

[II. No suggestions]

III. TERMINOLOGY

In paragraph 6, the definition of Children in conflict with the law could benefit from the use of legal terms, where appropriate, which would add clarity. We suggest replacing “children alleged as, accused of, or recognized as having infringed the penal law” with **“children accused of, charged with, tried for or convicted of** having infringed the penal law”.

As regards Juvenile justice we suggest substituting “children considered as offenders” with **“children in conflict with the law”** as it is otherwise unclear who is considering or what such consideration entails.

We suggest that in the definition of Minimum age of criminal responsibility the phrase “children shall be presumed not to have the capacity” be replaced with **“below which the law determines that children do not have the capacity...”** so as to increase the clarity of this definition.

IV. JUVENILE JUSTICE: THE LEADING PRINCIPLES OF A COMPREHENSIVE POLICY

NON-DISCRIMINATION (ART. 2)

Paragraph 8 does not address discrimination on the basis of real or perceived sexual orientation or gender identity or expression. It also categorises all girl children as “vulnerable” which is potentially disempowering. We suggest resolving this by deleting “girl children” from the list in the second sentence and adding a sentence after “(recidivists)”: **“Measures adopted by States parties must be gender-appropriate, addressing the specific needs and risks faced by girls in conflict with the law as well as discrimination against children based on their real or perceived sexual orientation or gender identity or expression.”**

The term “child offenders” is not defined in this General Comment, and could be understood narrowly. We suggest replacing it with: **“children in conflict with the law”** or variations thereof throughout.

We also suggest changing ‘vulnerable groups of children’ to **‘marginalised** groups of children’ to place greater emphasis on the social process of marginalization as opposed to the inherent vulnerability of such groups.

As regards paragraph 9, the term “child offenders” is not defined in this General Comment, and could be understood narrowly. We suggest replacing it here with: **“children who have been convicted of offences”** - this covers both children who are currently in prison and those who have been released, as well as support for children whose conviction does not entail imprisonment.

We suggest the addition of a new paragraph between paragraphs 8 and 9, which would address structural inequalities and discrimination faced by children in conflict with the law. This paragraph would make clear that

structural inequalities and the failure of States to respect, protect and fulfil economic, social and cultural rights such as the rights to education, housing and health can increase children's vulnerability and their chances of coming into conflict with the law. Such a new paragraph would also urge states to take steps to address these factors by focusing resources on the realization of economic, social and cultural rights rather than punitive criminal justice measures.

We suggest paragraph 11 to be expanded to address the fact that criminal codes in some countries effectively criminalize homelessness through laws that can bring children – particularly children in street situations - in conflict with the law and put them at additional risk of rights violations. This paragraph would make clear that States parties must abolish such offences. In addition, when deciding what correctional measures should be applied to a child in conflict with the law, their living conditions/homeless status should not result in the deprivation of liberty. Non-custodial measures should be equally considered for all children. This paragraph would make clear that states must abolish offences based on a child's socioeconomic status and offences and refrain from any decisions to deprive a child of liberty on the basis of their socioeconomic status. This paragraph would make clear that states must instead invest in ensuring that all persons, including children, have access to adequate housing and all other economic and social rights.

As regards paragraph 12, we suggest substituting “for instance, that the traditional objectives of criminal justice, such as repression/retribution...” with “... **means that rehabilitation and restorative justice are the primary objectives...**” and deleting the rest of the sentence. Retribution is no longer seen, internationally, as the objectives of justice for adults either.¹

We suggest deleting the rhetorical question at paragraph 15 (“If the key actors...”) in order to increase clarity and avoid rhetorical questions.

We suggest deleting “and promotes the child's integration and the child's assuming a constructive role in society” and replace it with language based on Rule 4(1) of the Nelson Mandela Rules, i.e. by stressing that treatment should ensure the reintegration of the child into society upon release.

The sentence commencing “This principle must be applied, observed and respected...” should be rephrased to state that this principle must be applied, observed and respected in implementing any and all measures of dealing with the child throughout the entire process, from the first contact with law enforcement agencies all the way to the time when law enforcement is no longer involved in his or her life.

We suggest amending paragraph 16 in line with our suggested amendments to paragraph 2.

V. JUVENILE JUSTICE: THE CORE ELEMENTS OF A COMPREHENSIVE POLICY

In paragraph 18 we suggest replacing “implementation” with “**realization**” in accordance with CRC Article 24(4). “Various measures should be taken for the full and equal **realization** of the rights to an adequate standard of living (art. 27), ...”

As regards the final line in paragraph 19, “special needs” has a distinct connotation. We suggest replacing it with “**specific needs**.” “The States parties should also develop community-based services and programmes that respond to the **specific needs**, problems, concerns and interests of children, and that provide appropriate counselling and guidance to their families.”

In paragraph 20 “The measures... should also emphasise” is unclear. We suggest replacing “should also emphasise” with “...**but also on** the promotion...” so that the sentence reads: “The measures of assistance should not only focus on the prevention of negative situations, but **also on the** promotion of the social potential of parents.”

For increased clarity we suggest replacing “In both interventions” with “**Regarding both kinds of** intervention” in paragraph 22, so that the sentence reads: “**Regarding both kinds of intervention**, the Committee reminds States

¹ See e.g. the Nelson Mandela Rules, Rule 4.

parties that utmost care must be taken to ensure that the child's human rights and legal safeguards are thereby fully respected and protected.”

In paragraph 24 we suggest replacing “child offenders” with “**children in conflict with the law**”.

Following the fourth bullet point of paragraph 27 (ending “review of the measure”) we recommend the insertion of a new bullet point which would clarify that a variety of diversion options should be available within the justice system so as to respect cultural diversity. Furthermore, it would make clear that diversion measures should not be used in a discriminatory manner and not result in, for example, racial disparity in sentencing and diversion measures.

C. AGE AND CHILDREN IN CONFLICT WITH THE LAW

In paragraph 31 we suggest changing the “and” for “or” so that the sentence reads “It is a fact that even young children do commit offences, but if they do so when below the minimum age of criminal responsibility the operation of law dictates that they cannot be formally charged **or** held responsible in a criminal law process.”

In paragraph 41, we suggest clarifying that states are prohibited from imposing the death penalty and life imprisonment without possibility of release even if the defendant turns 18 before the trial is conducted or sentence imposed, by adding a sentence stressing that in line with Article 37 of the Convention, the death penalty and life imprisonment without possibility of release must not be imposed on those who are younger than 18 at the time of the commission of the offence. This distinction in legal obligation at sentencing is critical, as we have documented several cases of children kept on death row and executed as soon as they turn 18.

We have further documented cases where the death penalty has been imposed on defendants whose age had passed the 18 years cut-off by merely weeks or months, while the courts were presented with evidence of their lack of adult maturity.² In line with the Committees expressed views on other issues,³ we suggest adding at the end of paragraph 41 a recommendation stating that the following recommendation the Committee additionally encourages States to take protective and support measures beyond the age of 18 years.

We suggest an additional sentence be added to paragraph 45, following the sentence which ends “...legal processes”: “Age assessment procedures must also avoid practices that are degrading and humiliating to the child – such as genital examinations - and must always respect the dignity of the child.” At the conclusion of paragraph 45 the following sentence should be included, as has previously been included in this committee's guidance on age assessments: “States should ensure that their determinations can be reviewed or appealed to a suitable independent body.”⁴

In paragraph 63 the following additional text should be inserted after “with children in conflict with the law”. “**The assistance provided itself must be age-appropriate and responsive to the needs of the individual child.**”

We suggest that paragraph 66 be amended so that “should” is replaced with ‘must’, “The shortened time frames **must** still allow for the child's rights and the legal safeguards to be fully respected.”

As regards paragraph 67, we suggest amending the first line so that parents or guardians are present “at all stages” of proceedings. “Parents or legal guardians should also be present **at all stages** of the proceedings.”

In the first line of paragraph 78 we recommend substituting “reflects the right enshrined in article 16” with “...**is protected under** Article 16...” so as to achieve greater clarity.

To paragraph 90, we suggest amending “Article 37 (a) of CRC reaffirms the internationally accepted standard” so that instead of “internationally accepted standard” the sentence refers to a “**prohibition under customary international law.**” An additional line should be inserted prior to the subsequent sentence, which would confirm

² See, for example, Amnesty International. *USA: Darkness Visible in the Sunshine State – The death penalty in Florida* (AMR 51/8959/2018), pp.39-48, <https://www.amnesty.org/en/documents/amr51/8959/2018/en/>

³ See for example “Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return”, UN Doc. CMW/C/GC/4-CRC/C/GC/23, para.3.

⁴ UN Doc. CMW/C/GC/4-CRC/C/GC/23, para.4.

that this prohibition has gained such widespread acceptance that it has been recognized as a rule of customary international law and a peremptory norm of general international law (*jus cogens*).⁵

Under **paragraph 96**, we suggest that the Committee include a new paragraph on safeguards during the arrest of a child. Such new paragraph would note that torture and other ill-treatment sometimes begin during arrest⁶ and that therefore, it is essential that governments ensure that safeguards are put in place and observed from the moment a child comes into contact with the law enforcement system to prevent physical or psychological abuses. The contact between law enforcement and a child in conflict with the law should be managed in such a way as to respect the legal status of the child and avoid harm to him or her. Safeguards to secure their safety and protection against torture and ill-treatment should include the immediate notification of parent/guardian upon child's arrest.⁷ This new paragraph would also recall that under article 37(a) of the CRC States parties are obliged to ensure that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment. It would also stress that States parties to the CRC have the obligation to treat children deprived of liberty "with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age." (article 37 (c)). Finally, it would specify that States parties must refrain from restraining methods and instruments affecting the child's dignity.⁸

In para. 107, we suggest adding reference also to the recommendations of the Day of General Discussion on "Children of Incarcerated Parents" that the Committee on the Rights of the Child held on 30 September 2011,⁹ which refer specifically to the rights and needs of children of incarcerated parents. This is because children who experience juvenile justice can also be themselves parents, and it is critical to ensure that adequate accommodation is provided for all concerned.

In para 108, we suggest that the paragraph also state that there must be no conditionalities or restrictions imposed on children's access to educational opportunities and health care while living in detention.

G. SPECIFIC ISSUES

We suggest to include non-state armed groups involved in drug trafficking as groups that recruit or exploit children in line with article 33 of the Convention. We suggest the addition of the following activities to the list in paragraph 110: transport and sale of drugs, surveillance, and participation in confrontations with State security forces.

Amnesty International encourages the Committee to include a separate section under "specific issues" relative to the prosecution of children for drug-related offences. In particular, the Committee should explicitly reference its long-standing position that children who use drugs should not to be subjected to criminal proceedings for their use and possession of drugs, even in the juvenile justice system.¹⁰ The implications of laws that criminalize the

⁵ The Human Rights Committee has stated that under the ICCPR a state "may not reserve the right . . . to execute . . . children". It has also stated that "The proclamation of certain provisions of the Covenant as being of a non-derogable nature, in article 4, paragraph 2 [of the ICCPR], is to be seen partly as recognition of the peremptory nature of some fundamental rights ensured in treaty form in the Covenant (e.g., articles 6 and 7)" and that "article 6 of the Covenant is non-derogable in its entirety". [General Comment 24 on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, adopted on 4 November 1994, UN document No. A/50/40, Vol. I, Annex V; General Comment 29 on states of emergency, adopted on 24 July 2001, UN document CCPR/C/21/Rev.1/Add.11, paras. 11, 15.]

⁶ See Amnesty International, *Combating torture and other ill-treatment, A manual for action* (Index: POL 30/4036/2016).

⁷ Beijing Rules 10(1). Bring child before judge within 24 hours, Beijing 10(2), CRC Gen Comment 10 para 83; separation from adult detainees CRC 37(c)

⁸ UNICEF, *Children in Israeli Military Detention, Observations and Recommendations*, February 2013; and UN General Assembly, *69/194 United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice*, A/RES/69/194, 26 January 2015:

In 2015, the UN General Assembly called on States to: "b) (...) implement the principle that the apprehension or arrest of children should be conducted in a child-sensitive manner;" and "c) to prohibit the use of firearms, electric shock weapons and violent methods to apprehend and arrest children, and to adopt measures and procedures that carefully limit and guide the use of force and instruments of restraint by the police while apprehending or arresting children;".

⁹ Available from <https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2011/DGD2011ReportAndRecommendations.pdf>

¹⁰ Committee on the Rights of the Child (21 April 2011), Concluding Observations: Ukraine, UN Doc. CRC/C/UKR/CO/3-4, para 61(b); Committee on the Rights of the Child (8 April 2011), Concluding Observations: Afghanistan UN Doc No CRC/C/AFG/CO/1, para 52(d); Committee on the Rights of the Child (26 February 2004), Concluding Observations: Armenia, UN Doc. CRC/C/15/ADD.225, para 63; Committee on the Rights of the Child (26 February 2004), Concluding Observations: Indonesia, UN Doc. CRC/C/15/ADD.223, para 74(b); Committee on the Rights of the Child (21 September 2005), Concluding Observations: Norway, UN Doc. CRC/C/15/Add.263, para 44(b); Committee on the Rights of the Child (11 February 2005), Concluding Observations: Bolivia UN Doc No CRC/C/15/Add.256, para 62(c); Committee on the Rights of the Child (23 November 2005), Concluding Observations: Denmark, UN Doc No CRC/C/DNK/CO/3, para 55(d); Committee on the Rights of the Child (23 November 2005), Concluding Observations: Russian Federation UN Doc No CRC/C/RUS/CO/3, para 77(b); Committee on the Rights of the Child (29 September 2006), Concluding Observations: Kiribati UN Doc No CRC/C/KIR/CO/1, para 49(c); Committee on the Rights

use and possession of drugs have long been analysed by this Committee and several other human rights mechanisms, showing its particular severe impact on the health and other human rights of children and young people.¹¹ As it has been recommended by this Committee and other human rights mechanisms, the decriminalization of use and possession of drugs should be accompanied by an expansion of health and other social services to address the problems related to drug use, including efforts specifically tailored for the needs of children and adolescents.¹²

States should also consider alternatives to criminalization when dealing with children accused of having committed other minor, non-violent drug-related offences outside the [juvenile] justice system.¹³ If States implement diversion programmes (or so-called “drug-courts”) for children in conflict with the law who use drugs, they must ensure that drug treatment and rehabilitation for children is not provided as a form of punishment and that is provided only when medically indicated, with the child’s free and voluntary consent, and should always ensure the meaningful participation of the child and their right to give or withhold consent in line with their evolving capacities. As already established by the Committee and other international human rights mechanisms, compulsory detention regimes for the purposes of drug “rehabilitation” through confinement or forced labour, including those based on the perceived danger to themselves or to others, or on arguments of “medical necessity”, are inherently arbitrary and should be repealed, and such institutions closed, without delay.¹⁴

We also suggest that the Committee include a new paragraph on military courts. Such a paragraph would confirm that the criminal jurisdiction of military courts should be limited to trials of members of the military for breaches of military discipline, it should not be applied to crimes over which civilian courts have jurisdiction or to try children. The Human Rights Committee has called on governments in several countries to prohibit the trials of civilians before military courts. The Committee has also specified that criminal proceedings should not be held against children in military courts.¹⁵

VII. AWARENESS-RAISING AND TRAINING

In para 123, we suggest amending the sentence after “causes of juvenile delinquency” so that it would read “with special attention to girls, **LGBTI children** and children belonging to minorities or Indigenous Peoples”.

of the Child (19 November 2007), Concluding Observations: Marshall Islands UN Doc No CRC/C/MHL/CO/2, para 55(c); See also General Comment No. 20 on the Implementation of the Rights of the Child During Adolescence, UN Doc No CRC/C/GC/20, 6 December 2016, para 64.

¹¹ Committee on the Rights of the Child, General Comment 20 on the implementation of the right of the child during adolescence, 6 December 2016, UN Doc. CRC/C/GC/20, para. 64; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 4 April 2016, UN Doc. A/HRC/32/32, para. 98, 103; Office of the High Commissioner on Human Rights, “Study on the impact of the world drug problem on the enjoyment of human rights”, 4 September 2015, UN Doc. A/HRC/30/65, para. 50; UNODC, *UNGASS Background Papers ‘Roundtable 3 Cross-cutting issues: drugs and human rights, youth, women, children and communities’*, pp. 9

¹² Committee on the Rights of the Child, General Comment 20 on the implementation of the right of the child during adolescence, 6 December 2016, UN Doc. CRC/C/GC/20, para. 64; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 4 April 2016, UN Doc. A/HRC/32/32, para. 100

¹³ Committee on the Rights of the Child, General Comment 20 on the implementation of the right of the child during adolescence, 6 December 2016, UN Doc. CRC/C/GC/20, para. 64; The Inter-American Commission on Human Rights, for example, has considered that it is incompatible with international human rights law to criminalize and imprison children and adolescents who are being used and exploited in drug-trafficking and other drug-related activities. See Inter-American Commission on Human Rights, *Violence, Children and Organized Crime*, 11 November 2015, OEA/Ser.LV/II. Doc. 40/15, para. 477

¹⁴ *Concluding Observations: Cambodia*, UN Doc No CRC/C/KHM/CO/2-3, 3 August 2011, paras 38 and 39; *Concluding Observations: Viet Nam*, UN Doc No CRC/C/VNM/CO/3-4, 22 August 2012, paras 43 and 44. See also ILO, OHCHR, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, WFP, WHO and UNAIDS, “Joint statement on compulsory drug detention and rehabilitation centres”, March, 2012; Report of the Working Group on Arbitrary Detention, 10 July 2015, UN Doc. A/HRC/30/36, para. 74; Committee Against Torture (20 January 2011), Concluding observations: Cambodia, UN Doc. CAT/C/KHM/CO/2, para. 20; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 1 February 2013, UN Doc. A/HRC/22/53, para. 87; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Mission to Viet Nam, 4 June 2012, UN Doc. A/HRC/20/15/Add.2, para. 64; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/65/255, para. 32

¹⁵ Concluding Observations: Israel, 4 July 2013, UN Doc No CRC/C/ISR/CO/2-4, para. 19.

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CHILDREN IN JUVENILE JUSTICE

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