

The Administration of Juvenile Justice¹

Outline

In the light of rule 75 of its provisional rules of procedure, the Committee on the Rights of the Child has decided to devote one or more meetings of its regular sessions to a general discussion on one specific article of the Convention or related subject in order to enhance a deeper understanding of the content and implications of the Convention.

Encouraged by the successful contribution of its previous thematic debates to creating wider awareness of the principles and provisions of the Convention and to guide States in their implementation, the Committee decided to devote the day of 13 November 1995 to the question of the administration of juvenile justice.

The area of the administration of juvenile justice has deserved constant and decisive attention by the Committee within the framework of its activities as a treaty-monitoring body. Similarly, it has gained particular importance in the concluding observations adopted by the Committee on the Rights of the Child in relation to States parties reports (CRC/C/15 and Addenda). Thus, the general discussion is a special opportunity to evaluate the Committee's experience in the first years of its mandate.

The experience of the Committee has shown that the area of the administration of juvenile justice is of practical and current relevance in all regions of the world and in relation to the different existing legal systems, in particular in the light of the challenging and innovative philosophy arising from the Convention on the Rights of the Child. In fact, this legal instrument, together with other United Nations standards adopted in the field - the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty - call for the adoption of a child-oriented system, that recognizes the child as a subject of fundamental rights and freedoms and stresses the need for all actions concerning children to be guided by the best interests of the child as a primary consideration.

These, along with other essential values, demonstrate how crucial it is for States parties to adopt all necessary measures to ensure full compliance of their national law and practice with the Convention on the Rights of the Child. The general discussion will therefore set an important framework to guide such a process of change.

It is important to recall that the field of the administration of juvenile justice, and in particular the standards relating to juveniles deprived of their liberty, has become the subject of increasing and very special interest on the part of different sectors of the United Nations system. Last year an important meeting of experts was held at Vienna at which was adopted a set of important recommendations on the human rights of detained juveniles (see E/CN.4/1995/100). Addressed to the international community as a whole, United Nations bodies and agencies, States and non-governmental organizations, this set of recommendations was later endorsed both by the Commission on Human Rights (resolution 1995/41) and the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Cairo, 29 April-8 May 1995). These decisions and the report of the expert meeting therefore constitute an important reference for the thematic discussion to be held by the Committee.

The thematic debate will mainly address the provisions of articles 37, 39 and 40 of the Convention on the Rights of the Child. But it will naturally reflect the holistic approach of

¹ Excerpted from CRC/C/43, Annex VIII, 10th Session, 13 November 1995.

the Convention, thus illustrating the interdependence and indivisibility of the fundamental rights of children. In this regard, and as was the case in the previous discussions held by the Committee, the general principles of the Convention, namely of non-discrimination, the best interests of the child and the participation of the child in the decisions affecting him or her, will be of decisive importance in the consideration of this theme.

The two basic areas to be considered during the debate will be the relevance of the effective implementation of existing standards and the value of international cooperation, namely through programmes of technical assistance. The consideration of these areas will emphasize the importance of accountability for the protection of, and respect for, the human rights of children, while stressing the need to foster international solidarity for the realization of those same rights.

Pursuant to article 45 of the Convention on the Rights of the Child, United Nations organs, bodies and specialized agencies, and other competent bodies, including non-governmental organizations and research and academic institutions, are invited to contribute to the discussion and provide expert advice on these two topics, in the light of the activities developed within the scope of their mandates. These contributions may, *inter alia*, address the content of specific rights recognized by the Convention in articles 37, 39 and 40, inform about concrete projects carried out at the country or regional level, or illustrate successful achievements or difficulties encountered in such a process.

In order to allow for the organization of the thematic discussion, participants are requested to submit, by 20 September 1995 written contributions, which may be presented orally during the day of the general discussion, in an intervention that should not exceed 10 minutes. The Committee welcomes the submission of specific action-oriented recommendations which may effectively enhance the promotion and protection of children's rights.

Summary report²

203. In the light of rule 74 of its provisional rules of procedure, the Committee on the Rights of the Child has decided periodically to devote one or more meetings to a general discussion on a specific article of the Convention or to a theme in the area of the rights of the child in order to enhance understanding of the content and implications of the Convention.

204. Encouraged by the successful contribution of its previous thematic debates towards creating wider awareness of the principles and provisions of the Convention and towards providing guidance to States for its implementation, the Committee had decided to devote the day of 13 November 1995 to discussion of the administration of juvenile justice.

205. The topic of the administration of juvenile justice has received consistent attention from the Committee, particularly in the concluding observations adopted by the Committee in relation to States parties reports (CRC/C/15 and addenda). The general discussion therefore provided an opportunity to evaluate the Committee's experience in the first years of its mandate.

206. The experience of the Committee has shown that the administration of juvenile justice is of practical concern in all regions of the world and in relation to all legal systems. The challenging and innovative philosophy arising from the Convention on the Rights of the Child and other United Nations standards adopted in the field - the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty -

² CRC/C/46.

predicates a child-oriented system that recognizes the child as a subject of fundamental rights and freedoms and ensures that all actions concerning him or her are guided by the best interests of the child as a primary consideration. To achieve such a system there was a need for States parties to adopt all necessary measures to ensure full compliance of their national law and practice with the Convention on the Rights of the Child, in particular in the light of its article 4.

207. In an outline prepared to guide the general discussion, the Committee recalled the increasing and special interest paid by different instances of the United Nations system to the field of the administration of juvenile justice, and in particular to the standards relating to juveniles deprived of their liberty. Special reference was made in this spirit to the expert group meeting on children and juveniles in detention held in Vienna in October-November 1994 and the important set of recommendations it adopted (E/CN.4/1995/100), as well as to the subsequent endorsement of them by the Commission on Human Rights (in its resolution 1995/41) and the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Consideration was also given to the important resolutions adopted at the fourth session of the Commission on Crime Prevention and Criminal Justice, in particular those relating to children as victims and perpetrators of crime and the effective application of United Nations standards and norms in juvenile justice.

208. The Committee had identified two main areas to be considered during the debate: the relevance of the effective implementation of existing standards; and the value of international cooperation, namely through programmes of technical assistance. It was of the opinion that discussion of those themes would contribute to emphasizing the importance of accountability for the protection of, and respect for, the human rights of children, and would stress the need to foster international solidarity for the realization of those rights.

209. As for previous thematic discussions, the Committee had invited, in the light of article 45 of the Convention, representatives of United Nations organs, bodies and specialized agencies, and other competent bodies, including non-governmental organizations and research and academic institutions, to contribute to the discussion and provide expert advice on the two identified topics.

210. Several organizations submitted documents on the theme. Written contributions were also received from the Governments of Austria and the Former Yugoslav Republic of Macedonia. The list of these documents and contributions is to be found in annex VI to the present report.

211. Representatives of the following organizations and bodies made statements on the day of the general discussion: Centre for Human Rights, United Nations Centre for Social Development and Humanitarian Affairs (Crime Prevention and Criminal Justice Branch), United Nations Children's Fund, Office of the United Nations High Commissioner for Refugees, World Health Organization, International Committee of the Red Cross, Children Rights Centre of Ghent University, Defence for Children International, Epoch Worldwide, Human Rights Watch Children's Rights Project, International Association of Juvenile and Family Court Magistrates, International Federation of Social Workers, International Save the Children Alliance, Japan Federation of Bar Associations, Rädde Barnen, Terre des Hommes (Bal Sakha), World Organization against Torture. Mr. Bruce Adamson, Mr. Dan O'Donnel, Ms. Dulce P. Estrella-Gust, and Ms. Ann Skelton (Coordinator, Child Rights for Lawyers for Human Rights, South Africa) in their capacity as individual experts also made statements during the debate.

212. The theme day was introduced by a Committee member, Ms. Sandra Mason. In her statement, the holistic approach of the Convention to children's rights was stressed, as well as the essential value of its general principles, which were of a particular relevance in the area of

juvenile justice. Envisaging the child as a subject of rights, ensuring clear recognition and implementation of the principle of equality before the law and recognizing the inherent link existing between human rights and legal rights were emphasized as essential means to ensure respect for existing standards, in particular the Convention on the Rights of the Child.

213. The various interventions of Committee members and invited participants ensured a lively debate during which the importance of existing United Nations norms and principles was stressed, concrete examples of projects carried out at the country and regional levels were presented, and successful achievements or difficulties encountered in the process of ensuring the realization of children's rights worldwide were mentioned.

214. In that framework, the universality of the Convention was referred to as having particular significance. In view of the fact that it had been ratified by 181 States, the Convention provided a common reference and an ethical vision for addressing the issue of the administration of juvenile justice. The binding nature of its provisions implied a clear recognition on the part of States parties of the rights set forth therein. In addition, the Convention called for the implementation of the most conducive provisions for the realization of the rights of the child, and had therefore to be considered in conjunction with other relevant international instruments, namely the Beijing Rules, the Riyadh Guidelines and the Rules for the Protection of Juveniles Deprived of their Liberty. Those instruments complemented and provided guidance for the implementation of the rights recognized by the Convention and confirmed that there was no possible conflict between human rights and juvenile justice.

215. That approach was prevalent in the consideration of States parties reports by the Committee, in the preparation of the list of issues, as well as in the formulation of concluding observations and of the recommendations addressed to Governments. It would further guide the Committee in the preparation of the guidelines for the future periodic reports to be submitted in the light of article 44 of the Convention.

216. Such an approach should also inspire action for the realization of children's rights in a broader context, since juvenile justice could not be reduced to situations where a conflict with criminal law had arisen. As an illustration, attention was paid to the area of asylum-seeking, refugee and unaccompanied children. In fact, the diversity of provisions in the Convention on the Rights of the Child applicable to them, and the universal nature of that legal instrument, extended the level of the protection of their fundamental human rights and legal safeguards, in particular in situations of deprivation of liberty or separation from their families. In such circumstances, it was essential to ensure that the child was treated in a manner consistent with the promotion of his or her sense of dignity and worth and that decisions were clearly taken in the light of the best interests of the child, in a due process that gave the child who was capable of forming his or her own views the right to express those views freely.

217. In the evaluation of the experience of the Committee in its monitoring function, it was stressed that very often reports lacked information concerning juvenile justice, including data on the number of children deprived of liberty through arrest, detention or imprisonment. Reports were usually limited to a general description of legal provisions, rarely addressing social factors leading to the involvement of juveniles with the system of administration of justice or the social consequences of the decisions taken in that context. Similarly, they usually did not identify factors or difficulties which impeded progress towards the effective realization of children's rights.

218. It was particularly felt that the general principles of the Convention had not been adequately reflected in national legislation or practice. In relation to non-discrimination, particular concern was expressed about instances where criteria of a subjective and arbitrary nature (such as with regard to the attainment of puberty, the age of discernment or the personality of the child) still prevailed in the assessment of the criminal responsibility of

children and in deciding upon the measures applicable to them. Attention was also paid to the situation of children living and/or working on the street, who in view of their low status were often confronted with social exclusion and stigmatization, including on the part of police officials. Such a situation paved the way for frequent and extreme abuses that were rarely monitored or punished and were therefore committed with unacceptable impunity.

219. The principle of the best interests of the child was reaffirmed by the Convention in the context of the administration of juvenile justice, particularly when it stressed that the child should be treated in a manner consistent with the promotion of his or her sense of dignity and worth which reinforced respect for the child's human rights and fundamental freedoms and took into account the child's age and special needs. However, reports revealed that special juvenile justice systems were often non-existent, that judges, lawyers, social workers or personnel in institutions were not given any special training and that information on fundamental rights and legal safeguards were not provided to children. For those reasons, and contrary to the Convention, deprivation of liberty was not used only as a measure of last resort or for the shortest period of time possible as called for in the Convention, nor were contacts with the family the rule; access to legal and other assistance was not provided and free legal aid was often not available.

220. Similarly, in relation to the right of the child to participate in proceedings affecting him or her, States parties' reports had indicated that children were seldom made sufficiently aware of their rights, including the right to assistance from a legal counsel, or of the circumstances surrounding the case or of the measures decided. They were also often denied the right to lodge complaints when they were victims of violation of their fundamental rights, including in cases of ill-treatment and sexual abuse. Moreover, the increasing trend for juvenile justice to become the subject of social and emotional pressure was a matter of particular concern, since it created opportunities to undermine respect for the best interests of the child.

221. It was noted with deep regret that the death penalty was still admitted in some countries for persons below the age of 18, that whipping and flogging were used as educative and punitive measures, and that insufficient attention was paid to the need for the promotion of an effective system of physical and psychological recovery and social reintegration of the child, in an environment that fostered his or her health, self-respect and dignity.

222. In that context, it was felt that there was a clear need to ensure, in the light of article 42 of the Convention and in the spirit of the United Nations Decade for Human Rights Education, a systematic campaign of information and awareness of the rights of the child. Particular efforts should be made to provide accessible information to children, including through the school system, as a means to strengthen the prevention of violation of their fundamental rights or neglect of fundamental legal safeguards.

223. Similarly, further steps should be taken to ensure that systematic training activities were provided to relevant professional groups working with and for children in that area. In that connection, the importance was stressed of incorporating the Convention on the Rights of the Child in training curricula and of reflecting its basic values in relevant codes of conduct. Particular reference was made to the role played by judges, lawyers, social workers, law enforcement officials, immigration officers and personnel working in institutions for children.

224. It was emphasized that there was an urgent need to ensure the publication and wide dissemination of a manual on standards of juvenile justice, including the Convention and other relevant United Nations standards adopted in this field, if possible with a commentary thereon, as well as of a manual on training for law enforcement officials. Expressing its willingness to be associated in such efforts, the Committee recognized the importance of such manuals as tools for advocacy and training activities, including those developed by the Centre for Human Rights and the Crime Prevention and Criminal Justice Branch.

225. All those measures would further contribute to ensuring the effective realization of children's rights and would promote the full compliance of national legislation with international standards adopted in the field of juvenile justice.

226. Moreover, all the above-mentioned measures would help to ensure that the child was always envisaged as a subject of the rights inherent to the human dignity of the person and that the child was envisaged mainly as a victim, including in situations of sexual abuse, child prostitution and child pornography. The criminal responsibility of the child should be based on objective criteria clearly excluding situations where the child was simply confronted with poverty and social exclusion.

227. Moreover, deprivation of liberty, in particular pre-trial detention, should never be unlawful or arbitrary and should only be used once all other alternative solutions would have proved to be inadequate. When deprived of liberty every child should have the right to prompt legal or other appropriate assistance, and the right to challenge the deprivation of liberty before a court or other impartial and independent body. The privacy of the child should be fully respected in all stages of the proceedings, including in relation to criminal records and possible reporting by the media.

228. In the same context, concern was expressed at the placement of children in institutions, under a welfare pretext, without taking into due consideration the best interests of the child nor ensuring the fundamental safeguards recognized by the Convention, including the right to challenge the decision of placement before a judicial authority, to a periodic review of the treatment provided to the child and all other circumstances relevant to the child's placement and the right to lodge complaints.

229. It was urged that alternatives to institutional care should be sought, and a call was made for the adoption of adequate measures to end the prevailing lack of transparency in institutions for children. In that regard, it was suggested that serious consideration be given to the development of independent mechanisms, at the national and international levels, to ensure periodic visits to and an effective monitoring of such institutions, including in relation to complaints that might have been lodged. Recalling the significant role played by the International Committee of the Red Cross, in particular in situations of armed conflict, and the current efforts of the Commission on Human Rights aimed at introducing a system of periodic visits to places of detention in the framework of an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, participants highlighted the particular relevance of national independent mechanisms. In that connection, reference was made to the role judges might play and to the importance of the intervention of an Ombudsman to ensure respect for the rights and interests of young persons.

230. During the debate, the role of the family was recognized as fundamental ensuring the effective enjoyment of the rights of children and their reintegration in an environment that fostered their self-respect and dignity. In the light of both the Convention and the Riyadh Guidelines, families should be encouraged to have closer and more frequent contacts with children placed in institutions and to have a say in children's treatment. The child's socialization should be promoted through increasing the involvement of families in children's programmes and through facilitating the release of children for home visits. Research on psycho-social implications of juvenile justice was recommended in that regard.

231. It was interesting to note, in that connection, the importance attached by traditional systems to the family, including the extended family, as well as to the community, in the process of ensuring the social reintegration of children and the promotion of their active participation in society. Such

systems allowed for respect of the privacy of the family and encouraged the consideration of healing and reconciliation measures as alternatives to custody or corporal punishment.

232. Research in that area was therefore considered as being important to identify the traditional solutions which were fully compatible with the Convention and its basic values. When widely shared in a given society, such solutions might be instrumental in the effective realization of children's rights.

233. The general discussion stressed the great relevance of international cooperation in the field of juvenile justice, an area which had become a clear priority in the United Nations system.

234. Relevant bodies, including the Committee on the Rights of the Child, the Commission on Crime Prevention and Criminal Justice and the Crime Prevention and Criminal Justice Branch of the United Nations Centre for Social Development and Humanitarian Affairs, the Commission on Human Rights, as well as the Advisory Services, Technical Assistance and Information Branch of the Centre for Human Rights should therefore cooperate increasingly in the areas of research, training, dissemination and the exchange of information, implementation and monitoring of existing standards, as well as in specific programmes of technical assistance. Only in that way would it be possible to rationalize the use of resources, streamline activities and enhance the efficiency of programmes, while clearly reaffirming the inherent link between criminal justice and human rights. For that reason, the participation in the thematic discussion of representatives of some of those bodies was welcomed.

235. The reporting system of the Convention, including the dialogue held with the States parties and the concluding observations adopted by the Committee, was recognized as decisively important to ensure a comprehensive framework for programmes of technical assistance. It provided the basis for a clear understanding of the situation in any given country and for fostering international cooperation and strengthening national capacities and infrastructures.

236. The recommendations addressed to States parties by the Committee could be of special benefit in the implementation of programmes of technical assistance in the areas of research, law reform and training of professional groups or in the consideration of alternatives to custodial measures, as well as for needs assessment missions and evaluation procedures.

237. For all those reasons, and in the light of the almost universal ratification of the Convention on the Rights of the Child, the Committee was a natural focal point and played a central and catalytic role in the area of international cooperation and assistance in the field of juvenile justice.

238. In that spirit, the Committee welcomed the initiatives designed to consider a strategy for technical cooperation and the establishment of a possible network for that purpose. It further welcomed the proposals made to ensure an increasing assistance to the Committee, in the light of the Plan of Action of the High Commissioner for Human Rights or through the establishment of an independent institution for that purpose.

List of Documents Submitted³

1. By Governments

Austria

- Austrian Federal Ministry for Youth and Family, "Children in trouble". United Nations Expert Group Meeting, Vienna, Austria, 30 October-4 November 1994
- "Human rights in juvenile justice: towards an integrated international strategy"

The former Yugoslav Republic of Macedonia

- "Implementation of juvenile justice", by Ms. E. Andreevska, Adviser to the Ministry of Foreign Affairs

2. By United Nations organs

United Nations Children's Fund

- Emilio Garcia Mendez, Regional Adviser on Child Rights, UNICEF Regional Office for Latin America and the Caribbean, "Adolescents in conflict with criminal law: citizen security and basic rights"

3. By intergovernmental and non-governmental organizations and individual experts

Children's Rights Centre of Ghent University

- Eugen Verhellen and Geert Cappelaere, "United Nations Guidelines for the Prevention of Juvenile Delinquency: prevention of juvenile delinquency or promotion of a society which respects children too?"

Defence for Children International

- West Bank Legal Aid Program, "Juvenile Justice in Israeli occupied West Bank. Lessons of the joint project of DCI-Palestine and DCI-Israel"
- "Un réseau international sur la justice des mineurs. De la création des normes à la mise en oeuvre"

Epoch Worldwide

- Peter Newell, "Physical punishment of children in the juvenile justice system"
- "Juvenile justice: using the UN Convention to audit juvenile justice systems and related services"

Human Rights Watch Children's Rights Project

- Lois Whitman, "United States: children in confinement in Louisiana"

International Catholic Child Bureau

- Project "Children in prison" in Africa
- Project on community-based alternatives to imprisoning children in central and north-eastern Brazil
- "Liberar la esperanza. Niñas y niños privados de libertad en América Latina"

International Committee of the Red Cross

- "Administration of juvenile justice"

³ CRC/C/46, Annex VI.

Japan Federation of Bar Associations

- A report from the Japan Federation of Bar Associations to the General Discussion of the Committee on the Rights of the Child
- A report to the Eighth United Nations Congress on Crime Prevention: "Japan's juvenile justice system: an overview"
- A report on the application and practice in Japan of the International Covenant on Civil and Political Rights
- A report from the Japan Federation of Bar Associations to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

Justice

- Submissions to the Convention on the Rights of the Child

National Children's Bureau, United Kingdom

- Submission to the General Discussion day on the administration of juvenile justice
- "Safe to let out? The current and future use of secure accommodation for children and young people"

Child Rights for Lawyers for Human Rights, South Africa

- Ann Skelton, "Developing a juvenile justice system for South Africa: international instruments and restorative justice"

Dan O'Donnell

- "The arrest and detention of street children under the Convention on the Rights of the Child"

Organisation Mondiale contre la Torture (OMCT/SOS-Torture)

- "Les enfants en conflit avec la loi"

Rädda Barnen

- Tim O'Flynn, "Summary of findings re juvenile justice in Sri Lanka, India and Nepal"

Save the Children Fund, United Kingdom

- John Parry Williams et al., "The administration of juvenile justice; a discussion paper"
- Petrus Trevi, Department of Social Welfare, Ghana, "Report on the re-establishment of probation services and community supervision for juveniles in Ghana, 1992-1995"

Terre des Hommes

- Bal Sakha, "Programme for the protection of children's rights, Patna, Bihar, India"
- "The juvenile justice system in India"