

J for Juvenile Justice

In a Nutshell: General Comment No. 10 of the Committee on the Rights of the Child

This summary for development practitioners provides:

- Information on the →topic of General Comment No. 10 and its legal foundation;
- an overview of the →Committee's key recommendations addressed to States parties;
- →key contents of General Comment No. 10;
- →recommendations for development practitioners on how to use this General Comment;
- an excerpt of the →relevant articles of the CRC and an overview of →State party obligations.

What is this General Comment about?

In its →General Comment No. 10 of 25 April 2007, the →Committee on the Rights of the Child (short: Committee) provides guidance and recommendations to States parties in dealing with children in conflict with the law, based upon the relevant provisions made in articles 37 and 40 of the →Convention on the Rights of the Child (short: CRC or Convention). 'Children in conflict with the law' relates to children who are alleged as or accused of having committed a criminal offence and those who have been convicted with infringing criminal law. This General Comment places special emphasis on prevention and on alternative measures to criminal justice.

Both articles 37 and 40 address how the justice system deals with children in conflict with the law. Article 37 focuses on criminal sanctions. It forbids the death penalty and cruel treatment, and requires that children have access to legal assistance and judicial review. Detention of children can only be used in accordance with the law and as a measure of last resort. Article 40 contains the general principles for juvenile justice in section 1, in particular emphasising promotion of the child's self-worth, respect for human rights, and reintegration. Section 2 restates minimum guarantees of a fair trial that are also contained in general human rights treaties. Section 3 demands that States parties establish a comprehensive juvenile justice system with a minimum age for sanctions, the latter not being

fixed too low. This system must also include a range of measures alternative to conviction and sanction (section 4).

How can States parties implement the Convention?

The Committee's **key recommendations** in this General Comment:

- **Take measures to prevent children from coming into conflict with the law** by addressing its **root causes** and supporting parents; abolish offences that only apply to children (so-called status offences).
- **Involve all actors**, including non-governmental organisations and children in particular, in the **design and implementation of programmes to address children in conflict with the law**; benefit from other States parties' best practices on prevention and alternative measures.
- **Make alternative measures an integral part of the juvenile justice system**; these measures should be regulated and consent-based; explore alternatives to conviction at every stage of the proceedings; make ample room for social and educational measures.
- **Make sure that all staff involved in juvenile justice is trained** on children's development and the specific needs of vulnerable children, in particular girls and children of minorities.
- **Provide free translation at all stages of the proceedings**, and inform the child in a simple enough language, preferably orally, as soon as steps are being taken against him or her.
- **Conduct juvenile justice behind closed doors** as a rule and be careful with press statements in order to protect the child's privacy; records should be kept confidential, not used in adult proceedings, and automatically removed after a certain time.
- To conduct proceedings without delay while safeguarding all procedural rights, **set time limits for each phase**, shorter than those used for adults.



Key contents of General Comment No. 10

1. What leading principles should States parties observe when dealing with children in conflict with the law?

Non-discrimination: States parties have an obligation to treat children equally before the law and to protect them from de-facto discrimination (art. 2). This is especially relevant for vulnerable children, such as children in a street situation, girls, children with disabilities or children from ethnic minorities, or repeat offenders. Criminal offences that only apply to children – for example vagrancy or truancy – discriminate against children. They criminalise behavioural problems of children and should be abolished. States should rather address the underlying psychological or socio-economic problems.

Best interests of the child: All decisions on juvenile justice must respect the best interests of the child (art. 3). Children are different from adults in their physical and psychological development; they need a distinct juvenile justice system, one that promotes rehabilitation and restorative justice.

The child's right to life, survival and the development of the child: This general principle, embedded in article 6, requires that States parties prevent delinquency and that they address it in a manner that supports child development.

The child's right to be heard: The child has a right to express his or her views and to have them given due weight at every stage of proceedings, that is from the first contact with law enforcement (art. 12).

Dignity: In line with the aims of education (art. 29), article 40 (1) requires that States parties respond to juvenile delinquency in a way that promotes the child's sense of dignity and worth; that reinforces the child's respect for the human rights and fundamental freedoms of others; and that takes into account the child's age. State parties have to promote the child's reintegration into society in a constructive role. By enacting effective laws and administrative regulations, States parties must also prevent violence against the child from the police and other personnel in the justice system. Police officers must lead by example—if they do not respect the human rights of others, how can they expect the child to do so?

2. What can States parties do to prevent children from coming into conflict with the law?

Both for the development of the child and for public safety, children should be prevented from committing offences in the first place. States parties should address circumstances that increase the child's risk of delinquency. This includes securing the child's right to an adequate living standard, to health, to education, and to protection from violence and exploitation. In line with the 1990 UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), States should promote the successful integration and socialisation of all children through families, communities, and education, including early childhood education and care. States are required by the Convention to provide assistance to parents and others responsible for the child (art. 18, 27). They should develop special community and family-based programmes, such as parent training or risk-focused prevention strategies. When designing and implementing their programmes, States parties should involve all actors, in particular children, and seek support from the UN Interagency Panel on Juvenile Justice.

3. How can States parties address children in conflict with the law without resorting to judicial proceedings?

The child's right to be treated in a way that supports his or her reintegration, even as a repeat offender, calls for a wide range of responses. In particular, States parties must promote measures outside of judicial proceedings at all stages, even after these proceedings have begun. Article 40 (4) lists a number of possible alternative approaches. Measures outside of judicial proceedings are especially important where the child has only committed a minor offence and/or is a first-time offender, but should not be limited to such cases. A variety of community-based programmes have been developed, such as community service, supervision and guidance by, for example, social workers or probation officers, family conferencing and other forms of restorative justice including restitution to and compensation of victims. These alternative measures can be more cost-effective than criminal sanctions, while serving public safety. But they must safeguard the child's human rights and legal safeguards, including the right to assistance, and be reviewed

regularly. As an alternative to conviction, diversion requires compelling evidence of the child's responsibility and the child's consent. However, it should not be viewed as "criminal record."

4. What is a minimum age of criminal responsibility?

States parties shall introduce a minimum age of criminal responsibility (art. 40 (3)), under which children cannot be held responsible for infringing penal law. States shall report on the treatment of children in conflict with the law who are too young to be sanctioned. The minimum age must not be below the age of 12 years, but States are strongly encouraged to increase it above this age. All children above the minimum age but under 18 years must enjoy the protection as explained in this General Comment, meaning that they cannot be treated like adults. The age must be proven by a birth certificate, which is free of charge. If the child has not been registered, an appropriate examination without fees must be conducted. If the age cannot be satisfactorily proven, the protection and rights of the CRC apply to the young person.

5. What guarantees apply in judicial proceedings involving children?

States parties must respect the rights and guarantees for a fair trial in article 40 (2). In particular, the child has the right to be heard—or remain silent—at all stages of the proceedings, and to not be treated like a passive object. He or she must be able to exercise his or her right to participate effectively in the procedure. This requires that the child understands the charges, consequences and the courtroom procedures and practices— which must be explained in words simple enough and, if necessary, in free translation. Promises of release or lighter sanction may not lead to compulsory self-incrimination and false confession. The child's right to privacy requires closed doors and confidential records. The legal assistance to the child should be both confidential and free of charge at all stages of the proceedings, given by persons who are trained in juvenile justice and child development. Parents or other guardians should be notified and be able to be present for support. Proceedings should be conducted without unnecessary delay. All convicted children should have a right to appeal.

6. Which rights does a child have upon conviction, especially in detention?

Detention must be the last resort, and it may only be applied for the shortest period appropriate. This means that effective alternatives must be put in place, including a probation service. The same is true for pre-trial detention, which must be regularly reviewed, preferably every two weeks. The trial should begin within 30 days.

Upon conviction — as at the earlier stages of proceedings — a wide variety of alternatives to institutional care and detention must be available. The measure must also pay tribute to the development of the child. It cannot be strictly punitive; public safety may be considered, but in the case of children, such considerations must always be outweighed by the need to safeguard the child's wellbeing and best interests, and the promotion of his or her reintegration. Whenever the offence was committed before the age of 18, the death penalty and life imprisonment without parole are prohibited, regardless of the age at trial. Corporal punishment and forced labour are unacceptable.

Children in detention must be separated from adults, in separate facilities. States parties must facilitate family contact by keeping the children close to home. In line with the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), States parties must provide an age-appropriate environment that enables play and social contacts, and fulfil the child's rights to education and health. If disciplining is needed, States must respect the child's inherent dignity and may not compromise his or her physical and mental health; corporal punishment or solitary confinement must be strictly forbidden. Physical restraint may only be used as a last resort, where the child poses an imminent threat of injury for him or herself or others, and must be strictly reviewed. Detention facilities must be inspected regularly through unannounced visits by independent personnel, especially including conversations with the children, in confidential settings.



7. How should States parties organise and monitor their juvenile justice system?

For the full implementation of these principles and rights, States parties should establish an effectively organised and comprehensive juvenile justice system with specialised units, personnel, and facilities. Juvenile courts can either be separate institutions or part of existing courts. All personnel involved in juvenile justice should be trained on the Convention and its meaning, on child development, youth culture, and group dynamics, as well as on the particular needs of girls and minority or indigenous children. When monitoring the juvenile justice system, States parties should seek the active involvement of civil society and children who are or have been in conflict with the law.

8. Awareness-raising

Article 40 (1) aims at reintegration of a child in conflict with the law, which means that stigmatisation, social isolation, or negative publicity must be avoided. In order to prevent negative stereotyping of children in conflict with the law and "tough" approaches such as "zero tolerance," State parties should raise awareness of the causes of child delinquency. They should involve all social actors in this effort, including children.

Approaches for bilateral development cooperation based on this General Comment

- Human rights-based development cooperation aims at promoting the respect, the protection and the fulfilment of human rights, including children's rights. With regard to **children's rights in juvenile justice, development cooperation needs to engage actively in a range of areas**, including in peace-building and conflict prevention and the governance and education sector.
- Development cooperation should **facilitate dialogue among relevant actors**, including the government, civil society and children and youth themselves, in the design and implementation of national programmes to address juvenile justice.
- Development measures should support projects for the **prevention** of juvenile delinquency and for the **reintegration** of children in conflict with the law. Prevention measures have to be conducted in schools, but also need to address the community, including families. They should address the root causes of juvenile delinquency, such as poverty, abuse, neglect, or social isolation. Training for the reintegration of young people in the labour market as well as in the society as a whole is essential. Rehabilitation activities for children and youth may include education or vocational training and also measures for psychological recovery and social reintegration to modify violent or anti-social behaviours, all initiatives to be undertaken in the best interests of the child.
- **Legal and judicial reforms:** The establishment of a comprehensive juvenile justice system, distinct from that for adults, is an obligation of all States parties to the CRC. Development cooperation has expertise in advising governments on all aspects of law and justice reforms. With regard to juvenile justice, development measures should provide:
 - **Strategic advisory services on reforms of criminal law, criminal procedures and the penal system.** Development cooperation should advise partner countries on the **establishment of a separate criminal law relating to young offenders and juvenile courts**, safeguarding that criminal procedures are child-friendly. Together with partner countries, development cooperation should also promote and elaborate **alternatives to juvenile justice proceedings**, with particular emphasis on alternatives to detention. These include orders related to financial penalties, compensation, restitution, group counselling and probation.

- **Institution-building services for the police, juvenile courts and the Office of the Public Prosecutor. Police units specialised in dealing with children**, such as "Juvenile Police Departments" or "Family and Child Protection Units", have proven to be successful in **child-friendly policing**. In some countries, their mandate focusses specifically on children in conflict with the law. In other countries, the mandate of the specialised police units is broader and covers children in conflict with the law as well as children (and oftentimes also women) who are victims of offences. These units should be decentralised to be easily accessible to every child. Overall, development measures should promote a **restorative justice approach**; focussing on prevention, diversion, alternatives to detention, access to legal assistance, avoiding capital or corporal punishment and increasing public awareness and rehabilitation.
- Development measures should support **training for paralegal assistants** on the CRC and **child-friendly proceedings**. The trained paralegals can provide (free) child-friendly legal assistance to children in conflict with the law and thus bridge the gap between these children, courts, police and lawyers.
- All personnel involved in juvenile justice should be trained on the CRC and its implementation in the justice sector. This is an obligation of States parties and should thus be incorporated in the curricula of the pre-service training or academic studies of judges, lawyers and law enforcement officials. Development measures can support **on-going training programmes on children's rights** for these professional groups.
- Supporting a greater **media engagement** in raising awareness of the CRC in general and the rights of the child in juvenile justice in particular is another approach.
- When advising partner countries on reforms of the criminal justice system, development cooperation should also bear in mind the **rights of children of incarcerated parents**, set out in article 9 CRC. Even though not directly related to juvenile justice, the rights of these children are connected to the criminal justice system in general.
- **Education**: Measures in the education sector are essential to prevent children from coming into conflict with the law. Development cooperation should advise education ministries to include **education on human rights**, teaching respect for human rights and the fundamental freedoms of others in the curricula, while at the same time **empowering children to take a constructive role in society**. In addition, life skills and employment orientation should be part of the curricula.
- **Peace-building and conflict prevention**: In fragile contexts, development cooperation should promote **gender-specific prevention measures against youth violence**. In addition, development measures should support the **establishment of protection systems for children and youth** affected by crisis or conflict. This includes measures for the reintegration of child soldiers, taking into account the rights and experiences of the surrounding communities who may have been victimised by the former child soldiers.

Abstract of Article 37 of the Convention

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment [...] shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated [...] in a manner that takes into account the needs of persons of his or her age. [...]
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance [...].



Abstract of Article 40 of the Convention

- (1) [general principles for juvenile justice; the child's best interests and social reintegration]
- (2) [fair trial guarantees]
- (3) States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
 - (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, [...] .
- (4) A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Which State party obligations are emphasised by the Committee in this General Comment?

- **Establish a comprehensive juvenile justice system**, distinct from that for adults. The minimum age of criminal responsibility may not be below the age of 12 years and should rather be higher; above the minimum age, juvenile justice applies as long as the child is under 18; provide a birth certificate or examination to prove the age (both free of charge) or grant the benefit of doubt.

- **Ensure that criminal proceedings are child-friendly** and respect the fair trial guarantees.
- **Provide a wide range of response measures to children in conflict with the law**; promote alternative measures such as restorative justice and avoid effects of juvenile justice that hamper full participation in community, such as stigmatization, social isolation, or negative publicity; grant the child the right to be heard, also when alternative measures and their implementation are being chosen.
- **Provide effective alternatives to detention**, including pre-trial detention, and speed up trials as much as possible while safeguarding all rights and guarantees.
- **Support parents or other guardians in their parental responsibility** and make sure that they are notified immediately of the child's apprehension to enable them to support the child.
- **Protect children from violence and refrain from corporal punishment**; the death penalty and life imprisonment without parole are prohibited for child offenders, independent of the age at trial.

Where can you find this General Comment?

→ General Comment No. 10 is available in Arabic, Chinese, English, French, Russian, and Spanish on the Committee's website.

You can also find it by its UN document number CRC/C/GC/10.

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