COUNCIL OF EUROPE

1. **R(87)20** concerning social reaction to juvenile delinquency, **1987 (4 p.)**
2. **R(88)6** on social reactions to juvenile delinquency among young people coming from migrant families, **1988 (3 p.)**
3. **Rec(2000)20** on the role of early psychosocial intervention in the prevention of criminality, **2000 (7 p.)**
4. **Rec(2003)20** concerning new ways of dealing with juvenile delinquency, **2003 (5 p.)**
5. **Rec(2005)5** on the rights of children living in residential institutions, **2005 (4 p.)**
6. **MJU-26(2005) Resol.2** on the social mission of the criminal justice system, **2005 (3 p.)**
7. **Rec(2006)2** Extract of the European Prison Rules, **2006 (6 p.)**
8. **MJU-28 (2007) Resol.2** on child-friendly justice, adopted by the 28th Conference of the European Ministers of Justice, **2007 (3 p.)**
9. **CM/Rec(2008)11** European Rules for juvenile offenders subject to sanctions or measures, **2008 (20 p.)**
10. **Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 2010 (40 p.)**
11. **MJU-31 (2012) Resol. F** on responses of Justice to urban violence, adopted by the 31st Council of Europe Conference of the European Ministers of Justice, **2012 (3 p.)**

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION No. R (87) 20

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

ON SOCIAL REACTIONS TO JUVENILE DELINQUENCY

(Adopted by the Committee of Ministers on 17 September 1987
at the 410th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Considering that young people are developing beings and in consequence all measures taken in their respect should have an educational character;

Considering that social reactions to juvenile delinquency should take account of the personality and specific needs of minors and that the latter need specialised interventions and, where appropriate, specialised treatment based in particular on the principles embodied in the United Nations Declaration of the Rights of the Child;

Convinced that the penal system for minors should continue to be characterised by its objective of education and social integration and that it should as far as possible abolish imprisonment for minors;

Considering that measures in respect of minors should preferably be implemented in their natural environment and should involve the community, in particular at local level;

Convinced that minors must be afforded the same procedural guarantees as adults;

Taking account of earlier work by the Council of Europe in the field of juvenile delinquency and in particular of Resolution (78) 62 on juvenile delinquency and social change and the conclusions of the 14th Criminological Research Conference on "Prevention of juvenile delinquency: the role of institutions of socialisation in a changing society";

Having regard to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),

Recommends the governments of member states to review, if necessary, their legislation and practice with a view:

I. *Prevention*

1. to undertaking or continuing particular efforts for the prevention of juvenile maladjustment and delinquency, in particular:

a. by implementing a comprehensive policy promoting the social integration of young people;

b. by providing special assistance and the introduction of specialised programmes, on an experimental basis, in schools or in young peoples' or sports' organisations for the better integration of young people who are experiencing serious difficulties in this field;

c. by taking technical and situational measures to reduce the opportunities offered to young people to commit offences;

II. *Diversion — mediation*

2. to encouraging the development of diversion and mediation procedures at public prosecutor level (discontinuation of proceedings) or at police level, in countries where the police has prosecuting functions, in order to prevent minors from entering into the criminal justice system and suffering the ensuing consequences; to associating Child Protection Boards or services to the application of these procedures;

3. to taking the necessary measures to ensure that in such procedures:

— the consent of the minor to the measures on which the diversion is conditional and, if necessary, the co-operation of his family are secured;

— appropriate attention is paid to the rights and interests of the minor as well as to those of the victim;

III. *Proceedings against minors*

4. to ensuring that minors are tried more rapidly, avoiding undue delay, so as to ensure effective educational action;

5. to avoiding committing minors to adult courts, where juvenile courts exist;

6. to avoiding, as far as possible, minors being kept in police custody and, in any case, encouraging the prosecuting authorities to supervise the conditions of such custody;

7. to excluding the remand in custody of minors, apart from exceptional cases of very serious offences committed by older minors; in these cases, restricting the length of remand in custody and keeping minors apart from adults; arranging for decisions of this type to be, in principle, ordered after consultation with a welfare department on alternative proposals;

8. to reinforcing the legal position of minors throughout the proceedings, including the police investigation, by recognising, *inter alia*:

— the presumption of innocence;

— the right to the assistance of a counsel who may, if necessary, be officially appointed and paid by the state;

— the right to the presence of parents or of another legal representative who should be informed from the beginning of the proceedings;

— the right of minors to call, interrogate and confront witnesses;

— the possibility for minors to ask for a second expert opinion or any other equivalent investigative measure;

— the right of minors to speak and, if necessary, to give an opinion on the measures envisaged for them;

— the right to appeal;

— the right to apply for a review of the measures ordered;

— the right of juveniles to respect for their private lives;

9. to encouraging arrangements for all the persons concerned at various stages of the proceedings (police, counsel, prosecutors, judges, social workers) to receive specialised training on the law relating to minors and juvenile delinquency;

10. to ensuring that the entries of decisions relating to minors in the police records are treated as confidential and only communicated to the judicial authorities or equivalent authorities and that these entries are not used after the persons concerned come of age, except on compelling grounds provided for in national law;

IV. *Interventions*

11. to ensuring that interventions in respect of juvenile delinquents are sought preferably in the minors' natural environment, respect their right to education and their personality and foster their personal development;

12. to providing that intervention is of a determined length and that only the judicial authorities or equivalent administrative authorities may fix it, and that the same authorities may terminate the intervention earlier than originally provided;

13. when residential care is essential:

— to diversifying the forms of residential care in order to provide the one most suited to the minor's age, difficulties and background (host families, homes);

— to establishing small-scale educational institutions integrated into their social, economic and cultural environment;

— to providing that the minor's personal freedom shall be restricted as little as possible and that the way in which this is done is decided under judicial control;

— in all forms of custodial education, to fostering, where possible, the minor's relations with his family:

- avoiding custody in places which are too distant or inaccessible;
- maintaining contact between the place of custody and the family;

14. with the aim of gradually abandoning recourse to detention and increasing the number of alternative measures, to giving preference to those which allow greater opportunities for social integration through education, vocational training as well as through the use of leisure or other activities;

15. among such measures, to paying particular attention to those which:

— involve probationary supervision and assistance;

— are intended to cope with the persistence of delinquent behaviour in the minor by improving his capacities for social adjustment by means of intensive educational action (including "intensive intermediary treatment");

— entail reparation for the damage caused by the criminal activity of the minor;

— entail community work suited to the minor's age and educational needs;

16. in cases where, under national legislation, a custodial sentence cannot be avoided:

— to establishing a scale of sentences suited to the condition of minors, and to introducing more favourable conditions for the serving of sentences than those which the law lays down for adults, in particular as regards the obtaining of semi-liberty and early release, as well as granting and revocation of suspended sentence;

— to requiring the courts to give reasons for their prison sentences;

— to separating minors from adults or, where in exceptional cases integration is preferred for treatment reasons, to protecting minors from harmful influence from adults;

— to providing both education and vocational training for young prisoners, preferably in conjunction with the community, or any other measure which may assist reinsertion in society;

— to providing educational support after release and possible assistance for the social rehabilitation of the minors;

17. to reviewing, if necessary, their legislation on young adult delinquents, so that the relevant courts also have the opportunity of passing sentences which are educational in nature and foster social integration, regard being had for the personalities of the offenders;

V. *Research*

18. to promoting and encouraging comparative research in the field of juvenile delinquency so as to provide a basis for policy in this area, laying emphasis on the study of:

— prevention measures;

— the relationship between the police and young people;

— the influence of new crime policies on the functioning of legal systems concerned with minors;

— specialised training for everyone working in this field;

— comparative features of juvenile delinquency and young adult delinquency, as well as re-education and social integration measures suitable for these age-groups;

— alternatives to deprivation of liberty;

— community involvement in the care of young delinquents;

— the relationship between demographic factors and the labour market on the one hand and juvenile delinquency on the other;

— the role of the mass media in the field of delinquency and reactions to delinquency;

— institutions such as a youth ombudsman or complaints board for the protection of young people's rights;

— measures and procedures of reconciliation between young offenders and their victims.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION No. R (88) 6

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

ON SOCIAL REACTIONS TO JUVENILE DELINQUENCY AMONG YOUNG PEOPLE COMING FROM MIGRANT FAMILIES

(Adopted by the Committee of Ministers on 18 April 1988 at the 416th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Drawing attention to the principles of the European Convention on Human Rights;

Having regard to the multicultural and multiracial nature of most European societies today and the need for Council of Europe member states to make allowance for this when framing their policies;

Considering the need for each state to reduce, as much as possible, differences existing between nationals and non-nationals in the participation in the social life of the country of residence;

Considering that any policy on juvenile delinquency necessarily entails taking measures to facilitate the social integration of young people in difficulty;

Considering that, of these young people, those coming from migrant families and in particular second-generation migrants deserve special attention;

Considering the need to prevent delinquent behaviour among the latter by giving them equal opportunities for self-fulfilment with the young among the indigenous population and enabling them to integrate themselves fully into the society of the country of residence;

Considering that special arrangements should be made to ensure that, when these young people come into contact with the system of justice for minors, the action taken is likely to foster their social integration;

Taking into account the work of the European Committee on Crime Problems in the sphere of juvenile delinquency and crime among migrants, namely: Resolution (75) 3 on the legal and administrative aspects of criminality among migrant workers, Resolution (78) 62 on juvenile delinquency and social change, Recommendation No. R (84) 12 concerning foreign prisoners and Recommendation No. R (87) 20 on social reactions to juvenile delinquency,

Recommends the governments of member states to take the following measures in legislation and practice in order to avoid any discriminatory treatment of young people coming from migrant families in the juvenile justice system and within the policy of social integration of youth and to help those who have displayed delinquent conduct to derive the maximum benefit from the measures available under that system:

I. *Prevention*

1. To promote their access to all available institutions and social resources in order to enable them to acquire a social status equivalent to that of other young people; to this end, to give young migrants, in accordance with arrangements laid down in the legislation, the possibility of acquiring the nationality of the country of residence;

2. To promote their participation in all facilities for young people: youth clubs and associations, sports clubs and social services; in this framework, encourage organisations aiming at conserving the cultural heritage of these groups;

3. To offer adequate aid and assistance to these young people and their families when they are in social and family crisis situations;

4. To ensure as far as possible that schools which have a certain proportion of these young people among their pupils are provided with special facilities, such as a larger number of teachers sensitive to the questions of migrants and minorities, tuition in the language and civilisation of both the host country and the country of origin, extra support in school work;

5. To ensure, with a view to securing equality of opportunities, that compulsory school attendance is effective for girls as well as boys;

6. To promote the access of these young people, even at a later stage, to training and offer them information and assistance in obtaining and keeping employment.

II. *Police*

7. To ensure that police services, which often constitute the first point of contact with young people in difficulty, adopt a non-discriminatory attitude during these contacts, taking into account the cultural context in which these young people live;

8. To ensure, consequently, that, in those departments of the police force responsible for juveniles, there are enough police officers having specialist training focused on the cultural values and standards of behaviour of the various ethnic groups with which they come into contact, including if possible police officers coming from a migrant background, and that all these officers may if necessary have recourse to interpreters;

9. To ensure that those departments establish links with associations concerned with these young people, in particular in order to be able to give the latter adequate assistance and guidance.

III. *Juvenile justice and care system*

10. To ensure that these young people benefit equally with young nationals from innovations in the juvenile justice and care system (diversion, mediation, other new forms of intervention, etc.);

11. To ensure that persons handling cases of minors at the various stages in proceedings are able to communicate in a satisfactory manner with the young migrants on account either of their ethnic origin or of their specialist training;

12. To intensify and ameliorate the contacts between the agents of the criminal justice and care system and families of migrants or other persons from the minor's environment in order better to understand the problems of the minor and reach well-founded decisions; to this end, to secure also the assistance of associations concerned with these young people.

IV. *Interventions and measures*

13. To undertake an adequate review of the young person's personal and social circumstances, in order to avoid simplistic and automatic "cultural" explanations, based on cultural values and conflicts;

14. To avoid systematic placing of these young people in institutions by providing the necessary resources in order that non-custodial measures and alternatives to placement and imprisonment are accessible and effectively applied to these young people in the same way as to the indigenous young people;

15. To ensure that educational and social staff are trained in the problems of these young people and include, if possible, members coming from migrant backgrounds, and that they can have recourse to collaborators (professional or voluntary) or to associations with experience in this field;

16. To avoid grouping young people of the same origin in specialised institutions;

17. To ensure that religious convictions and practices, including food practices, of the groups concerned are respected in the course of these interventions;

18. To encourage the recruitment of foster families representative of the various communities existing in the national territory so that, if desirable, young people can be entrusted to families of the same cultural origin;

19. To avoid, in principle, the expulsion of second-generation migrants during their minority or later for offences committed during their minority.

V. *Research*

20. To promote research especially on the following subjects:

— perception of the juvenile criminal justice system by young migrants and young people belonging to ethnic or cultural minorities;

— problems of young people returning to the country of origin and measures to be taken to prevent their possible misadaptation and delinquency;

— social and ethnic discrimination and institutional practice;

— practice related to reporting facts concerning these groups to the criminal justice system;

— discrimination in the reporting of criminality of young migrants by the media;

— effects of demographic changes on the labour-market and impact on the position of migrants and the development of criminality;

— studies of victimisation of young migrants or young people belonging to minorities, especially by racial attacks;

— ethnic monitoring of recruitment and selection of staff working in the juvenile justice system.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec(2000)20
of the Committee of Ministers to member states
on the role of early psychosocial intervention
in the prevention of criminality

(Adopted by the Committee of Ministers
on 6 October 2000
at the 724th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to the growing concern about the increasing incidence of juvenile delinquency throughout Europe, which presently takes different and more persistent and violent forms;

Bearing in mind that those who begin offending at an early age are most at risk of engaging in serious criminal behaviour and that there is some evidence of a trend towards young offenders beginning to offend at increasingly early ages;

Considering that any society has a duty to ensure the full well-being of children and to see to it that their interests and rights are respected by all those with responsibilities towards them;

Bearing in mind the primary importance of the family, parents and others charged with taking responsibility for the socialisation and up-bringing of children;

Considering that children are still in the process of developing and that deficits in their socialisation may lead to the onset of delinquency;

Convinced that any reaction in terms of preventing criminality requires efforts across society, taking into account adverse social and economic circumstances of children, and deficits in their socialisation, personality and specific needs;

Considering that special interventions should be made to ensure that, when a child is at risk of engaging in persistent criminal behaviour, such behaviour is effectively prevented, in particular, by promoting protective factors and reducing risk factors;

Bearing in mind that these interventions involve partnership between the state, local community and local agencies;

Aware of existing regional and national variations in organisational structures and socio-economic circumstances across member states;

Given that the prevention of criminality is an essential part of an effective overall crime control strategy, as well as policies affecting the well-being of children;

Taking into account its recommendations in the sphere of preventing and controlling delinquency, and in particular: Recommendation No. R (87) 19 on organisation of crime prevention; Recommendation No. R (87) 20 on social reactions to juvenile delinquency and referring to the conclusions and recommendations of the 19th Criminological Research Conference (1990) on "New social strategies and the criminal justice system";

Recalling its recommendations in the field of family and social laws, and in particular, Recommendation No. R (90) 2 on social measures concerning violence within the family; Recommendation No. R (93) 2 on medical-social aspects of child abuse and Recommendation No. R (94) 14 on coherent and integrated family policies;

Bearing in mind the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and related sectoral recommendations;

Bearing in mind the European Convention on Human Rights, the European Social Charter, as well as the European Convention on the Exercise of Children's Rights;

Bearing also in mind the United Nations Convention on the Rights of the Child and the UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines, adopted by the General Assembly Resolution 45/112),

Recommends that governments of member states:

– introduce and, where they exist, promote national strategies of early psycho-social intervention for the prevention of criminality;

– be guided, when formulating these strategies, by the principles and measures set out in the appendix to this recommendation; and

– bring this recommendation and its explanatory memorandum to the attention of all interested and relevant authorities and invite them to take these texts into account when devising strategies to tackle overall crime.

Appendix to Recommendation Rec(2000)20

I. Definitions

For the purposes of this recommendation:

– "prevention of criminality" means measures and activities aimed specifically at reducing the likelihood of engaging in future persistent criminal behaviour as opposed to prevention of crime which is concerned with reducing the number and seriousness of offences committed;

– "risk factors" means individual characteristics or socio-economic, cultural, demographic and other circumstances, which increase the likelihood of engaging in future persistent criminal behaviour;

– "children at risk" means persons below the age of 18 years exposed to multiple risk factors;

– "early psychosocial intervention" means any measure or activity aimed at distinguishing children at risk and reducing the likelihood of their future engagement in persistent criminal behaviour;

– "protective factors" means certain socio-economic and cultural factors as well as individual characteristics which help to protect children against the likelihood of engaging in future persistent criminal behaviour;

– "parental responsibilities" means a collection of duties and powers which aim at ensuring the affective, moral and material welfare of the child, in particular by taking care of the person of the child, by maintaining personal relationships with him/her and by providing for his/her education, his/her maintenance, his/her legal representation and the administration of his/her property;

– "holders of parental responsibilities" means parents and other persons or bodies entitled to exercise some or all parental responsibilities.

II. Programmes of early psychosocial intervention in preventing criminality

1. Programmes of early psychosocial intervention to prevent criminality should be developed on the basis that they are in the best interests of children, families and society and in line with existing legal norms. They should in particular respect the privacy and integrity of children and their families and take due account of the principles of proportionality, non-stigmatisation and non-discrimination.

2. Programmes should comprise a range of relevant measures which target as full a range as possible of risk factors within the primary domains of a child's life – the family, the school (including pre-school), the peer group and the local neighbourhood – as well as promoting protective factors. They should include measures to support and strengthen families, promote attachment to school, encourage responsible, pro-social behaviour and develop safer and more cohesive neighbourhoods.

3. Measures targeting risk factors should pay particular attention to the following:

– learning difficulties and hyperactivity/impulsivity;
– abuse, neglect, parental breakdown and placement in a residential care or welfare institution;
– bullying, persistent truancy, exclusion, educational failure and poor school environment;
– racial discrimination, parental unemployment and long-term deprivation;
– association with deviant peer groups or sects, substance abuse (including parental substance abuse), child prostitution, begging and vagrancy.

4. Measures aiming at the promotion of protective factors should particularly encourage the following:

- social and cognitive skills, pro-social values and attitudes and coping skills;
- strong attachment to parents and siblings, and clear, consistent and non-authoritarian rules and sanctions at home;
- inclusive and caring school environment with opportunities for all children to achieve success;
- strong attachments to pro-social peers and adults outside the home;
- attachment to the local community.

5. As far as possible, all interventions should be based on measures which have been scientifically proven to be effective, although some scope for innovation should remain.

6. It should be ensured that adequate resources are provided for early intervention to prevent criminality.

III. Children at Risk

7. In order to distinguish children at risk, national, regional and local agencies should develop appropriate structures and processes, including those for gathering and sharing relevant information while ensuring respect for relevant legal norms and principles on the protection of personal data.

8. All means designed to distinguish and deal with children at risk should be undertaken in their best interests and in accordance with the rights of the holders of parental responsibility.

9. These means should observe the fundamental rights of children, such as physical and psychological integrity or the right to privacy. Exceptions should only be allowed if they directly benefit the child and are permissible in law.

10. Parents and/or holders of parental responsibilities of children at risk, should be informed as soon as possible, unless this is clearly incompatible with the best interests of the child.

IV. Implementation

11. Statutory as well as other arrangements should be developed for the provision of a wide range of programmes for early intervention to prevent criminality.

12. An inter-ministerial group or other interdisciplinary official/public body should be entrusted with stimulating and overseeing the development of an early intervention strategy. This group or body or authority should include representatives from the voluntary and private sectors, as well as the relevant ministries and local partnerships. The group or body or authority should also be responsible for setting standards and identifying and disseminating good practice.

13. In implementing psychosocial interventions, the following principles should be applied:

– effectiveness: interventions achieve the desired aims, occur at the appropriate moment and match the level of resources to the seriousness of the risks targeted;
– minimum intervention: interventions are appropriate and the least intrusive possible;
– proportionality: interventions are commensurate with the degree of risk;
– non-stigmatisation: interventions do not blame or shame children, their families and communities;
– non-discrimination: interventions do not distinguish on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

14. Programmes should be planned, co-ordinated and delivered by local partnerships with a clear indication of who is in charge. They must include those responsible for social welfare, health and the education of children. If deemed appropriate they should work closely together with other relevant agencies such as youth protection, the police, and the voluntary and the private sector.

15. Partnerships should provide appropriate structures and processes for ensuring effective decision-making, resource allocation, priority setting and programme implementation. The latter should include:

– consulting and engaging local communities, children and their families about the nature of the problem and potential solutions;
– making use of existing services, including by reallocating existing resources, as well as providing new resources where gaps in provision are identified;
– constructing an action plan based, as far as possible, on scientific knowledge of what works;
– setting realistic targets;
– monitoring and reviewing progress; and
– evaluating outcomes using appropriate benchmarks and assessing cost effectiveness.

16. Early intervention strategies should include specific provision for initial and in-service training for those involved in co-ordinating, delivering and evaluating programmes.

17. Participation in programmes should be organised on a voluntary or contractual basis. Compulsory participation by holders of parental responsibilities should only be required when they are unwilling to fulfil their obligations and providing this is in line with existing legal frameworks and does not invoke criminal law provisions.

V. Research priorities

18. To increase the current knowledge base on the nature of criminality and its prevention, funds should be allocated to specific research on:

the nature and scale of the problem of criminality;
– the risk and protective factors associated with criminality; and

scientific evaluations of the cost-effectiveness of interventions to prevent criminality, including the process of implementation and the co-ordination of interventions across agencies and over time.

19. In order to promote the exchange of information and knowledge on what causes and prevents criminality and to make this available to policy makers, ways to improve national and international co-operation should be developed both within the scientific community and between the scientific community and those responsible for designing and implementing preventive programmes.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec(2003)20
of the Committee of Ministers to member states
concerning new ways of dealing with juvenile delinquency and the role of juvenile justice

(Adopted by the Committee of Ministers on 24 September 2003
at the 853rd meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Considering that juvenile delinquency is perceived as a pressing concern in a number of European countries;

Aware of the fact that, although overall juvenile crime rates remain more or less stable, the nature and seriousness of juvenile delinquency require new responses and new methods of intervention;

Taking into consideration that the traditional criminal justice system may not by itself offer adequate solutions as regards the treatment of juvenile delinquents, given that their specific educational and social needs differ from those of adults;

Convinced that responses to juvenile delinquency should be multidisciplinary and multi-agency in their approach and should be so designed as to tackle the range of factors that play a role at different levels of society: individual, family, school and community;

Considering that the age of legal majority does not necessarily coincide with the age of maturity, so that young adult offenders may require certain responses comparable to those for juveniles;

Furthermore, considering that some categories of juvenile offenders, such as members of ethnic minorities, young women and those offending in groups, may need special intervention programmes;

Taking into account, inter alia, Recommendation No. R (87) 20 on social reactions to juvenile delinquency, Recommendation No. R (88) 6 on social reactions to juvenile delinquency among young people from migrant families and Recommendation Rec(2000)20 on the role of early psychosocial intervention in the prevention of criminality;

Having regard to the outcome of the 10th Criminological Colloquy on young adult offenders and crime policy (1991);

Taking into consideration the European Convention on Human Rights, the European Convention on the Exercise of Children's Rights, the United Nations Convention on the Rights of the Child, 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,

Recommends that governments of member states:

– **be guided in their legislation and policies and practice by the principles and measures laid down in this recommendation;**

– bring this recommendation and its explanatory memorandum to the attention of all relevant agencies, the media and the public; and

– acknowledge the need for separate and distinct European rules on community sanctions and measures and European prison rules for juveniles.

I. Definitions

For the purposes of this recommendation:

- “juveniles” means persons who have reached the age of criminal responsibility but not the age of majority; however, this recommendation may also extend to those immediately below and above these ages;

- “delinquency” means actions which are dealt with under criminal law. In some countries it also extends to antisocial and/or deviant behaviour which may be dealt with under administrative or civil law;

- “juvenile justice system” is defined as the formal component of a wider approach for tackling youth crime. In addition to the youth court, it encompasses official bodies or agencies such as the police, the prosecution service, the legal profession, the probation service and penal institutions. It works closely with related agencies such as health, education, social and welfare services and non-governmental bodies, such as victim and witness support.

II. A more strategic approach

1. The principal aims of juvenile justice and associated measures for tackling juvenile delinquency should be:

i. to prevent offending and re-offending;
ii. to (re)socialise and (re)integrate offenders; and
iii. to address the needs and interests of victims.

2. The juvenile justice system should be seen as one component in a broader, community-based strategy for preventing juvenile delinquency, that takes account of the wider family, school, neighbourhood and peer group context within which offending occurs.

3. Resources should in particular be targeted towards addressing serious, violent, persistent and drug- and alcohol-related offending.

4. More appropriate and effective measures to prevent offending and re-offending by young members of ethnic minorities, groups of juveniles, young women and those under the age of criminal responsibility also need to be developed.

5. Interventions with juvenile offenders should, as much as possible, be based on scientific evidence on what works, with whom and under what circumstances.

6. In order to prevent discrimination public authorities should produce “impact” statements on the potential consequences of new policies and practices on young members of ethnic minorities.

III. New responses

7. Expansion of the range of suitable alternatives to formal prosecution should continue. They should form part of a regular procedure, must respect the principle of proportionality, reflect the best interests of the juvenile and, in principle, apply only in cases where responsibility is freely accepted.

8. To address serious, violent and persistent juvenile offending, member states should develop a broader spectrum of innovative and more effective (but still proportional) community sanctions and measures. They should directly address offending behaviour as well as the needs of the offender. They should also involve the offender's parents or other legal guardian (unless this is considered counter-productive) and, where possible and appropriate, deliver mediation, restoration and reparation to the victim.

9. Culpability should better reflect the age and maturity of the offender, and be more in step with the offender's stage of development, with criminal measures being progressively applied as individual responsibility increases.

10. Parents (or legal guardians) should be encouraged to become aware of and accept their responsibilities in relation to the offending behaviour of young children. They should attend court proceedings (unless this is considered counter-productive) and, where possible, they should be offered help, support and guidance. They should be required, where appropriate, to attend counselling or parent training courses, to ensure their child attends school and to assist official agencies in carrying out community sanctions and measures.

11. Reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and to be subject to the same interventions, when the judge is of the opinion that they are not as mature and responsible for their actions as full adults.

12. To facilitate their entry into the labour market, every effort should be made to ensure that young adult offenders under the age of 21 should not be required to disclose their criminal record to prospective employers, except where the nature of the employment dictates otherwise.

13. Instruments for assessing the risk of future re-offending should be developed in order that the nature, intensity and duration of interventions can be closely matched to the risk of re-offending, as well as to the needs of the offender, always bearing in mind the principle of proportionality. Where appropriate, relevant agencies should be encouraged to share information, but always in accordance with the requirements of data protection legislation.

14. Short time periods for each stage of criminal proceedings should be set to reduce delays and ensure the swiftest possible response to juvenile offending. In all cases, measures to speed up justice and improve effectiveness should be balanced with the requirements of due process.

15. Where juveniles are detained in police custody, account should be taken of their status as a minor, their age and their vulnerability and level of maturity. They should be promptly informed of their rights and safeguards in a manner that ensures their full understanding. While being questioned by the police they should, in principle, be accompanied by their parent/legal guardian or other appropriate adult. They should also have the right of access to a lawyer and a doctor. They should not be detained in police custody for longer than forty-eight hours in total and for younger offenders every effort should be made to reduce this time further. The detention of juveniles in police custody should be supervised by the competent authorities.

16. When, as a last resort, juvenile suspects are remanded in custody, this should not be for longer than six months before the commencement of the trial. This period can only be extended where a judge not involved in the investigation of the case is satisfied that any delays in proceedings are fully justified by exceptional circumstances.

17. Where possible, alternatives to remand in custody should be used for juvenile suspects, such as placements with relatives, foster families or other forms of supported accommodation. Custodial remand should never be used as a punishment or form of intimidation or as a substitute for child protection or mental health measures.

18. In considering whether to prevent further offending by remanding a juvenile suspect in custody, courts should undertake a full risk assessment based on comprehensive and reliable information on the young person's personality and social circumstances.

19. Preparation for the release of juveniles deprived of their liberty should begin on the first day of their sentence. A full needs and risk assessment should be the first step towards a reintegration plan which fully prepares offenders for release by addressing, in a co-ordinated manner, their needs relating to education, employment, income, health, housing, supervision, family and social environment.

20. A phased approach to reintegration should be adopted, using periods of leave, open institutions, early release on licence and resettlement units. Resources should be invested in rehabilitation measures after release and this should, in all cases, be planned and carried out with the close co-operation of outside agencies.

IV. Implementation

21. The response to juvenile delinquency should be planned, co-ordinated and delivered by local partnerships comprising the key public agencies – police, probation, youth and social welfare, judicial, education, employment, health and housing authorities – and the voluntary and private sector. Such partnerships should be responsible and accountable for achieving a common and clearly defined aim, and:

- provide initial and in-service training;
- plan, fund and deliver services;
- set standards and monitor performance;
- share information (adhering to the legal requirements of data protection and professional secrecy and taking into consideration the specific duties of the agencies concerned); and
- evaluate effectiveness and disseminate good practice.

V. Rights and safeguards

22. All new responses and procedures contained in the current recommendation must be considered within the framework of the rights and safeguards set out in relevant international instruments.

VI. Monitoring, evaluation and dissemination of information

23. To increase the knowledge base as to what interventions work, funds should be allocated to the independent scientific evaluation of such interventions and the dissemination of findings to practitioners.

24. To prevent discrimination on ethnic grounds within the juvenile justice system and to identify cases where culturally specific interventions are required, information should be collected and/or research undertaken on the involvement and treatment of ethnic minorities at each and every stage of the juvenile justice system.

25. To counter overly negative perceptions, inform public opinion and increase public confidence, information strategies on juvenile delinquency and the work and effectiveness of the juvenile justice system should be developed, using a wide range of outlets, including television and the Internet. This should be accomplished without making available personal information or other data that may lead to the identification of an individual offender or victim.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec(2005)5
of the Committee of Ministers to member states
on the rights of children living in residential institutions

(Adopted by the Committee of Ministers on 16 March 2005
at the 919th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its member states, *inter alia,* by promoting the adoption of common rules;

Recalling the work of the Council of Europe's programme for children and its childhood policies project, in particular the recommendations from the Conference on "Children's Rights and Childhood Policies in Europe: New Approaches?", held in Leipzig in 1996, the Parliamentary Assembly's Recommendations 1286 (1996) on a European strategy for children, 1551 (2002) on building a 21st century society with and for children: follow-up to the European strategy for children (Recommendation 1286 (1996)), and 1601 (2003) on improving the lot of abandoned children in institutions;

Reaffirming the legal texts referring to the situation of children living in residential institutions in general, and in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5); the United Nations Convention on the Rights of the Child; the European Social Charter (ETS No. 35) and the Revised European Social Charter (ETS No. 163); the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126); the European Convention on the Exercise of Children's Rights (ETS No. 160) and the Convention on Contact concerning Children (ETS No. 192);

Taking into account the Resolutions and Recommendations of the Committee of Ministers: Resolution No. R (77) 33 on the placement of children, and Recommendation No. R (79) 17 concerning the protection of children against ill-treatment, Recommendation No. R (84) 4 on parental responsibilities, Recommendation No. R (87) 6 on foster families, Recommendation No. R (87) 20 on social reactions to juvenile delinquency, Recommendation No. R (94) 14 on coherent and integrated family policies, Recommendation No. R (98) 8 on children's participation in family and social life, Recommendation Rec(2001)16 on the protection of children against sexual exploitation, Recommendation Rec(2003)19 on improving access to social rights and Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice;

Bearing in mind the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the United Nations Convention on the Rights of the Child according to which the placement of children should be avoided wherever feasible by means of preventive measures;

Aware that, despite preventive measures, some children will still need to be placed outside their family;

Considering that the type of placement must primarily take account of the needs and best interests of the child and, where appropriate, his or her personal views on the matter; due weight should be given to these views in accordance with the child's age and his or her degree of maturity;

Anxious that all children who are placed outside their families, and particularly those placed in institutions, should grow in dignity, in the best possible conditions, without being marginalised either during their childhood or in adulthood, and that they should experience no obstacles to becoming fully-fledged citizens in European societies,

Recommends that governments of member states:

1. adopt such legislative and other measures as may be necessary, including national guidelines and action plans, to guarantee that the principles and quality standards set out in the Appendix to this Recommendation are complied with, with a view to achieving full implementation of the rights of children living in residential institutions, irrespective of the reasons for and the nature of the placement;

2. ensure, by appropriate means and action, a wide dissemination of this Recommendation to children and other relevant persons and bodies.

Appendix to Recommendation Rec(2005)5

Basic principles

– The family is the natural environment for the growth and well-being of the child and the parents have the primary responsibility for the upbringing and development of the child;

– preventive measures of support for children and families in accordance with their special needs should be provided as far as possible;

– the placement of a child should remain the exception and have as the primary objective the best interests of the child and his or her successful social integration or re-integration as soon as possible; the placement must guarantee full enjoyment of the child's fundamental rights ;

– the placement should not be longer than necessary and should be subject to periodic review with regard to the child's best interests that should be the primary consideration during his or her placement; the parents should be supported as much as possible with a view to harmoniously reintegrating the child in the family and society;

– a child leaving care should be entitled to an assessment of his or her needs and appropriate after-care support in accordance with the aim to ensure the re-integration of the child in the family and society;

– the decision taken about the placement of a child and the placement itself should not be subject to discrimination on the basis of gender, race, colour, social, ethnic or national origin, expressed opinions, language, property, religion, disability, birth or any other status of the child and/or his or her parents;

– the procedure, organisation and individual care plan of the placement, including a periodic review of the placement, shall guarantee the rights of the child, notably the child's right to be heard; due weight should be given to these views in accordance with the child's age and his or her degree of maturity;

– any measures of control and discipline which may be used in residential institutions, including those with the aim of preventing self-inflicted harm or injury to others, should be based on public regulations and approved standards;

– the family of the child should, if possible, be involved in the planning and organisation of the child's placement;

– when the return of the child to his or her own family is not possible, other means of care or the continuation of the placement should be envisaged, taking into account the child's wishes and the continuity in his or her life path and his or her fulfilment and own needs.

Specific rights for children living in residential institutions

To ensure the respect for these basic principles and fundamental rights of the child, the following specific rights of children living in residential institutions should be recognised:

– the right to be placed only to meet needs that have been established as imperative on the basis of a multidisciplinary assessment, and to have the placement periodically reviewed; in such reviews, alternatives should be sought and the child's views taken into account;

– the right to maintain regular contact with the child's family and other significant people; such contact may be restricted or excluded only where necessary in the best interests of the child;

– the right for siblings, whenever possible, to stay together or maintain regular contact;

– the right to an identity;

– the right to respect of the child's ethnic, religious, cultural, social and linguistic background;

– the right to privacy, including access to a person they trust and a competent body for confidential advice on their rights;

– the right to good quality health care adapted to the needs and well-being of the individual child;

– the right to respect for the child's human dignity and physical integrity; in particular, the right to conditions of human and non-degrading treatment and a non-violent upbringing, including the protection against corporal punishment and all forms of abuse;

– the right to equal opportunities;

– the right to have access to all types of education, vocational guidance and training, under the same conditions as for all other children;

– the right to be prepared for active and responsible citizenship through play, sport, cultural activity, informal education and increasing responsibilities;

– the right to participate in decision-making processes concerning the child and the living conditions in the institution;

– the right to be informed about children's rights and the rules of the residential institution in a child-friendly way;

– the right to make complaints to an identifiable, impartial and independent body in order to assert children's fundamental rights.

Guidelines and quality standards

To ensure the implementation of these principles and rights, the following guidelines and standards should be taken into account:

– when circumstances allow, a placement should be selected which is as close as possible to the child's environment and organised to allow parents to exercise their responsibilities and to maintain parent-child contact on a regular basis;

– a small family-style living unit should be provided;

– priority should be given to the physical and mental health of the child and his or her full, harmonious development as the essential conditions for the success of the care plan;

– an individual care plan should be drawn up which is based on both the development of the child's capacities and abilities and respect for his or her autonomy, as well as on maintaining contacts with the outside world and preparation for living outside the institution in the future;

– conditions that allow continuity of the educational and proper emotional relationship between staff and the children, notably through the stability of the staff (continuous presence, avoiding staff transfers) are preferable;

– an internal organisation of the institution should be foreseen, based on:

  - the quality and stability of living units;
  - mixed living units, when this is in the best interests of the child;
  - high professional standards of the staff, benefiting from in-service training;
  - adequate salaries for the staff;
  - stability of staff and a sufficient number of staff members;
  - diversified staff, particularly in terms of gender;
  - multidisciplinary teamwork and other means of support, including supervision;
  - effective child-centred use of available resources;
  - means and specific training to develop appropriate cooperation with the child's parents;
  - codes of ethics, describing the standards of practice that should be consistent with the United Nations Convention on the Rights of the Child;

– all residential institutions should be accredited and registered with the competent public authorities on the basis of regulations and national minimum standards of care;

– on the basis of these standards, an efficient system of monitoring and external control of residential institutions should be ensured;

– relevant statistical data should be collected and analysed, and research for the purposes of efficient monitoring should be supported;

– any infringements of the rights of children living in residential institution should be sanctioned in conformity with appropriate and effective procedures;

– it should be recognised that apart from public institutions, non-governmental organisations (NGOs), religious organisations and other private bodies may play an important role concerning children living in residential institutions; this role should be defined by member states' governments. Involving non-governmental bodies should not release member states from their obligations towards children in residential institutions that have been enshrined in this Recommendation, concerning in particular the establishment of appropriate standards, systems of accreditation and inspection by competent bodies.

MJU-26 (2005) Resol. 2 Final

26th CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE
(Helsinki, 7-8 April 2005)

RESOLUTION No 2
on
The Social Mission of the Criminal Justice System - Restorative Justice

THE MINISTERS participating in the 26th Conference of European Ministers of Justice (Helsinki, 7 and 8 April 2005);

1. Having examined the report of the Minister of Justice of Finland on the social mission of the criminal justice system;

2. Considering that it is of great importance for social peace to promote a criminal policy which focuses also on the prevention of anti-social and criminal behaviour, the development of community sanctions and measures, the victim's needs and offender reintegration;

3. Noting that the use of imprisonment causes a heavy burden on society and causes human suffering;

4. Considering that community sanctions and measures as well as restorative justice measures can have a positive effect on the social costs of crime and crime control;

5. Convinced that by a restorative justice approach the interests of crime victims may often be better served, the possibilities for offenders to achieve a successful integration into society be increased and public confidence in the criminal justice system be thereby enhanced;

6. Bearing in mind that the purpose of restorative justice is also to decrease the number of proceedings before the criminal courts and that alternative non-judicial systems for restorative justice should be developed as far as possible within the national context;

7. Considering that prison sentences cannot always be avoided but that the treatment and management of prisoners can also benefit, inter alia, from the restorative justice approach so as to promote successful reintegration of the offender;

8. Considering that the restorative justice approach should be developed both in the framework of community measures as well as in all stages of criminal justice procedure, including restorative justice measures applied during and after imprisonment;

9. Considering that the prevention of crime, support and compensation for crime victims, and reintegrating sentenced offenders requires a multidisciplinary and/or multi-agency approach;

10. Aware of the need to design particular strategies to address the specific needs of vulnerable groups of victims and offenders;

11. Aware of the particular situation in some countries where the criminal justice system is currently undergoing substantial reforms, and that these countries may be in particular need of technical assistance to carry out these reforms;

12. Bearing in mind the importance of the principles contained in existing relevant international instruments;

13. Recalling the Council of Europe Recommendations of relevance in this field;

14. Recalling the European Convention on Compensation to Victims of Violent Crimes;

15. AGREE on the importance of promoting the restorative justice approach in their criminal justice systems;

16. ENCOURAGE the continuing work of the European Committee for Crime Problems (CDPC) in:

- updating the European Prison Rules;
- addressing the needs of victims of crime, including victims of terrorism and of serious violations of international humanitarian law;
- examining means of enhancing crime prevention policies;

17. FURTHER ENCOURAGE the work of the Council of Europe in conducting a multidisciplinary project on violence and children;

18. INVITE the CDPC to prepare, in accordance with Recommendation Rec(2003)20, an instrument with a view to developing comprehensive standards governing sanctions and measures for dealing with juvenile offenders;

19. INVITE the Committee of Ministers to further entrust the CDPC to examine the issue of probation and post prison assistance with a view to addressing the need to develop the role of probation services;

20. INVITE the Committee of Ministers to ask the CDPC to give further consideration to the possibility of preparing one or more instruments to address the needs of groups of vulnerable victims and/or offenders;

21. FURTHER INVITE the Committee of Ministers to support and develop co-operation programmes put in place to promote the widespread application of restorative justice in the member countries, on the basis of the Council of Europe's Recommendations in this field;

22. ASK the Secretary General of the Council of Europe to report on the steps taken to give effect to this Resolution, on the occasion of their next Conference.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec(2006)2
of the Committee of Ministers to member states
on the European Prison Rules[1]

(Adopted by the Committee of Ministers on 11 January 2006
at the 952nd meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Having regard to the European Convention on Human Rights and the case law of the European Court of Human Rights;

Having regard also to the work carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and in particular the standards it has developed in its general reports;

Reiterating that no one shall be deprived of liberty save as a measure of last resort and in accordance with a procedure prescribed by law;

Stressing that the enforcement of custodial sentences and the treatment of prisoners necessitate taking account of the requirements of safety, security and discipline while also ensuring prison conditions which do not infringe human dignity and which offer meaningful occupational activities and treatment programmes to inmates, thus preparing them for their reintegration into society;

Considering it important that Council of Europe member states continue to update and observe common principles regarding their prison policy;

Considering, moreover, that the observance of such common principles will enhance international co-operation in this field;

Noting the significant social changes which have influenced important developments in the penal field in Europe in the course of the last two decades;

Endorsing once again the standards contained in the recommendations of the Committee of Ministers of the Council of Europe, which relate to specific aspects of penitentiary policy and practice and in particular No. R (89) 12 on education in prison, No. R (93) 6 concerning prison and criminological aspects of the control of transmissible diseases including AIDS and related health problems in prison, No. R (97) 12 on staff concerned with the implementation of sanctions and measures, No. R (98) 7 concerning the ethical and organisational aspects of health care in prison, No. R (99) 22 concerning prison overcrowding and prison population inflation, Rec(2003)22 on conditional release (parole), and Rec(2003)23 on the management by prison administrations of life sentence and other long-term prisoners;

Bearing in mind the United Nations Standard Minimum Rules for the Treatment of Prisoners;

Considering that Recommendation No. R (87) 3 of the Committee of Ministers on the European Prison Rules needs to be substantively revised and updated in order to reflect the developments which have occurred in penal policy, sentencing practice and the overall management of prisons in Europe,

[1] When this recommendation was adopted, and in application of Article 10.2*c* of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representative of Denmark reserved the right of his government to comply or not with Rule 43, paragraph 2, of the appendix to the recommendation because it is of the opinion that the requirement that prisoners held under solitary confinement be visited by medical staff on a daily basis raises serious ethical concerns regarding the possible role of such staff in effectively pronouncing prisoners fit for further solitary confinement.

Recommends that governments of member states:

- be guided in their legislation, policies and practice by the rules contained in the appendix to this recommendation, which replaces Recommendation No. R (87) 3 of the Committee of Ministers on the European Prison Rules;

- ensure that this recommendation and the accompanying commentary to its text are translated and disseminated as widely as possible and more specifically among judicial authorities, prison staff and individual prisoners.

Appendix to Recommendation Rec(2006)2

Part I

Basic principles

1. All persons deprived of their liberty shall be treated with respect for their human rights.

2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.

3 Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.

5. Life in prison shall approximate as closely as possible the positive aspects of life in the community.

6. All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.

7. Co-operation with outside social services and as far as possible the involvement of civil society in prison life shall be encouraged.

8. Prison staff carry out an important public service and their recruitment, training and conditions of work shall enable them to maintain high standards in their care of prisoners.

9 All prisons shall be subject to regular government inspection and independent monitoring.

Scope and application

10.1 The European Prison Rules apply to persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction.

10.2 In principle, persons who have been remanded in custody by a judicial authority and persons who are deprived of their liberty following conviction should only be detained in prisons, that is, in institutions reserved for detainees of these two categories.

10.3 The Rules also apply to persons:

a. who may be detained for any other reason in a prison; or

b. who have been remanded in custody by a judicial authority or deprived of their liberty following conviction and who may, for any reason, be detained elsewhere.

10.4 All persons who are detained in a prison or who are detained in the manner referred to in paragraph 10.3.*b* are regarded as prisoners for the purpose of these rules.

11.1 Children under the age of 18 years should not be detained in a prison for adults, but in an establishment specially designed for the purpose.

11.2 If children are nevertheless exceptionally held in such a prison there shall be special regulations that take account of their status and needs.

12.1 Persons who are suffering from mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an establishment specially designed for the purpose.

12.2 If such persons are nevertheless exceptionally held in prison there shall be special regulations that take account of their status and needs.

13. These rules shall be applied impartially, without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Part II

Conditions of imprisonment

Admission

14. No person shall be admitted to or held in a prison as a prisoner without a valid commitment order, in accordance with national law.

15.1 At admission the following details shall be recorded immediately concerning each prisoner:

a. information concerning the identity of the prisoner;
b. the reasons for commitment and the authority for it;
c. the day and hour of admission;
d. an inventory of the personal property of the prisoner that is to be held in safekeeping in accordance with Rule 31;
e. any visible injuries and complaints about prior ill-treatment; and
f. subject to the requirements of medical confidentiality, any information about the prisoner's health that is relevant to the physical and mental well-being of the prisoner or others.

15.2 At admission all prisoners shall be given information in accordance with Rule 30.

15.3 Immediately after admission notification of the detention of the prisoner shall be given in accordance with Rule 24.9.

16. As soon as possible after admission:

a. information about the health of the prisoner on admission shall be supplemented by a medical examination in accordance with Rule 42;
b. the appropriate level of security for the prisoner shall be determined in accordance with Rule 51;
c. the threat to safety that the prisoner poses shall be determined in accordance with Rule 52;
d. any available information about the social situation of the prisoner shall be evaluated in order to deal with the immediate personal and welfare needs of the prisoner; and
e. in the case of sentenced prisoners the necessary steps shall be taken to implement programmes in accordance with Part VIII of these rules.

Allocation and accommodation

33.3 All prisoners shall have the benefit of arrangements designed to assist them in returning to free society after release.

33.4 On the release of a prisoner all articles and money belonging to the prisoner that were taken into safe custody shall be returned except in so far as there have been authorised withdrawals of money or the authorised sending of any such property out of the institution, or it has been found necessary to destroy any article on hygienic grounds.

33.5 The prisoner shall sign a receipt for the property returned.

33.6 When release is pre-arranged, the prisoner shall be offered a medical examination in accordance with Rule 42 as close as possible to the time of release.

33.7 Steps must be taken to ensure that on release prisoners are provided, as necessary, with appropriate documents and identification papers, and assisted in finding suitable accommodation and work.

33.8 Released prisoners shall also be provided with immediate means of subsistence, be suitably and adequately clothed with regard to the climate and season, and have sufficient means to reach their destination.

Women

34.1 In addition to the specific provisions in these rules dealing with women prisoners, the authorities shall pay particular attention to the requirements of women such as their physical, vocational, social and psychological needs when making decisions that affect any aspect of their detention.

34.2 Particular efforts shall be made to give access to special services for women prisoners who have needs as referred to in Rule 25.4.

34.3 Prisoners shall be allowed to give birth outside prison, but where a child is born in prison the authorities shall provide all necessary support and facilities.

Detained children

35.1 Where exceptionally children under the age of 18 years are detained in a prison for adults the authorities shall ensure that, in addition to the services available to all prisoners, prisoners who are children have access to the social, psychological and educational services, religious care and recreational programmes or equivalents to them that are available to children in the community.

35.2 Every prisoner who is a child and is subject to compulsory education shall have access to such education.

35.3 Additional assistance shall be provided to children who are released from prison.

35.4 Where children are detained in a prison they shall be kept in a part of the prison that is separate from that used by adults unless it is considered that this is against the best interests of the child.

Infants

36.1 Infants may stay in prison with a parent only when it is in the best interest of the infants concerned. They shall not be treated as prisoners.

36.2 Where such infants are allowed to stay in prison with a parent special provision shall be made for a nursery, staffed by qualified persons, where the infants shall be placed when the parent is involved in activities where the infant cannot be present.

36.3 Special accommodation shall be set aside to protect the welfare of such infants.

72.1 Prisons shall be managed within an ethical context which recognises the obligation to treat all prisoners with humanity and with respect for the inherent dignity of the human person.

72.2 Staff shall manifest a clear sense of purpose of the prison system. Management shall provide leadership on how the purpose shall best be achieved.

72.3 The duties of staff go beyond those required of mere guards and shall take account of the need to facilitate the reintegration of prisoners into society after their sentence has been completed through a programme of positive care and assistance.

72.4 Staff shall operate to high professional and personal standards.

73. Prison authorities shall give high priority to observance of the rules concerning staff.

74. Particular attention shall be paid to the management of the relationship between first line prison staff and the prisoners under their care.

75. Staff shall at all times conduct themselves and perform their duties in such a manner as to influence the prisoners by good example and to command their respect.

Selection of prison staff

76. Staff shall be carefully selected, properly trained, both at the outset and on a continuing basis, paid as professional workers and have a status that civil society can respect.

77. When selecting new staff the prison authorities shall place great emphasis on the need for integrity, humanity, professional capacity and personal suitability for the complex work that they will be required to do.

78. Professional prison staff shall normally be appointed on a permanent basis and have public service status with security of employment, subject only to good conduct, efficiency, good physical and mental health and an adequate standard of education.

79.1 Salaries shall be adequate to attract and retain suitable staff.

79.2 Benefits and conditions of employment shall reflect the exacting nature of the work as part of a law enforcement agency.

80. Whenever it is necessary to employ part-time staff, these criteria shall apply to them as far as that is appropriate.

Training of prison staff

81.1 Before entering into duty, staff shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.

81.2 Management shall ensure that, throughout their career, all staff maintain and improve their knowledge and professional capacity by attending courses of in-service training and development to be organised at suitable intervals.

81.3 Staff who are to work with specific groups of prisoners, such as foreign nationals, women, juveniles or mentally ill prisoners, etc., shall be given specific training for their specialised work.

81.4 The training of all staff shall include instruction in the international and regional human rights instruments and standards, especially the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as in the application of the European Prison Rules.

107.2 In the case of those prisoners with longer sentences in particular, steps shall be taken to ensure a gradual return to life in free society.

107.3 This aim may be achieved by a pre-release programme in prison or by partial or conditional release under supervision combined with effective social support.

107.4 Prison authorities shall work closely with services and agencies that supervise and assist released prisoners to enable all sentenced prisoners to re-establish themselves in the community, in particular with regard to family life and employment.

107.5 Representatives of such social services or agencies shall be afforded all necessary access to the prison and to prisoners to allow them to assist with preparations for release and the planning of after-care programmes.

Part IX

Updating the Rules

108. The European Prison Rules shall be updated regularly.

www. coe.int/minjust

26 October 2007

MJU-28 (2007) Resol. 2E

28th Conference of the European Ministers of Justice
(Lanzarote, Spain, 25-26 October 2007)

RESOLUTION No. 2
on child-friendly justice

THE MINISTERS participating in the 28th Conference of the European Ministers of Justice (Lanzarote, 25-26 October 2007),

1. Having regard to the report of the Minister of Justice of Spain on "Emerging issues of access to justice for vulnerable groups, in particular: migrants and asylum seekers, children, including children perpetrators of crime", and welcoming the contributions made by other delegations;

2. Having discussed access to justice for children, including children perpetrators of crime;

3. Having regard in particular to the European Convention on Human Rights, the United Nations Convention on the rights of the child and its optional protocols, the European Convention on the exercise of children's rights and the Council of Europe Recommendations concerning juvenile delinquency;

4. Welcoming the results achieved so far by the Council of Europe programme "Building a Europe for and with children" and encouraging the Council of Europe to continue with this important work and noting in particular the results of the Conference on "International Justice for Children" (Strasbourg, 17 and 18 September 2007);

5. Underlining the importance of the recent Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse;

6. Welcoming the drafting of European Rules for juvenile offenders subject to community sanctions or measures or deprived of their liberty;

7. Recognising that the best interests of children are a primary consideration;

8. Acknowledging the need to provide and facilitate children's access to effective remedies, to mediation and to court proceedings, in order for their rights to be fully respected and promoted including through the enforcement of decisions and judgments;

9. Convinced that children's participation, as appropriate in judicial proceedings in which they are involved, is an important element of a modern and fair justice system where children's views, needs and concerns should effectively be taken into account;

10. Aware of the necessity to establish measures and safeguards to reduce the negative impact of, and to protect children from suffering harm when encountering the justice system;

11. Noting that special attention and guarantees are required for child victims or witnesses of crime to protect their welfare and prevent them from repeat victimisation by inappropriate judicial procedures;

12. Aware that the development of a secure and friendly environment for children involved with the justice system, with specially trained persons and efficient procedures, reduces the harm suffered by children and enhances the efficiency of justice;

13. Underlining that alternatives to custody should be developed for children perpetrators of crime and that, where deprivation of liberty is absolutely necessary as a measure of last resort, the conditions and regime of detention should take into account their specific needs as children;

14. Underlining in particular that children should be detained separately from adults, including in cases of preventive detention, unless this is considered to be against the best interests of the child;

15. Underlining that the Memorandum of Understanding is now a new basis for co-operation between the Council of Europe and the European Union for any activity undertaken in this matter;

16. Referring to the Declaration and Action Plan adopted during the Third Summit of Heads of State and Government of the Council of Europe, in particular Chapter III.2 on "Building a Europe for children".

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17. RECALL the particular vulnerability of children and the necessity to ensure respect for their rights and attention to their specific needs and concerns in all aspects of the justice system;

18. CALL UPON member states to respect the principle, in all justice matters involving children, that the best interests of children shall be a primary consideration;

19. CALL UPON states to become parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, and those states which have not yet done so to become parties to the Council of Europe Convention on action against trafficking in human beings, the European Convention on the exercise of children's rights and the Convention on cybercrime;

20. INVITE the Committee of Ministers to promote and encourage the implementation of the above-mentioned instruments and to appoint a thematic co-ordinator on children;

21. ENCOURAGE the relevant Council of Europe bodies to finalise as soon as possible the European Rules for juvenile offenders subject to community sanctions or measures or deprived of their liberty;

22. AGREE on the importance of taking measures to develop child-friendly justice;

23. INVITE the Committee of Ministers to entrust the European Committee on Crime Problems (CDPC), the European Committee on Legal Co-operation (CDCJ), the Steering Committee for Human Rights (CDDH) as well as the European Commission for the efficiency of justice (CEPEJ) in co-operation with other competent bodies of the Council of Europe, to:

    a. examine the access and the place children have prior to, during and after judicial proceedings;
    b. examine the way in which the views of children can be taken into account during such proceedings;
    c. examine ways of improving the manner in which authorities provide information to children on their rights and access to justice, including to the European Court of Human Rights;
    d. gather information on child-friendly procedures implemented in member states;
    e. prepare elements for European guidelines for child-friendly justice;

24. ASK the Secretary General of the Council of Europe to report on the steps taken to give effect to this Resolution, on the occasion of their next Conference.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE
Committee of Ministers
Comité des Ministres

Recommendation CM/Rec(2008)11
of the Committee of Ministers to member states
on the European Rules for juvenile offenders subject to sanctions or measures

(Adopted by the Committee of Ministers on 5 November 2008
at the 1040th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, in particular through harmonising laws on matters of common interest;

Having regard in particular:

- to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) and to the case law of the European Court of Human Rights;
- to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126) and to the work of the committee entrusted with its implementation;
- to the United Nations Convention on the Rights of the Child;

Taking into consideration:

- Recommendation Rec(2006)2 on the European Prison Rules;
- Recommendation Rec(2005)5 on the rights of children living in residential institutions;
- Recommendation Rec(2004)10 concerning the protection of the human rights and dignity of persons with mental disorder;
- Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice;
- Recommendation No. R (97) 12 on staff concerned with the implementation of sanctions or measures;
- Recommendation No. R (92) 16 on the European rules on community sanctions and measures;
- Recommendation No. R (87) 20 on social reactions to juvenile delinquency;

Taking further into consideration:

- the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines);
- the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules);
- the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules);
- the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules);

Having regard to the Final Declaration and Action Plan adopted at the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, Poland, 16-17 May 2005), and in particular to Part III.2 of the Action Plan entitled "Building a Europe for children", as well as having regard to Resolution No. 2 adopted at the 28th Conference of European Ministers of Justice (Lanzarote, Spain, 25-26 October 2007);

Considering therefore that common action at European level is needed in order to better protect the rights and well-being of juveniles who enter in conflict with the law and to develop a child-friendly justice system in its member states;

Considering it important in this respect that Council of Europe member states continue to improve, update and observe common principles regarding their national juvenile justice policies and practices and enhance international co-operation in this field,

Recommends that governments of the member states:

- be guided in their legislation, policies and practice by the rules contained in the appendix to this recommendation;

- ensure that this recommendation and the accompanying commentary are translated and disseminated as widely as possible and more specifically among judicial authorities and the police; services entrusted with the execution of sanctions and measures addressing juvenile offenders; penitentiary, welfare and mental health institutions holding juvenile offenders and their staff as well as the media and the general public.

Appendix to Recommendation CM/Rec(2008)11

European Rules for juvenile offenders subject to sanctions or measures

The aim of the present rules is to uphold the rights and safety of juvenile offenders subject to sanctions or measures and to promote their physical, mental and social well-being when subjected to community sanctions or measures, or any form of deprivation of liberty.

Nothing in these rules ought to be interpreted as precluding the application of other relevant international human rights instruments and standards that are more conducive to ensuring the rights, care and protection of juveniles. Furthermore, the provisions of Recommendation Rec(2006)2 on the European Prison Rules and of Recommendation No. R (92) 16 on the European rules on community sanctions and measures shall be applied to the benefit of juvenile offenders in as far as they are not in conflict with these rules.

Part I – Basic principles, scope and definitions

A. Basic principles

1. Juvenile offenders subject to sanctions or measures shall be treated with respect for their human rights.

2. The sanctions or measures that may be imposed on juveniles, as well as the manner of their implementation, shall be specified by law and based on the principles of social integration and education and of the prevention of re-offending.

3. Sanctions and measures shall be imposed by a court or if imposed by another legally recognised authority they shall be subject to prompt judicial review. They shall be determinate and imposed for the minimum necessary period and only for a legitimate purpose.

4. The minimum age for the imposition of sanctions or measures as a result of the commission of an offence shall not be too low and shall be determined by law.

5. The imposition and implementation of sanctions or measures shall be based on the best interests of the juvenile offenders, limited by the gravity of the offences committed (principle of proportionality) and take account of their age, physical and mental well-being, development, capacities and personal circumstances (principle of individualisation) as ascertained when necessary by psychological, psychiatric or social inquiry reports.

6. In order to adapt the implementation of sanctions and measures to the particular circumstances of each case the authorities responsible for the implementation shall have a sufficient degree of discretion without leading to serious inequality of treatment.

7. Sanctions or measures shall not humiliate or degrade the juveniles subject to them.

8. Sanctions or measures shall not be implemented in a manner that aggravates their afflictive character or poses an undue risk of physical or mental harm.

9. Sanctions or measures shall be implemented without undue delay and only to the extent and for the period strictly necessary (principle of minimum intervention).

10. Deprivation of liberty of a juvenile shall be a measure of last resort and imposed and implemented for the shortest period possible. Special efforts must be undertaken to avoid pre-trial detention.

11. Sanctions or measures shall be imposed and implemented without discrimination on any ground such as sex, race, colour, language, religion, sexual orientation, political or other opinion, national or social origin, association with a national minority, property, birth or other status (principle of non-discrimination).

12. Mediation or other restorative measures shall be encouraged at all stages of dealing with juveniles.

13. Any justice system dealing with juveniles shall ensure their effective participation in the proceedings concerning the imposition as well as the implementation of sanctions or measures. Juveniles shall not have fewer legal rights and safeguards than those provided to adult offenders by the general rules of criminal procedure.

14. Any justice system dealing with juveniles shall take due account of the rights and responsibilities of the parents and legal guardians and shall as far as possible involve them in the proceedings and the execution of sanctions or measures, except if this is not in the best interests of the juvenile. Where the offender is over the age of majority, the participation of parents and legal guardians is not compulsory. Members of the juveniles' extended families and the wider community may also be associated with the proceedings where appropriate.

15. Any justice system dealing with juveniles shall follow a multi-disciplinary and multi-agency approach and be integrated with wider social initiatives for juveniles in order to ensure a holistic approach to and continuity of the care of such juveniles (principles of community involvement and continuous care).

16. The juvenile's right to privacy shall be fully respected at all stages of the proceedings. The identity of juveniles and confidential information about them and their families shall not be conveyed to anyone who is not authorised by law to receive it.

17. Young adult offenders may, where appropriate, be regarded as juveniles and dealt with accordingly.

18. All staff working with juveniles perform an important public service. Their recruitment, special training and conditions of work shall ensure that they are able to provide the appropriate standard of care to meet the distinctive needs of juveniles and provide positive role models for them.

19. Sufficient resources and staffing shall be provided to ensure that interventions in the lives of juveniles are meaningful. Lack of resources shall never justify the infringement of the human rights of juveniles.

20. The execution of any sanction or measure shall be subjected to regular government inspection and independent monitoring.

B. Scope and definitions

21. For the purpose of these rules:

21.1. "juvenile offender" means any person below the age of 18 who is alleged to have or who has committed an offence. References to juveniles in these rules shall be regarded as references to juvenile offenders as defined above;

21.2. "young adult offender" means any person between the ages of 18 and 21 who is alleged to have or who has committed an offence and who is subject to these rules because he/she falls under the provisions of Rule 17. References to young adults in these rules shall be regarded as references to young adult offenders as defined above;

21.3. "offence" means any act or omission that infringes criminal law. For the purpose of these rules it includes any such infringement dealt with by a criminal court or any other judicial or administrative authority;

21.4. "community sanctions or measures" means any sanction or measure other than a detention measure which maintains juveniles in the community and involves some restrictions of their liberty through the imposition of conditions and/or obligations, and which is implemented by bodies designated by law for that purpose. The term designates any sanction imposed by a judicial or administrative authority and any measure taken before or instead of a decision on a sanction, as well as ways of enforcing a sentence of imprisonment outside a prison establishment;

21.5. “deprivation of liberty” means any form of placement in an institution by decision of a judicial or administrative authority, from which the juvenile is not permitted to leave at will;

21.6. “institution” means a physical entity under the control of public authorities, where juveniles are living under the supervision of staff according to formal rules.

22. These rules may also apply to the benefit of other persons held in the same institutions or settings as juvenile offenders.

Part II – Community sanctions and measures

C. Legal framework

23.1. A wide range of community sanctions and measures, adjusted to the different stages of development of juveniles, shall be provided at all stages of the process.

23.2. Priority shall be given to sanctions and measures that may have an educational impact as well as constituting a restorative response to the offences committed by juveniles.

24. National law shall specify the following characteristics of the different community sanctions and measures:

a. the definition and mode of application of all sanctions and measures applicable to juveniles;
b. any condition or obligation that is the consequence of the imposition of such sanction or measure;
c. the cases in which the consent of the juvenile is required before a sanction or measure may be imposed;
d. which authorities are responsible for the imposition, modification and implementation of a sanction or measure and their respective duties and responsibilities;
e. the grounds and procedures applicable for the modification of an imposed sanction or measure; and
f. the procedures for the regular and external scrutiny of the work of the implementing authorities.

25. In order to meet the specific needs of juveniles, national law shall set out:

a. the obligation of any competent authority to explain the content and the aims of the legal provisions governing community sanctions or measures to juvenile offenders and, if necessary, to their parents or legal guardians;
b. the obligation of any competent authority to aim at the best possible co-operation with juvenile offenders and their parents or legal guardians; and
c. the rights of parents and legal guardians of juvenile offenders who may be subject to community sanctions or measures, possible restrictions on their rights and duties in regard to the imposition and implementation of any such sanctions and measures.

26. The decision to impose or revoke a community sanction or measure shall be taken by a judicial authority or, if it is taken by an administrative authority authorised by law, it shall be subject to judicial review.

27. Depending on the progress made by the juvenile, the competent authorities shall, when provided for by national law, be entitled to reduce the duration of any sanction or measure, relax any condition or obligation laid down in such a sanction or measure or terminate it.

28. The rights of juveniles to benefits in respect of education, vocational training, physical and mental health care, safety and social security shall not be limited by the imposition or implementation of community sanctions or measures.

29. Whenever the consent of juveniles or their parents or legal guardians is required for the imposition or implementation of community sanctions or measures, such consent shall be informed and explicit.

30.1. If juveniles do not comply with the conditions and obligations of the community sanctions or measures imposed on them, this shall not lead automatically to deprivation of liberty. Where possible, modified or new community sanctions or measures shall replace the previous ones.

30.2. Failure to comply shall not automatically constitute an offence.

D. Conditions of implementation and consequences of non-compliance

D.1. Conditions of implementation

31.1. Community sanctions and measures shall be implemented in a way that makes them as meaningful as possible to juveniles and that contributes to their educational development and the enhancement of their social skills.

31.2. Juveniles shall be encouraged to discuss matters relating to the implementation of community sanctions and measures and to communicate individually or collectively with the authorities about these matters.

32. The implementation of community sanctions or measures shall respect as far as possible the existing constructive social networks of the juveniles and the relations to their families.

33.1. Juveniles shall be informed, in a manner and language they understand, as to how the community sanction or measure imposed on them will be implemented and about their rights and duties in regard to its implementation.

33.2. Juveniles shall have the right to make oral or written representations prior to any formal decision concerning the implementation of the community sanctions or measures, as well as the right to apply to alter the conditions of implementation.

34.1. Individual case records shall be established and kept up to date by the implementing authorities.

34.2. Case records shall meet the following requirements:

a. information in case records shall only encompass matters relevant to the community sanction or measure imposed and its implementation;
b. juveniles and their parents or legal guardians shall have access to the juvenile's case records to the extent that it does not infringe the rights to privacy of others; they shall have the right to contest the contents of the case records;
c. information in a case record shall only be disclosed to those with a legal right to receive it and any information disclosed shall be limited to what is relevant for the task of the authority requesting information;
d. after the termination of the community sanction or measure, case records shall be destroyed or kept in archives where access to their contents shall be restricted by rules providing safeguards on revealing their content to third parties.

35. Any information about juveniles given to agencies which provide educational or work placements or personal and social assistance shall be restricted to the purpose of the particular action under consideration.

36.1. The conditions under which juveniles carry out community work or comparable duties shall meet the standards set by general national health and safety legislation.

36.2. The juveniles shall be insured or indemnified against the consequences of accident, injury and public liability arising as a result of implementation of community sanctions or measures.

37. The costs of implementation shall in principle not be borne by the juveniles or their families.

38. The relationship between the staff concerned and the juveniles shall be guided by principles of education and development.

39.1. The implementation of community sanctions and measures shall be based on individualised assessments and methods of intervention that are consistent with proven professional standards.

39.2. These methods shall be developed in the light of research findings and best practices in social work, youth welfare and allied fields of activity.

40. Within the framework of a given community sanction or measure various approaches, such as case-work, group therapy, mentoring and day attendance, and the specialised treatment of various categories of offenders shall be adopted to meet the needs of the juveniles.

41.1 Restrictions of liberty shall be proportionate to the community sanction or measure, limited by its aims and shall be placed on juveniles only to the extent that they are necessary for its proper implementation.

41.2. Practical and precise instructions shall be issued to the staff directly responsible for the implementation of community sanctions or measures.

42. Wherever possible, a continuous and long-term relationship shall be maintained between the staff implementing a community sanction or measure and the juvenile, even when the juvenile's place of residence, legal status or type of intervention changes.

43.1. Special attention shall be paid to appropriate interventions for linguistic or ethnic minorities and juveniles who are foreign nationals.

43.2 In case there is a provision to transfer the execution of community sanctions or measures applied to juveniles who are foreign nationals they shall be informed of their rights in this respect. Close co-operation with the juvenile welfare and justice agencies shall be established in order to facilitate the necessary assistance for such juveniles immediately upon arrival in their country of origin.

43.3. In exceptional cases where juveniles who are foreign nationals are to be expelled to their countries of origin after the execution of the community sanctions or measures, efforts shall be made to establish contacts with social welfare authorities in their countries of origin, in so far as such contacts are in the best interest of the juveniles concerned.

44. Juveniles shall be encouraged to make reparation to the best of their ability for any damage or negative effects caused by the offence, in so far as such reparation is within the scope of the community sanctions or measures to which they are subject.

45. Community work shall not be undertaken for the sole purpose of making a profit.

D.2. Consequences of non-compliance

46. Juveniles and their parents or legal guardians shall be informed of the consequences of non-compliance with the conditions and obligations of community sanctions or measures and the rules under which allegations of non-compliance will be considered.

47.1. The procedures to be followed by the authorities reporting or deciding on non-compliance with the requirements of the community sanctions or measures shall be defined clearly.

47.2. Minor transgressions shall be noted in the individual case file but need not be reported to the authority deciding on non-compliance, unless national law requires that this be done. Such transgressions may be promptly dealt with by discretionary means.

47.3. Significant failure to comply with the requirements shall be promptly reported in writing to the authority deciding on non-compliance.

47.4. Such reports shall give a detailed account of the manner in which the non-compliance occurred, the circumstances in which it took place and the personal situation of the juvenile.

48.1. The authority responsible for deciding on non-compliance shall only give a ruling on the modification or the partial or total revocation of a community sanction or measure after making a detailed examination of the facts reported to it.

48.2. If necessary, psychological or psychiatric assessments or observations, as well as social inquiry reports shall be requested.

48.3. The authority shall ensure that juveniles and, where appropriate, their parents or legal guardians have the opportunity to examine the evidence of non-compliance on which the request for modification or revocation is based and to present their comments.

48.4. Where the revocation or modification of a community sanction or measure is being considered, due account shall be taken of the extent to which the juvenile has already fulfilled the requirements of the initial sanction or measure in order to ensure that a new or modified sanction or measure is still proportionate to the offence.

48.5. If as a result of non-compliance an authority other than a court revokes or modifies a community sanction or measure, its decision shall be subject to judicial review.

Part III – Deprivation of liberty

E. General part

E.1. Overall approach

49.1. Deprivation of liberty shall be implemented only for the purpose for which it is imposed and in a manner that does not aggravate the suffering inherent to it.

49.2. Deprivation of liberty of juveniles shall provide for the possibility of early release.

50.1. Juveniles deprived of their liberty shall be guaranteed a variety of meaningful activities and interventions according to an individual overall plan that aims at progression through less restrictive regimes and preparation for release and reintegration into society. These activities and interventions shall foster their physical and mental health, self-respect and sense of responsibility and develop attitudes and skills that will prevent them from re-offending.

50.2. Juveniles shall be encouraged to take part in such activities and interventions.

50.3. Juveniles deprived of their liberty shall be encouraged to discuss matters relating to general conditions and regime activities in institutions and to communicate individually or, where applicable, collectively with authorities about these matters.

51. In order to guarantee the continuity of care, juveniles shall be assisted, from the beginning of and throughout any period of deprivation of liberty, by the agencies that may be responsible for them after release.

52.1. As juveniles deprived of their liberty are highly vulnerable, the authorities shall protect their physical and mental integrity and foster their well-being.

52.2. Particular care shall be taken of the needs of juveniles who have experienced physical, mental or sexual abuse.

E.2. Institutional structure

53.1. Institutions or sections of institutions shall provide a range of facilities to meet the individual needs of the juveniles held there and the specific purpose of their committal.

53.2. Such institutions shall provide conditions with the least restrictive security and control arrangements necessary to protect juveniles from harming themselves, staff, others or the wider community.

53.3. Life in an institution shall approximate as closely as possible the positive aspects of life in the community.

53.4. The number of juveniles in an institution shall be small enough to enable individualised care. Institutions shall be organised into small living units.

53.5. Juvenile institutions shall be located in places that are easy to access and facilitate contact between the juveniles and their families. They should be established and integrated into the social, economic and cultural environment of the community.

E.3. Placement

54. The placement of different categories of juveniles in institutions shall be guided in particular by the provision of the type of care best suited to their particular needs and the protection of their physical and mental integrity and well-being.

55. Juveniles shall be placed, as far as possible, in institutions easily accessible from their homes or places of social reintegration.

56. Juveniles deprived of liberty shall be sent to institutions with the least restrictive level of security to hold them safely.

57. Juveniles who are suffering from mental illness and who are to be deprived of their liberty shall be held in mental health institutions.

58. As far as possible, juveniles, and where practicable their parents or legal guardians, shall be consulted about the initial placement and any subsequent transfer from one institution to another.

59.1. Juveniles shall not be held in institutions for adults, but in institutions specially designed for them. If juveniles are nevertheless exceptionally held in an institution for adults, they shall be accommodated separately unless in individual cases where it is in their best interest not to do so. In all cases, these rules shall apply to them.

59.2. Exceptions may have to be made to the requirements for separate detention in terms of sub-paragraph 1 in order to allow juveniles to participate jointly in organised activities with persons in institutions for adults.

59.3. Juveniles who reach the age of majority and young adults dealt with as if they were juveniles shall normally be held in institutions for juvenile offenders or in specialised institutions for young adults unless their social reintegration can be better effected in an institution for adults.

60. Male and female juveniles shall normally be held in separate institutions or units within an institution. Separation between male and female juveniles need not be applied in welfare or mental health institutions. Even where male and female juveniles are held separately, they shall be allowed to participate jointly in organised activities.

61. Within institutions there shall be an appropriate assessment system in order to place juveniles according to their educational, developmental and safety needs.

E.4. Admission

62.1. No juvenile shall be admitted to or held in an institution without a valid commitment order.

62.2. At admission, the following details shall be recorded immediately concerning each juvenile:

a. information concerning the identity of the juvenile and his or her parents or legal guardians;
b. the reasons for commitment and the authority responsible for it;
c. the date and time of admission;
d. an inventory of the personal property of the juvenile that is to be held in safekeeping;
e. any visible injuries and allegations of prior ill-treatment;
f. any information and any report about the juvenile's past and his or her educational and welfare needs; and
g. subject to the requirements of medical confidentiality, any information about the juvenile's risk of self-harm or a health condition that is relevant to the physical and mental well-being of the juvenile or to that of others.

62.3. At admission, the rules of the institution and the rights and obligations of the juvenile shall be explained in a language and manner that the juvenile understands.

62.4. Notification of the placement of the juvenile, information on the rules governing the institution and any other relevant information shall be given immediately to the juvenile's parents or legal guardians.

62.5. As soon as possible after admission, the juvenile shall be medically examined, a medical record shall be opened and treatment of any illness or injury shall be initiated.

62.6. As soon as possible after admission:

a. the juvenile shall be interviewed and a first psychological, educational and social report identifying any factors relevant to the specific type and level of care and intervention shall be made;
b. the appropriate level of security for the juvenile shall be established and if necessary alterations shall be made to the initial placement;
c. save in the case of very short periods of deprivation of liberty, an overall plan of educational and training programmes in accordance with the individual characteristics of the juvenile shall be developed and the implementation of such programmes shall begin; and
d. the views of the juvenile shall be taken into account when developing such programmes.

E.5. Accommodation

63.1. The accommodation provided for juveniles, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation. Specific minimum requirements in respect of these matters shall be set in national law.

63.2. Juveniles shall normally be accommodated during the night in individual bedrooms, except where it is preferable for them to share sleeping accommodation. Accommodation shall only be shared if it is appropriate for this purpose and shall be occupied by juveniles suitable to associate with each other. Juveniles shall be consulted before being required to share sleeping accommodation and may indicate with whom they would wish to share.

64. There shall be regular, unobtrusive supervision by staff of all accommodation, particularly during the night in order to ensure the protection of each juvenile. There shall also be an effective alarm system that can be used in case of emergencies.

E.6. Hygiene

65.1. All parts of every institution shall be properly maintained and kept clean at all times.

65.2. Juveniles shall have ready access to sanitary facilities that are hygienic and respect privacy.

65.3. Adequate facilities shall be provided so that juveniles may have a bath or shower daily if possible, at a temperature suitable to the climate.

65.4. Juveniles shall keep their persons, clothing and sleeping accommodation clean and tidy and the authorities shall teach them to do so and provide them with the means for it.

E.7. Clothing and bedding

66.1. Juveniles shall be allowed to wear their own clothing provided that it is suitable.

66.2. Juveniles who do not have sufficient suitable clothing of their own shall be provided with such clothing by the institution.

66.3 Suitable clothing is clothing that is not degrading or humiliating and is adequate for the climate and does not pose a risk to security or safety.

66.4. Juveniles who obtain permission to go outside the institution shall not be required to wear clothing that identifies them as persons deprived of their liberty.

67. Every juvenile shall be provided with a separate bed and separate and appropriate bedding, which shall be kept in good order and changed often enough to ensure its cleanliness.

E.8. Nutrition

68.1. Juveniles shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the activities that they undertake in the institution.

68.2. Food shall be prepared and served hygienically in three meals a day with reasonable intervals between them.

68.3. Clean drinking water shall be available to juveniles at all times.

68.4. Where appropriate, juveniles shall be given the opportunity to cater for themselves.

E.9. Health

69.1. The provisions contained in international instruments on medical care for the physical and mental health of adult detainees are applicable also to juveniles deprived of their liberty.

69.2. The health of juveniles deprived of their liberty shall be safeguarded according to recognised medical standards applicable to juveniles in the wider community.

70.1. Particular attention should be paid to dealing with health hazards linked to deprivation of liberty.

70.2. Special policies shall be developed and implemented to prevent suicide and self-harm by juveniles, particularly during their initial detention, segregation and other recognised high risk periods.

71. Juveniles shall be given preventive health care and health education.

72.1. Medical interventions, including the use of medication, shall be made only on medical grounds and not for purposes of maintaining good order or as a form of punishment. The same ethical principles and principles of consent governing medical interventions in free society shall be applied. A record shall be kept of any medical treatment or any drugs administered.

72.2. Juveniles deprived of their liberty shall never be subject to experimental use of drugs or treatment.

73. Particular attention shall be paid to the needs of:

a. younger juveniles;
b. pregnant girls and mothers with infant children;
c. drug addicts and alcoholics;
d. juveniles with physical and mental health problems;
e. juveniles who exceptionally are deprived of their liberty for long periods;
f. juveniles who have experienced physical, mental or sexual abuse;
g. socially isolated juveniles; and
h. other particularly vulnerable offender groups.

74.1. Health-care services offered to juveniles shall form an integral part of a multidisciplinary programme of care.

74.2. In order to provide a seamless web of support and therapy and without prejudice to professional confidentiality and the role of each profession, the work of doctors and nurses shall be closely co-ordinated with social workers, psychologists, teachers, other professionals and staff, who have regular contact with juvenile offenders.

75. Health care in juvenile institutions shall not be limited to treating sick patients, but shall extend to social and preventive medicine and the supervision of nutrition.

E.10. Regime activities

76.1 All interventions shall be designed to promote the development of juveniles, who shall be actively encouraged to participate in them.

76.2. These interventions shall endeavour to meet the individual needs of juveniles in accordance with their age, gender, social and cultural background, stage of development and type of offence committed. They shall be consistent with proven professional standards based on research findings and best practices in the field.

77. Regime activities shall aim at education, personal and social development, vocational training, rehabilitation and preparation for release. These may include:

a. schooling;
b. vocational training;
c. work and occupational therapy;
d. citizenship training;
e. social skills and competence training;
f. aggression-management;
g. addiction therapy;
h. individual and group therapy*;*
i. physical education and sport;
j. tertiary or further education;
k. debt regulation;
l. programmes of restorative justice and making reparation for the offence;
m. creative leisure time activities and hobbies;
n. activities outside the institution in the community, day leave and other forms of leave; and
o. preparation for release and aftercare.

78.1. Schooling and vocational training, and where appropriate treatment interventions, shall be given priority over work.

78.2. As far as possible arrangements shall be made for juveniles to attend local schools and training centres and other activities in the community.

78.3. Where it is not possible for juveniles to attend local schools or training centres outside the institution, education and training shall take place within the institution, but under the auspices of external educational and vocational training agencies.

78.4. Juveniles shall be enabled to continue their schooling or vocational training while in detention and those who have not completed their compulsory schooling may be obliged to do so.

78.5. Juveniles in detention shall be integrated into the educational and vocational training system of the country so that after their release they may continue their education and vocational training without difficulty.

79.1. An individual plan shall be drawn up based on the activities in Rule 77 listing those in which the juvenile shall participate.

79.2. The objective of this plan shall be to enable juveniles from the outset of their detention to make the best use of their time and to develop skills and competences that enable them to reintegrate into society.

79.3. The plan shall be oriented towards preparing juveniles to be released as early as possible and give an indication of appropriate post-release measures.

79.4. The plan shall be implemented and updated regularly with the participation of the juveniles, the outside agencies concerned and as far as possible their parents or legal guardians.

80.1. The regime shall allow all juveniles to spend as many hours a day outside their sleeping accommodation as are necessary for an adequate level of social interaction. Such a period shall be preferably at least eight hours a day.

80.2. The institution shall also provide meaningful activities on weekends and holidays.

81. All juveniles deprived of their liberty shall be allowed to exercise regularly for at least two hours every day, of which at least one hour shall be in the open air, if the weather permits.

82.1. The institution shall provide sufficient work for juveniles which is stimulating and of educational value.

82.2. Work shall be adequately rewarded.

82.3. When juveniles participate in regime activities during work time they shall be rewarded in the same way as if they were working.

82.4. Juveniles shall receive adequate social security coverage similar to that provided in free society.

E.11. Contact with the outside world

83. Juveniles shall be allowed to communicate through letters, without restriction as to their number and as often as possible by telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive regular visits from these persons.

84. Arrangements for visits shall be such as to allow juveniles to maintain and develop family relationships in as normal a manner as possible and have opportunities for social reintegration.

85.1. Institutional authorities shall assist juveniles in maintaining adequate contact with the outside world and provide them with the appropriate means to do so.

85.2. Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

85.3. Any information received of the death or serious illness of any near relative shall be promptly communicated to the juvenile.

86.1. As part of the normal regime, juveniles shall be allowed regular periods of leave, either escorted or alone. In addition, juveniles shall be allowed to leave the institution for humanitarian reasons.

86.2. If regular periods of leave are not practicable, provision shall be made for additional or long-term visits by family members or other persons who can make a positive contribution to the development of the juvenile.

E.12. Freedom of thought, conscience and religion

87.1. Juveniles' freedom of thought, conscience and religion shall be respected.

87.2. The institutional regimen shall be organised so far as is practicable to allow juveniles to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs.

87.3. Juveniles may not be compelled to practise a religion, follow a belief, attend religious services or meetings, take part in religious practices or to accept a visit from a representative of any religion or belief.

E.13. Good order

E.13.1. General approach

88.1. Good order shall be maintained by creating a safe and secure environment in which the dignity and physical integrity of the juveniles are respected and their primary developmental goals are met.

88.2. Particular attention shall be paid to protecting vulnerable juveniles and to preventing victimisation.

88.3. Staff shall develop a dynamic approach to safety and security which builds on positive relationships with juveniles in the institutions.

88.4. Juveniles shall be encouraged to commit themselves individually and collectively to the maintenance of good order in the institution.

E.13.2. Searching

89.1. There shall be detailed procedures regarding searching of juveniles, staff, visitors and premises. The situations when such searches are necessary and their nature shall be defined by national law.

89.2. Searches shall respect the dignity of juveniles concerned and as far as possible their privacy. Juveniles shall be searched by staff of the same gender. Related intimate examinations must be justified by reasonable suspicion in an individual case and shall be conducted by a medical practitioner only.

89.3. Visitors shall only be searched if there is a reasonable suspicion that they may have something in their possession that threatens the safety and security of the institution.

89.4. Staff shall be trained to carry out searches effectively, while at the same time respecting the dignity of those being searched and their personal possessions.

E.13.3. Use of force, physical restraint and weapons

90.1. Staff shall not use force against juveniles except, as a last resort, in self-defence or in cases of attempted escape, physical resistance to a lawful order, direct risk of self-harm, harm to others or serious damage to property.

90.2. The amount of force used shall be the minimum necessary and be applied for the shortest time necessary.

90.3. Staff who deal directly with juveniles shall be trained in techniques that enable the minimal use of force in the restraint of aggressive behaviour.

90.4. There shall be detailed procedures concerning the use of force, including stipulations on:

a. the various types of force that may be used;
b. the circumstances in which each type of force may be used;
c. the members of staff who are entitled to use different types of force;
d. the level of authority required before any force is used;
e. the reports that must be completed once force has been used; and
f. the process for reviewing the above reports.

91.1. Handcuffs or restraint jackets shall not be used except when less intensive forms of the use of force have failed. Handcuffs may also be used if essential as a precaution against violent behaviour or escape during a transfer. They shall be removed when a juvenile appears before a judicial or administrative authority unless that authority decides otherwise.

91.2. Instruments of restraint shall not be applied for any longer time than is strictly necessary. The use of chains and irons shall be prohibited.

91.3. The manner of use of instruments of restraint shall be specified in national law.

91.4. Isolation in a calming down cell as a means of temporary restraint shall only be used exceptionally and only for a few hours and in any case shall not exceed twenty-four hours. A medical practitioner shall be informed of such isolation and given immediate access to the juvenile concerned.

92. Staff in institutions in which juveniles are deprived of their liberty shall not be allowed to carry weapons unless an operational emergency so requires. The carrying and use of lethal weapons in welfare and mental health institutions is prohibited.

E.13.4. Separation for security and safety reasons

93.1. If in very exceptional cases a particular juvenile needs to be separated from the others for security or safety reasons, this shall be decided by the competent authority on the basis of clear procedures laid down in national law, specifying the nature of the separation, its maximum duration and the grounds on which it may be imposed.

93.2 Such separation shall be subject to regular review. In addition, the juvenile may lodge a complaint in terms of Rule 121 about any aspect of such separation. A medical practitioner shall be informed of such separation and given immediate access to the juvenile concerned.

E.13.5. Discipline and punishment

94.1. Disciplinary procedures shall be mechanisms of last resort. Restorative conflict resolution and educational interaction with the aim of norm validation shall be given priority over formal disciplinary hearings and punishments.

94.2. Only conduct likely to constitute a threat to good order, safety or security may be defined as a disciplinary offence.

94.3. National law shall determine the acts or omissions that constitute disciplinary offences, the procedures to be followed at disciplinary hearings, the types and duration of punishment that may be imposed, the authority competent to impose such punishment and the appellate process.

94.4. Juveniles charged with disciplinary offences must be informed promptly and in a manner and language they understand of the nature of the accusation against them and be given adequate time and facilities to prepare their defence; be allowed to defend themselves in person or with the assistance of their parents or legal guardians or, when the interests of justice so require, through legal assistance.

95.1. Disciplinary punishments shall be selected, as far as possible, for their educational impact. They shall not be heavier than justified by the seriousness of the offence.

95.2. Collective punishment, corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman and degrading punishment shall be prohibited.

95.3. Solitary confinement in a punishment cell shall not be imposed on juveniles.

95.4. Segregation for disciplinary purposes shall only be imposed in exceptional cases where other sanctions would not be effective. Such segregation shall be for a specified period of time, which shall be as short as possible. The regime during such segregation shall provide appropriate human contact, grant access to reading material and offer at least one hour of outdoor exercise every day if the weather permits.

95.5. A medical practitioner shall be informed of such segregation and given access to the juvenile concerned.

95.6. Disciplinary punishment shall not include a restriction on family contacts or visits unless the disciplinary offence relates to such contacts or visits.

95.7. Exercise under the terms of Rule 81 shall not be restricted as part of a disciplinary punishment.

E.14. Transfer between institutions

96. Juveniles shall be transferred when the initial criteria for placing them or the further promotion of reintegration into society can be met more effectively in another institution or when serious security and safety risks make such a transfer essential.

97. Juveniles shall not be transferred as a disciplinary measure.

98. A juvenile may be transferred from one type of institution to another if prescribed by law and if ordered by a judicial or administrative authority after an appropriate inquiry has been conducted.

99.1. All relevant information and data relating to the juvenile shall be transferred in order to ensure continuity of care.

99.2. The conditions under which juveniles are transported shall meet the requirements of humane detention.

99.3. The anonymity and privacy of the juveniles being transported shall be respected.

E.15. Preparation for release

100.1. All juveniles deprived of their liberty shall be assisted in making the transition to life in the community.

100.2. All juveniles whose guilt has been determined shall be prepared for release by special forms of interventions.

100.3. Such interventions shall be included in the individual plan under the terms of Rule 79.1 and shall be implemented in good time prior to release.

101.1. Steps shall be taken to ensure a gradual return of the juvenile to life in free society.

101.2. Such steps should include additional leave, and partial or conditional release combined with effective social support.

102.1. From the beginning of the deprivation of liberty the institutional authorities and the services and agencies that supervise and assist released juveniles shall work closely together to enable them to re-establish themselves in the community, for example by:

a. assisting in returning to their family or finding a foster family and helping them develop other social relationships;
b. finding accommodation;
c. continuing their education and training;
d. finding employment;
e. referring them to appropriate social and health-care agencies; and
f. providing monetary assistance.

102.2. Representatives of such services and agencies shall be given access to juveniles in institutions to assist them with preparation for release.

102.3. These services and agencies shall be obliged to provide effective and timely pre-release assistance before the envisaged dates of release.

103. Where juveniles are released conditionally, the implementation of such conditional release shall be subject to the same principles that guide the implementation of community sanctions and measures in terms of these rules.

E.16. Foreign nationals

104.1 Juveniles who are foreign nationals and who are to remain in the country in which they are held shall be treated in the same way as other juveniles.

104.2 As long as a definite decision is not yet taken on whether to transfer foreign juveniles to their country of origin, they shall be treated in the same way as other juveniles.

104.3. If it has been decided to transfer them, they shall be prepared for reintegration in their countries of origin. Where possible there should be close co-operation with the juvenile welfare and justice agencies in order to guarantee the necessary assistance for such juveniles immediately upon arrival in their country of origin.

104.4. Juveniles who are foreign nationals shall be informed of the possibilities of requesting that the execution of their deprivation of liberty take place in their country of origin.

104.5. Juveniles who are foreign nationals shall be allowed extended visits or other forms of contacts with the outside world where this is necessary to compensate for their social isolation.

105.1. Juveniles who are foreign nationals and are held in institutions shall be informed, without delay, of their right to request contact and be allowed reasonable facilities to communicate with the diplomatic or consular representative of their state.

105.2. Such juveniles who are nationals of states without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the state which takes charge of their interests or the national or international authority whose task it is to serve the interests of such persons.

105.3. Institutional and welfare authorities shall co-operate fully with diplomatic or consular officials representing such juveniles in order to meet their special needs.

105.4. In addition, foreign juveniles facing expulsion shall be provided with legal advice and assistance in this regard.

E.17. Ethnic and linguistic minorities in institutions

106.1. Special arrangements shall be made to meet the needs of juveniles who belong to ethnic or linguistic minorities in institutions.

106.2. As far as practicable, the cultural practices of different groups shall be allowed to continue in the institution.

106.3. Linguistic needs shall be met by using competent interpreters and by providing written material in the range of languages used in a particular institution.

106.4. Special steps shall be taken to offer language courses to juveniles who are not proficient in the official language.

E.18. Juveniles with disabilities

107.1. Juveniles with disabilities should be detained in ordinary institutions in which the accommodation has been adapted to meet their needs.

107.2. Juveniles with disabilities whose needs cannot be accommodated in ordinary institutions shall be transferred to specialised institutions where these needs can be met.

F. Special Part

F.1. Police custody, pre-trial detention, and other forms of deprivation of liberty prior to sentencing

108. All detained juvenile offenders whose guilt has not been determined by a court shall be presumed innocent of an offence and the regime to which they are subject shall not be influenced by the possibility that they may be convicted of an offence in the future.

109. The particular vulnerability of juveniles during the initial period of detention shall be taken into consideration to ensure that they are treated with full respect for their dignity and personal integrity at all times.

110. In order to guarantee the through care for such juveniles, they shall be assisted immediately by the agencies that will be responsible for them after their release or while they are subject to custodial or non-custodial sanctions or measures in the future.

111. The liberty of such juveniles may be restricted only to the extent justified by the purpose of their detention.

112. Such juveniles shall not be compelled to work or take part in any interventions or activities which juveniles in the community cannot be compelled to undertake.

113.1. A range of interventions and activities shall be available to detained juveniles whose guilt has not been determined.

113.2. If such juveniles request to participate in interventions for juveniles whose guilt has been determined, they shall, if possible, be allowed to do so.

F.2. Welfare institutions

114. Welfare institutions are primarily open institutions and shall provide closed accommodation only in exceptional cases and for the shortest period possible.

115. All welfare institutions shall be accredited and registered with the competent public authorities and shall provide care meeting the required national standards.

116. Juvenile offenders who are integrated with other juveniles in welfare institutions shall be treated in the same way as such juveniles.

F.3. Mental health institutions

117. Juvenile offenders in mental health institutions shall receive the same general treatment as other juveniles in such institutions and the same regime activities as other juveniles deprived of their liberty.

118. Treatment for mental health problems in such institutions shall be determined on medical grounds only, shall follow the recognised and accredited national standards prescribed for mental health institutions and shall be governed by the principles contained in the relevant international instruments.

119. In mental health institutions safety and security standards for juvenile offenders shall be determined primarily on medical grounds.

Part IV – Legal advice and assistance

120.1. Juveniles and their parents or legal guardians are entitled to legal advice and assistance in all matters related to the imposition and implementation of sanctions or measures.

120.2. The competent authorities shall provide juveniles with reasonable facilities for gaining effective and confidential access to such advice and assistance, including unrestricted and unsupervised visits by legal advisors.

120.3. The state shall provide free legal aid to juveniles, their parents or legal guardians when the interests of justice so require.

Part V – Complaints procedures. Inspection and monitoring

G. Complaints procedures

121. Juveniles and their parents or guardians shall have ample opportunity to make requests or complaints to the authority responsible for the institution where they are held or for the community sanction or measure to which they are subject.

122.1. Procedures for making requests or complaints shall be simple and effective. Decisions on such requests or complaints shall be taken promptly.

122.2. Mediation and restorative conflict resolution shall be given priority as means of resolving complaints or meeting requests.

122.3. If a request is denied or a complaint is rejected, reasons shall be provided to the juvenile and, where applicable, to the parent or legal guardian who made it. The juvenile or, where applicable, the parent or legal guardian shall have the right to appeal to an independent and impartial authority.

122.4. Such appellate process is to be conducted by this authority:

a. in a way that is sensitive to juveniles and their needs and concerns;
b. by persons who have an understanding of juvenile matters; and
c. at a place as near as possible to the institution where the juvenile is held or where the community sanctions or measures to which the juvenile is subject are being implemented.

122.5. Even where the initial complaint or request or the subsequent appellate process is primarily in writing, there shall be a possibility for the juvenile to be heard in person.

123. Juveniles shall not be punished for having made a request or lodged a complaint.

124. Juveniles and their parents or legal guardians are entitled to seek legal advice about complaints and appeal procedures and to benefit from legal assistance when the interests of justice so require.

H. Inspection and monitoring

125. Institutions in which juveniles are deprived of their liberty and authorities implementing community sanctions and measures shall be inspected regularly by a governmental agency in order to assess whether they are operating in accordance with the requirements of national and international law, and the provisions of these rules.

126.1. The conditions in such institutions and the treatment of juveniles deprived of their liberty or subject to community sanctions or measures shall be monitored by an independent body or bodies, to which the juveniles shall have confidential access, and whose findings shall be made public.

126.2. In such independent monitoring particular attention shall be paid to the use of force, restraints, disciplinary punishments and other particularly restrictive forms of treatment.

126.3. All instances of death or serious injury of juveniles shall be investigated promptly, vigorously and independently.

126.4. Such independent monitoring bodies shall be encouraged to co-operate with those international agencies that are legally entitled to visit institutions in which juveniles are deprived of liberty.

Part VI – Staff

127.1. A comprehensive policy concerning the staff responsible for the implementation of community sanctions and measures and the deprivation of liberty of juveniles shall be laid down in a formal document covering recruitment, selection, training, status, management responsibilities and conditions of work.

127.2. This policy shall also specify the fundamental ethical standards to be adopted by the staff dealing with such juveniles and focus on the juvenile target group to be dealt with. It shall also provide for an effective mechanism to deal with violations of ethical and professional standards.

128.1. There shall be special recruitment and selection procedures for staff dealing with juveniles, taking into consideration the qualities of character and the professional qualifications necessary to work with juveniles and their families.

128.2. Recruitment and selection procedures shall be explicit, clear, fair and non-discriminatory.

128.3. Staff recruitment and selection shall take into account the need to employ men and women with the skills necessary to deal with the language and cultural diversities of the juveniles for whom they are responsible.

129.1. Staff responsible for the implementation of community sanctions and measures and the deprivation of liberty of juveniles shall have adequate initial training, dealing with theoretical and practical aspects of their work, and be given guidance that will enable them to have a realistic understanding of their particular field of activity, their practical duties and the ethical requirements of their work.

129.2. The professional competence of staff shall be regularly reinforced and developed through further in-service training, supervision and performance reviews and appraisals.

129.3. The training shall focus on:

a. ethics and basic values of the profession concerned;
b. national safeguards and international instruments on children's rights and protection of juveniles against unacceptable treatment;
c. juvenile and family law, psychology of development, social and educational work with juveniles;
d. instruction of staff on how to guide and motivate the juveniles, to gain their respect, and to provide juveniles with a positive role model and perspective;
e. the establishment and maintenance of a professional relationship with the juveniles and their families;
f. proven methods of intervention and good practices;
g. methods of dealing with the diversity of the juveniles concerned; and
h. ways of co-operating in multidisciplinary teams as well as with other institutions involved in the treatment of individual juveniles.

130. The staff concerned with the implementation of community sanctions and measures and the deprivation of liberty of juveniles shall be sufficiently numerous to carry out their various duties effectively and shall include a sufficient range of specialists to meet the needs of the juveniles in their care.

131.1. Staff should normally be employed on a permanent basis.

131.2. Suitable volunteer workers shall be encouraged to contribute to activities with juveniles.

131.3. The authority responsible for implementing sanctions or measures remains accountable for ensuring that the requirements of the present rules are met even where other organisations or individuals are involved in the process of implementation, whether they are paid for their services or not.

132. Staff shall be employed in a way that ensures continuity in the treatment of juveniles.

133. Staff working with juveniles shall have appropriate conditions of work and pay that are commensurate with the nature of their work and comparable to the conditions of others employed in similar professional activities.

134.1. In order to enhance effective co-operation between staff working with juveniles in the community and in custodial settings, the possibility for those two groups to be seconded or to undertake training to work in the other setting shall be encouraged.

134.2. Budgetary constraints shall never lead to the secondment of persons who lack the necessary qualifications.

Part VII – Evaluation, research, work with the media and the public

I. Evaluation and research

135. Sanctions and measures designed for juveniles are to be developed on the basis of research and scientific evaluation.

136.1. For this purpose, comparative data shall be collected that allow the success and failure of both residential and community sanctions and measures to be evaluated. Such evaluation shall pay attention to recidivism rates and their causes.

136.2. Data shall also be collected on the personal and social circumstances of juveniles and on the conditions in institutions where juveniles may be held.

136.3. The authorities shall be responsible for the collection and collation of statistical data in a way that would allow regional and other comparisons.

137. Criminological research on all aspects of the treatment of juveniles by independent bodies shall be fostered by the provision of financial support and access to data and institutions. Research findings shall be published, also when commissioned by national authorities.

138. Research shall respect the privacy of juveniles and meet the standards of national and international data protection law.

J. Work with the media and the public

139.1. The media and the public shall be provided regularly with factual information about conditions in institutions for the deprivation of liberty of juveniles and of the steps taken to implement community sanctions and measures for juveniles.

139.2. The media and the public shall be informed about the purpose of community sanctions and measures and the deprivation of liberty of juveniles, as well of the work of the staff implementing these, in order to encourage a better understanding of the role of such sanctions or measures in society.

140. The responsible authorities shall be encouraged to publish regular reports on developments in institutions for juveniles and of the implementation of community sanctions and measures.

141. The media and members of the public with a professional interest in matters concerning juveniles shall be given access to institutions where juveniles are held, provided that the privacy and other rights of such juveniles are protected.

Part VIII – Updating the rules

142. These rules shall be updated regularly.

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Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice

and their explanatory memorandum

(Adopted by the Committee of Ministers on 17 November 2010
at the 1098th meeting of the Ministers' Deputies)
Guidelines and Explanatory memorandum - version edited 31 May 2011

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice
(Adopted by the Committee of Ministers on 17 November 2010
at the 1098th meeting of the Ministers' Deputies) – edited version 31 May 2011

Preamble

The Committee of Ministers,

Considering that the aim of the Council of Europe is to achieve a greater unity between the member states, in particular by promoting the adoption of common rules in legal matters;

Considering the necessity of ensuring the effective implementation of existing binding universal and European standards protecting and promoting children's rights, including in particular:

- the 1951 United Nations Convention Relating to the Status of Refugees;
- the 1966 International Covenant on Civil and Political Rights;
- the 1966 International Covenant on Economic, Social and Cultural Rights;
- the 1989 United Nations Convention on the Rights of the Child;
- the 2006 United Nations Convention on the Rights of Persons with Disabilities;
- the Convention for the Protection of Human Rights and Fundamental Freedoms (1950, ETS No. 5) (hereafter the "ECHR");
- the European Convention on the Exercise of Children's Rights (1996, ETS No. 160);
- the revised European Social Charter (1996, ETS No. 163);
- the Council of Europe Convention on Contact concerning Children (2003, ETS No. 192);
- the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007, CETS No. 201);
- the European Convention on the Adoption of Children (Revised) (2008, CETS No. 202);

Considering that, as guaranteed under the ECHR and in line with the case law of the European Court of Human Rights, the right of any person to have access to justice and to a fair trial – in all its components (including in particular the right to be informed, the right to be heard, the right to a legal defence, and the right to be represented) – is necessary in a democratic society and equally applies to children, taking however into account their capacity to form their own views;

Recalling relevant case law of the European Court of Human Rights, decisions, reports or other documents of other Council of Europe institutions and bodies including recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and statements and opinions of the Council of Europe Commissioner for Human Rights and various recommendations of the Parliamentary Assembly of the Council of Europe;

Noting various recommendations of the Committee of Ministers to member states in the area of children's rights, including Recommendation Rec(2003)5 on measures of detention of asylum seekers, Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, Recommendation Rec(2005)5 on the rights of children living in residential institutions, Recommendation Rec(2006)2 on the European Prison Rules, Recommendation CM/Rec(2008)11 on the European Rules for Juvenile Offenders subject to sanctions or measures and Recommendation CM/Rec(2009)10 on Policy Guidelines on integrated national strategies for the protection of children from violence;

Recalling Resolution No. 2 on Child-friendly Justice, adopted at the 28th Conference of European Ministers of Justice (Lanzarote, October 2007);

Considering the importance of safeguarding children's rights by United Nations instruments such as:

- the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules", 1985);
- the United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("The Havana Rules", 1990);
- the United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines", 1990);

- the United Nations Guidelines on Justice in matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, 2005);
- the Guidance note of the United Nations Secretary-General: United Nations Approach to Justice for Children (2008);
- the United Nations Guidelines for the Appropriate Use and Conditions of Alternative Care for Children (2009);
- the Principles relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights ("The Paris Principles");

Recalling the need to guarantee the effective implementation of existing binding norms concerning children's rights, without preventing member states from introducing or applying higher standards or more favourable measures;

Referring to the Council of Europe Programme "Building a Europe for and with children";

Acknowledging the progress made in member states towards implementing child-friendly justice;

Noting, nonetheless, existing obstacles for children within the justice system such as, among others, the non-existing, partial or conditional legal right to access to justice, the diversity in and complexity of procedures, possible discrimination on various grounds;

Recalling the need to prevent possible secondary victimisation of children by the judicial system in procedures involving or affecting them;

Inviting member states to investigate existing lacunae and problems and identify areas where child-friendly justice principles and practices could be introduced;

Acknowledging the views and opinions of consulted children throughout the member states of the Council of Europe;

Noting that the guidelines aim to contribute to the identification of practical remedies to existing shortcomings in law and in practice;

Adopts the following guidelines to serve as a practical tool for member states in adapting their judicial and non-judicial systems to the specific rights, interests and needs of children and invites member states to ensure that they are widely disseminated among all authorities responsible for or otherwise involved with children's rights in justice.

I. Scope and purpose

1. The guidelines deal with the issue of the place and role, and the views, rights and needs of the child in judicial proceedings and in alternatives to such proceedings.

2. The guidelines should apply to all ways in which children are likely to be, for whatever reason and in whatever capacity, brought into contact with all competent bodies and services involved in implementing criminal, civil or administrative law.

3. The guidelines aim to ensure that, in any such proceedings, all rights of children, among which the right to information, to representation, to participation and to protection, are fully respected with due consideration to the child's level of maturity and understanding and to the circumstances of the case. Respecting children's rights should not jeopardise the rights of other parties involved.

II. Definitions

For the purposes of these guidelines on child friendly justice (hereafter "the guidelines"):

a. A "child" means any person under the age of 18 years;

b. A "parent" refers to the person(s) with parental responsibility, according to national law. In case the parent(s) is/are absent or no longer holding parental responsibility, this can be a guardian or an appointed legal representative;

c. "Child-friendly justice" refers to justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the child's level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.

III. Fundamental principles

1. The guidelines build on the existing principles enshrined in the instruments referred to in the preamble and the case law of the European Court of Human Rights.

2. These principles are further developed in the following sections and should apply to all chapters of these guidelines.

A. Participation

1. The right of all children to be informed about their rights, to be given appropriate ways to access justice and to be consulted and heard in proceedings involving or affecting them should be respected. This includes giving due weight to the children's views bearing in mind their maturity and any communication difficulties they may have in order to make this participation meaningful.

2. Children should be considered and treated as full bearers of rights and should be entitled to exercise all their rights in a manner that takes into account their capacity to form their own views and the circumstances of the case.

B. Best interests of the child

1. Member states should guarantee the effective implementation of the right of children to have their best interests be a primary consideration in all matters involving or affecting them.

2. In assessing the best interests of the involved or affected children:

a. their views and opinions should be given due weight;

b. all other rights of the child, such as the right to dignity, liberty and equal treatment should be respected at all times;

c. a comprehensive approach should be adopted by all relevant authorities so as to take due account of all interests at stake, including psychological and physical well-being and legal, social and economic interests of the child.

3. The best interests of all children involved in the same procedure or case should be separately assessed and balanced with a view to reconciling possible conflicting interests of the children.

4. While the judicial authorities have the ultimate competence and responsibility for making the final decisions, member states should make, where necessary, concerted efforts to establish multidisciplinary approaches with the objective of assessing the best interests of children in procedures involving them.

C. Dignity

1. Children should be treated with care, sensitivity, fairness and respect throughout any procedure or case, with special attention for their personal situation, well-being and specific needs, and with full respect for their physical and psychological integrity. This treatment should be given to them, in whichever way they have come into contact with judicial or non-judicial proceedings or other interventions, and regardless of their legal status and capacity in any procedure or case.

2. Children shall not be subjected to torture or inhuman or degrading treatment or punishment.

D. Protection from discrimination

1. The rights of children shall be secured without discrimination on any grounds such as sex, race, colour or ethnic background, age, language, religion, political or other opinion, national or social origin, socio-economic background, status of their parent(s), association with a national minority, property, birth, sexual orientation, gender identity or other status.

2. Specific protection and assistance may need to be granted to more vulnerable children, such as migrant children, refugee and asylum seeking children, unaccompanied children, children with disabilities, homeless and street children, Roma children, and children in residential institutions.

E. Rule of law

1. The rule of law principle should apply fully to children as it does to adults.

2. Elements of due process such as the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right to access to courts and the right to appeal, should be guaranteed for children as they are for adults and should not be minimised or denied under the pretext of the child's best interests. This applies to all judicial and non-judicial and administrative proceedings.

3. Children should have the right to access appropriate independent and effective complaints mechanisms.

IV. Child-friendly justice before, during and after judicial proceedings

A. General elements of child-friendly justice

1. Information and advice

1. From their first involvement with the justice system or other competent authorities (such as the police, immigration, educational, social or health care services) and throughout that process, children and their parents should be promptly and adequately informed of, *inter alia*:

a. their rights, in particular the specific rights children have with regard to judicial or non-judicial proceedings in which they are or might be involved, and the instruments available to remedy possible violations of their rights including the opportunity to have recourse to either a judicial or non-judicial proceeding or other interventions. This may include information on the likely duration of proceedings, possible access to appeals and independent complaints mechanisms;

b. the system and procedures involved, taking into consideration the particular place the child will have and the role he or she may play in it and the different procedural steps;

c. the existing support mechanisms for the child when participating in the judicial or non-judicial procedures;

d. the appropriateness and possible consequences of a given in-court or out-of-court proceedings;

e. where applicable, the charges or the follow-up given to their complaint;

f. the time and place of court proceedings and other relevant events, such as hearings, if the child is personally affected;

g. the general progress and outcome of the proceedings or intervention;

h. the availability of protective measures;

i. the existing mechanisms for review of decisions affecting the child;

j. the existing opportunities to obtain reparation from the offender or from the state through the justice process, through alternative civil proceedings or through other processes;

k. the availability of the services (health, psychological, social, interpretation and translation, and other) or organisations which can provide support and the means of accessing such services along with emergency financial support, where applicable;

l. any special arrangements available in order to protect as far as possible their best interests if they are resident in another state.

2. The information and advice should be provided to children in a manner adapted to their age and maturity, in a language which they can understand and which is gender- and culture-sensitive.

3. As a rule, both the child and parents or legal representatives should directly receive the information. Provision of the information to the parents should not be an alternative to communicating the information to the child.

4. Child-friendly materials containing relevant legal information should be made available and widely distributed, and special information services for children such as specialised websites and helplines established.

5. Information on any charges against the child must be given promptly and directly after the charges are brought. This information should be given to both the child and the parents in such a way that they understand the exact charge and the possible consequences.

2. Protection of private and family life

6. The privacy and personal data of children who are or have been involved in judicial or non-judicial proceedings and other interventions should be protected in accordance with national law. This generally implies that no information or personal data may be made available or published, particularly in the media, which could reveal or indirectly enable the disclosure of the child's identity, including image, detailed descriptions of the child or the child's family, names or addresses, audio and video records, etc.

7. Member states should prevent violations of the privacy rights as mentioned under guideline 6. above by the media through legislative measures or monitoring self-regulation by the media.

8. Member states should stipulate limited access to all records or documents containing personal and sensitive data of children, in particular in proceedings involving them. If the transfer of personal and sensitive data is necessary, while taking into account the best interests of the child, member states should regulate this transfer in line with relevant data protection legislation.

9. Whenever children are being heard or giving evidence in judicial or non-judicial proceedings or other interventions, where appropriate, this should preferably take place in camera. As a rule, only those directly involved should be present, provided that they do not obstruct children in giving evidence.

10. Professionals working with and for children should abide by the strict rules of confidentiality, except where there is a risk of harm to the child.

3. Safety (special preventive measures)

11. In all judicial and non-judicial proceedings or other interventions, children should be protected from harm, including intimidation, reprisals and secondary victimisation.

12. Professionals working with and for children should, where necessary, be subject to regular vetting, according to national law and without prejudice to the independence of the judiciary, to ensure their suitability to work with children.

13. Special precautionary measures should apply to children when the alleged perpetrator is a parent, a member of the family or a primary caregiver.

4. Training of professionals

14. All professionals working with and for children should receive necessary interdisciplinary training on the rights and needs of children of different age groups, and on proceedings that are adapted to them.

15. Professionals having direct contact with children should also be trained in communicating with them at all ages and stages of development, and with children in situations of particular vulnerability.

5. Multidisciplinary approach

16. With full respect of the child's right to private and family life, close co-operation between different professionals should be encouraged in order to obtain a comprehensive understanding of the child, and an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation.

17. A common assessment framework should be established for professionals working with or for children (such as lawyers, psychologists, physicians, police, immigration officials, social workers and mediators) in proceedings or interventions that involve or affect children to provide any necessary support to those taking decisions, enabling them to best serve children's interests in a given case.

18. While implementing a multidisciplinary approach, professional rules on confidentiality should be respected.

6. Deprivation of liberty

19. Any form of deprivation of liberty of children should be a measure of last resort and be for the shortest appropriate period of time.

20. When deprivation of liberty is imposed, children should, as a rule, be held separately from adults. When children are detained with adults, this should be for exceptional reasons and based solely on the best interests of the child. In all circumstances, children should be detained in premises suited to their needs.

21. Given the vulnerability of children deprived of liberty, the importance of family ties and promoting the reintegration into society, competent authorities should ensure respect and actively support the fulfilment of the rights of the child as set out in universal and European instruments. In addition to other rights, children in particular should have the right to:

a. maintain regular and meaningful contact with parents, family and friends through visits and correspondence, except when restrictions are required in the interests of justice and the interests of the child. Restrictions on this right should never be used as a punishment;

b. receive appropriate education, vocational guidance and training, medical care, and enjoy freedom of thought, conscience and religion and access to leisure, including physical education and sport;

c. access programmes that prepare children in advance for their return to their communities, with full attention given to them in respect of their emotional and physical needs, their family relationships, housing, schooling and employment possibilities and socio-economic status.

22. The deprivation of liberty of unaccompanied minors, including those seeking asylum, and separated children should never be motivated or based solely on the absence of residence status.

B. <u>Child-friendly justice before judicial proceedings</u>

23. The minimum age of criminal responsibility should not be too low and should be determined by law.

24. Alternatives to judicial proceedings such as mediation, diversion (of judicial mechanisms) and alternative dispute resolution should be encouraged whenever these may best serve the child's best interests. The preliminary use of such alternatives should not be used as an obstacle to the child's access to justice.

25. Children should be thoroughly informed and consulted on the opportunity to have recourse to either a court proceeding or alternatives outside court settings. This information should also explain the possible

consequences of each option. Based on adequate information, both legal and otherwise, a choice should be available to use either court procedures or alternatives for these proceedings whenever they exist. Children should be given the opportunity to obtain legal advice and other assistance in determining the appropriateness and desirability of the proposed alternatives. In making this decision, the views of the child should be taken into account.

26. Alternatives to court proceedings should guarantee an equivalent level of legal safeguards. Respect for children's rights as described in these guidelines and in all relevant legal instruments on the rights of the child should be guaranteed to the same extent in both in-court and out-of-court proceedings.

C. Children and the police

27. Police should respect the personal rights and dignity of all children and have regard to their vulnerability, that is, take account of their age and maturity and any special needs of those who may be under a physical or mental disability or have communication difficulties.

28. Whenever a child is apprehended by the police, the child should be informed in a manner and in language that is appropriate to his or her age and level of understanding of the reason for which he or she has been taken into custody. Children should be provided with access to a lawyer and be given the opportunity to contact their parents or a person whom they trust.

29. Save in exceptional circumstances, the parent(s) should be informed of the child's presence in the police station, given details of the reason why the child has been taken into custody and be asked to come to the station.

30. A child who has been taken into custody should not be questioned in respect of criminal behaviour, or asked to make or sign a statement concerning such involvement, except in the presence of a lawyer or one of the child's parents or, if no parent is available, another person whom the child trusts. The parent or this person may be excluded if suspected of involvement in the criminal behaviour or if engaging in conduct which amounts to an obstruction of justice.

31. Police should ensure that, as far as possible, no child in their custody is detained together with adults.

32. Authorities should ensure that children in police custody are kept in conditions that are safe and appropriate to their needs.

33. In member states where this falls under their mandate, prosecutors should ensure that child-friendly approaches are used throughout the investigation process.

D. Child-friendly justice during judicial proceedings

1. Access to court and to the judicial process

34. As bearers of rights, children should have recourse to remedies to effectively exercise their rights or act upon violations of their rights. The domestic law should facilitate where appropriate the possibility of access to court for children who have sufficient understanding of their rights and of the use of remedies to protect these rights, based on adequately given legal advice.

35. Any obstacles to access to court, such as the cost of the proceedings or the lack of legal counsel, should be removed.

36. In cases of certain specific crimes committed against children, or certain aspects of civil or family law, access to court should be granted for a period of time after the child has reached the age of majority where necessary. Member states are encouraged to review their statutes of limitation.

2. Legal counsel and representation

37. Children should have the right to their own legal counsel and representation, in their own name, in proceedings where there is, or could be, a conflict of interest between the child and the parents or other involved parties.

38. Children should have access to free legal aid, under the same or more lenient conditions as adults.

39. Lawyers representing children should be trained in and knowledgeable on children's rights and related issues, receive ongoing and in-depth training and be capable of communicating with children at their level of understanding.

40. Children should be considered as fully-fledged clients with their own rights and lawyers representing children should bring forward the opinion of the child.

41. Lawyers should provide the child with all necessary information and explanations concerning the possible consequences of the child's views and/or opinions.

42. In cases where there are conflicting interests between parents and children, the competent authority should appoint either a guardian *ad litem* or another independent representative to represent the views and interests of the child.

43. Adequate representation and the right to be represented independently from the parents should be guaranteed, especially in proceedings where the parents, members of the family or caregivers are the alleged offenders.

3. Right to be heard and to express views

44. Judges should respect the right of children to be heard in all matters that affect them or at least to be heard when they are deemed to have a sufficient understanding of the matters in question. Means used for this purpose should be adapted to the child's level of understanding and ability to communicate and take into account the circumstances of the case. Children should be consulted on the manner in which they wish to be heard.

45. Due weight should be given to the child's views and opinion in accordance with his or her age and maturity.

46. The right to be heard is a right of the child, not a duty on the child.

47. A child should not be precluded from being heard solely on the basis of age. Whenever a child takes the initiative to be heard in a case that affects him or her, the judge should not, unless it is in the child's best interests, refuse to hear the child and should listen to his or her views and opinion on matters concerning him or her in the case.

48. Children should be provided with all necessary information on how effectively to use the right to be heard. However, it should be explained to them that their right to be heard and to have their views taken into consideration may not necessarily determine the final decision.

49. Judgments and court rulings affecting children should be duly reasoned and explained to them in language that children can understand, particularly those decisions in which the child's views and opinions have not been followed.

4. Avoiding undue delay

50. In all proceedings involving children, the urgency principle should be applied to provide a speedy response and protect the best interests of the child, while respecting the rule of law.

51. In family law cases (for example parentage, custody, parental abduction), courts should exercise exceptional diligence to avoid any risk of adverse consequences on the family relations.

52. When necessary, judicial authorities should consider the possibility of taking provisional decisions or making preliminary judgments to be monitored for a certain period of time in order to be reviewed later.

53. In accordance with the law, judicial authorities should have the possibility to take decisions which are immediately enforceable in cases where this would be in the best interests of the child.

5. Organisation of the proceedings, child-friendly environment and child-friendly language

54. In all proceedings, children should be treated with respect for their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have. Cases involving children should be dealt with in non-intimidating and child-sensitive settings.

55. Before proceedings begin, children should be familiarised with the layout of the court or other facilities and the roles and identities of the officials involved.

56. Language appropriate to children's age and level of understanding should be used.

57. When children are heard or interviewed in judicial and non-judicial proceedings and during other interventions, judges and other professionals should interact with them with respect and sensitivity.

58. Children should be allowed to be accompanied by their parents or, where appropriate, an adult of their choice, unless a reasoned decision has been made to the contrary in respect of that person.

59. Interview methods, such as video or audio-recording or pre-trial hearings in camera, should be used and considered as admissible evidence.

60. Children should be protected, as far as possible, against images or information that could be harmful to their welfare. In deciding on disclosure of possibly harmful images or information to the child, the judge should seek advice from other professionals, such as psychologists and social workers.

61. Court sessions involving children should be adapted to the child's pace and attention span: regular breaks should be planned and hearings should not last too long. To facilitate the participation of children to their full cognitive capacity and to support their emotional stability, disruption and distractions during court sessions should be kept to a minimum.

62. As far as appropriate and possible, interviewing and waiting rooms should be arranged for children in a child-friendly environment.

63. As far as possible, specialist courts (or court chambers), procedures and institutions should be established for children in conflict with the law. This could include the establishment of specialised units within the police, the judiciary, the court system and the prosecutor's office.

6. Evidence/statements by children

64. Interviews of and the gathering of statements from children should, as far as possible, be carried out by trained professionals. Every effort should be made for children to give evidence in the most favourable settings and under the most suitable conditions, having regard to their age, maturity and level of understanding and any communication difficulties they may have.

65. Audiovisual statements from children who are victims or witnesses should be encouraged, while respecting the right of other parties to contest the content of such statements.

66. When more than one interview is necessary, they should preferably be carried out by the same person, in order to ensure coherence of approach in the best interests of the child.

67. The number of interviews should be as limited as possible and their length should be adapted to the child's age and attention span.

68. Direct contact, confrontation or interaction between a child victim or witness with alleged perpetrators should, as far as possible, be avoided unless at the request of the child victim.

69. Children should have the opportunity to give evidence in criminal cases without the presence of the alleged perpetrator.

70. The existence of less strict rules on giving evidence such as absence of the requirement for oath or other similar declarations, or other child-friendly procedural measures, should not in itself diminish the value given to a child's testimony or evidence.

71. Interview protocols that take into account different stages of the child's development should be designed and implemented to underpin the validity of children's evidence. These should avoid leading questions and thereby enhance reliability.

72. With regard to the best interests and well-being of children, it should be possible for a judge to allow a child not to testify.

73. A child's statements and evidence should never be presumed invalid or untrustworthy by reason only of the child's age.

74. The possibility of taking statements of child victims and witnesses in specially designed child-friendly facilities and a child-friendly environment should be examined.

E. Child-friendly justice after judicial proceedings

75. The child's lawyer, guardian *ad litem* or legal representative should communicate and explain the given decision or judgment to the child in a language adapted to the child's level of understanding and should give the necessary information on possible measures that could be taken, such as appeal or independent complaint mechanisms.

76. National authorities should take all necessary steps to facilitate the execution of judicial decisions/rulings involving and affecting children without delay.

77. When a decision has not been enforced, children should be informed, possibly through their lawyer, guardian *ad litem* or legal representative, of available remedies either through non-judicial mechanisms or access to justice.

78. Implementation of judgments by force should be a measure of last resort in family cases when children are involved.

79. After judgments in highly conflictual proceedings, guidance and support should be offered, ideally free of charge, to children and their families by specialised services.

80. Particular health care and appropriate social and therapeutic intervention programmes or measures for victims of neglect, violence, abuse or other crimes should be provided, ideally free of charge, and children and their caregivers should be promptly and adequately informed of the availability of such services.

81. The child's lawyer, guardian or legal representative should have a mandate to take all necessary steps to claim for damages during or after criminal proceedings in which the child was a victim. Where appropriate, the costs could be covered by the state and recovered from the perpetrator.

82. Measures and sanctions for children in conflict with the law should always be constructive and individualised responses to the committed acts, bearing in mind the principle of proportionality, the child's age, physical and mental well-being and development and the circumstances of the case. The right to education, vocational training, employment, rehabilitation and reintegration should be guaranteed.

83. In order to promote the reintegration within society, and in accordance with the national law, criminal records of children should be non-disclosable outside the justice system on reaching the age of majority. Exceptions for the disclosure of such information can be permitted in cases of serious offences, *inter alia* for reasons of public safety or when employment with children is concerned.

V. Promoting other child-friendly actions

Member states are encouraged to:

a. promote research into all aspects of child-friendly justice, including child-sensitive interviewing techniques and dissemination of information and training on such techniques;

b. exchange practice and promote co-operation in the field of child-friendly justice internationally;

c. promote the publication and widest possible dissemination of child-friendly versions of relevant legal instruments;

d. set up, or maintain and reinforce where necessary, information offices for children's rights, possibly linked to bar associations, welfare services, (children's) ombudsmen, Non-governmental Organisations (NGOs), etc.;

e. facilitate children's access to courts and complaint mechanisms and further recognise and facilitate the role of NGOs and other independent bodies or institutions such as children's ombudsmen in supporting children's effective access to courts and independent complaint mechanisms, both on a national and international level;

f. consider the establishment of a system of specialised judges and lawyers for children and further develop courts in which both legal and social measures can be taken in favour of children and their families;

g. develop and facilitate the use by children and others acting on their behalf of universal and European human and children's rights protection mechanisms for the pursuit of justice and protection of rights when domestic remedies do not exist or have been exhausted;

h. make human rights, including children's rights, a mandatory component in the school curricula and for professionals working with children;

i. develop and support systems aimed at raising the awareness of parents on children's rights;

j. set up child-friendly, multi-agency and interdisciplinary centres for child victims and witnesses where children could be interviewed and medically examined for forensic purposes, comprehensively assessed and receive all relevant therapeutic services from appropriate professionals;

k. set up specialised and accessible support and information services, such as online consultation, help lines and local community services free of charge;

l. ensure that all concerned professionals working in contact with children in justice systems receive appropriate support and training, and practical guidance in order to guarantee and implement adequately the rights of children, in particular while assessing children's best interests in all types of procedures involving or affecting them.

VI. Monitoring and assessment

Member states are also encouraged to:

a. review domestic legislation, policies and practices to ensure the necessary reforms to implement these guidelines;

b. to speedily ratify, if not yet done so, relevant Council of Europe conventions concerning children's rights;

c. periodically review and evaluate their working methods within the child-friendly justice setting;

d. maintain or establish a framework, including one or more independent mechanisms, as appropriate, to promote and monitor implementation of the present guidelines, in accordance with their judicial and administrative systems;

e. ensure that civil society, in particular organisations, institutions and bodies which aim to promote and to protect the rights of the child, participate fully in the monitoring process.

Explanatory memorandum

General comments

Why a new instrument?

1. For the Council of Europe, protecting children's rights and promoting child-friendly justice is a priority. The issue of protection of children was addressed by the Action Plan of the 3rd Summit of Heads of State and Government of the Council of Europe in Warsaw in 2005.

2. While a number of legal instruments exist at the international, European and national levels, gaps remain both in law and in practice, and governments and professionals working with children are requesting guidance to ensure the effective implementation of their standards. In the well-known *V. and T. v. the United Kingdom* case, two 10-year old boys who had kidnapped and battered to death a 2-year old, were tried as adults, under massive press coverage. The European Court of Human Rights (hereinafter "the Court") later found that the trial had been incomprehensible and intimidating for the children who had thus been unable to participate effectively in the proceedings against them, and established a breach of Article 6 of the European Convention on Human Rights (hereinafter the "ECHR"), which guarantees the right to a fair trial. In the *Sahin v. Germany* case, the Court found that the substantive violation was the failure to hear the child's own views, and indicated that the national court had to take considerable steps to ensure direct contact with the child and that, by this means only, can the best interests of the child be ascertained.

3. These cases could have occurred in almost any Council of Europe member state. They illustrate the need to enhance access to justice and improve the treatment of children in judicial and non-judicial proceedings, the importance of raising the knowledge and awareness of professionals working with children in such proceedings and of providing them with adapted training in order to guarantee the best interests of the child, and the good administration of justice.

Background

4. The following guidelines are the Council of Europe's direct response to Resolution No. 2 on child-friendly justice adopted at the 28th Conference of European Ministers of Justice (Lanzarote, 25-26 October 2007), which requested concrete guidance for the member states in this field. The Committee of Ministers thus instructed four Council of Europe bodies to prepare guidelines on child-friendly justice (hereafter "the guidelines") proposing solutions to assist member states in establishing judicial systems responding to the specific needs of children, with a view to ensuring children's effective and adequate access to and treatment in justice, in any sphere – civil, administrative or criminal.

Working method

5. With that transversal perspective in mind, the Council of Europe adopted an innovative integrated approach bringing together three of its major intergovernmental committees dealing with civil and administrative law (the European Committee on Legal Co-operation – CDCJ), criminal law (the European Committee on Crime Problems – CDPC), general human rights (the Steering Committee for Human Rights – CDDH), and the European Commission for the Efficiency of Justice (CEPEJ). The guidelines were also drafted in close co-operation with the programme "Building a Europe for and with children", which made child-friendly justice one of the core pillars of the Council of Europe's strategy on children's rights for 2009-2011.

6. The Council of Europe started this work in 2008 with the preparation of four expert reports assessing the challenges and obstacles faced by children in accessing justice at national level in all sectors of the judicial system. These reports were presented and used as a basis for discussions at high-level Council of Europe conferences held under the auspices of the Swedish chairmanship of the Committee of Ministers,,"Building a Europe for and with Children – Towards a strategy for 2009-2011", Stockholm, 8-10 September 2008, and Spanish chairmanship of the Committee of Ministers, "The protection of children in European justice systems", Toledo, 12-13 March 2009. The findings of the reports and the conclusions of the conferences paved the way for the drafting of the guidelines and provided valuable material for the Group of Specialists on Child-friendly Justice (CJ-S-CH) which was established to prepare the guidelines in 2009-2010.

Drafting process

7. This Group of Specialists was composed of 17 independent specialists selected by the Council of Europe in consultation with the CDCJ, CDPC and CDDH on the basis of their personal expertise in children's rights, while respecting a specialisation balance (between civil and administrative, criminal and human rights law), and a geographical and a gender balance. The Group had Mr Seamus Carroll (Ireland) – Chair of the CDCJ – as Chair, Ms Ksenija Turković (Croatia) – appointed by the CDPC – as Vice-Chair, and Ms Ankie Vandekerckhove, children's rights specialist from Belgium, as scientific expert.

8. The group included judges, attorneys, prosecutors, academics, psychologists, police officers, social workers and representatives of the governments of the member states, and was therefore characterised by its multidisciplinary composition. A wide range of observers, including representatives of leading international intergovernmental and non-governmental organisations, also contributed to its work.

9. The draft guidelines and their explanatory memorandum were examined and approved by the CDCJ during its 85th plenary meeting held from 11 to 14 October 2010, before their transmission to the Committee of Ministers for adoption on 17 November 2010. Before that, the CDPC and the CDDH took note of the text and supported it at their plenary sessions (7-10 June and 15-18 June 2010 respectively).

Consultation of stakeholders

10. The consultation of various stakeholders on the draft guidelines was ensured throughout the drafting process through continuous public consultation on the successive drafts of the text from October 2009 to May 2010. A hearing with leading international NGOs and other stakeholders specialised in children's rights was organised on 7 December 2009 in Strasbourg. The 4th draft of the guidelines was specifically submitted to the member states and focal points for comments, and to a number of internal and external partners, between January and May 2010. The comments were subsequently taken into consideration by the group when finalising the text, thus ensuring a transparent and inclusive process of adoption.

Consultation of children and young people

11. In accordance with the terms of reference of this Group of Specialists, the Council of Europe also organised a direct consultation of children and young people on justice in 2010. Around 30 partners throughout Europe contributed to it, drafting, translating and disseminating a questionnaire in 11 languages and organising focus groups. Exactly 3 721 replies from 25 countries were analysed by Dr Ursula Kilkelly, an Irish children's rights expert, and taken into account by the CJ-S-CH in the finalisation of the guidelines. Key themes included family, (mis)trust of authority, need for respect and the importance for children and young people of being listened to.[1]

[1]. The report is available on the website: www.coe.int/childjustice.

12. This consultation has been the first attempt of the Council of Europe to directly involve children and young people when drafting a legal instrument and will be extended to further similar activities with a view to ensuring the meaningful participation of children and young people in the normative work of the Organisation. It was carried out with the generous financial support of the Government of Finland.

13. During the drafting process, numerous changes were made to ensure that the guidelines met the needs of the children and responded to what children recounted about the justice system. Overall, a very genuine effort was made to ensure that these views were taken into account in the detail, scope and strength of the guidelines.

14. In particular, the views of children have been used to:

- support the extent and manner in which the guidelines recognise the right of children to be heard, to receive information about their rights, to enjoy independent representation and to participate effectively in decisions made about them. The wording in all relevant sections was strengthened in these respects. For example, the guidelines now require judges to respect the right of all children to be heard in all matters affecting them and require that the means used shall be adapted to the child's understanding and ability to communicate and take into account the circumstances of the case;

- ensure that adequate provision is made in the guidelines for children to understand and receive feedback on the weight attached to their views;

- strengthen the provision in the guidelines for support to children before, during and after contact with the justice system. Particular consideration was given to the role of parents and those trusted by children (for example, section on children and the police);

- support provision for an unequivocal right to access independent and effective complaints mechanisms for all parts of the justice system, support specialisation among all professionals and demand appropriate training for all professionals who come into contact with children in the justice system. These issues were considered central to addressing the lack of trust in authority expressed by children during the consultation;

- strengthen provision with regard to confidentiality in professionals' dealings with children;

- promote consultation and partnership with children, where appropriate, with regard to on the operation of children's justice systems, and the development and review of law, policy and practice.

Structure and content

15. The guidelines are a non-binding instrument. While in these guidelines the conditional "should" is frequently used where the relevant principles are taken from a binding legal instrument, whether a Council of Europe instrument or other international instrument, the use of the conditional "should" must not be understood as reducing the legal effect of the binding instrument concerned.

16. The guidelines build on existing international, European and national standards. The best interests of the child are their guiding thread, as they take into account the basic principles set out in the ECHR and the related case law of the Court and the United Nations Convention on the Rights of the Child. The guidelines promote and protect, among other things, the rights to information, representation and participation of children in judicial and non-judicial proceedings, and give a place and voice to the child in justice at all stages of the procedures. As a practical tool, they also present good practices and propose practical solutions to remedy legal inconsistencies and lacunae. For instance, specific techniques for listening to the child (including in a courtroom environment) are addressed. The guidelines are not only a declaration of principles, but aspire to be a practical guide to the implementation and advancement of internationally agreed and binding standards.

17. In line with the terms of reference of the CJ-S-CH, the text of the guidelines is structured around various principles applicable before, during and after the proceedings.

18. The attention of those Council of Europe member states that are considering drafting legislation concerning children in judicial and non-judicial proceedings is drawn to the guidelines' relevant principles, standards and recognised good practices.[2]

Introduction

19. Over the last few decades, many public and private organisations, ombudspersons, policymakers and others have been seeking to ensure that children[3] are aware of their rights and that these rights are reinforced in their daily lives. While we recently celebrated 60 years of the ECHR and 20 years of the United Nations Convention on the Rights of the Child, reality at national, regional and international levels demonstrates too often that children's rights are still violated.

20. Children may come into contact with judicial or non-judicial proceedings in many ways: when their parents get divorced or fight custody battles over them, when they commit offences, witness crimes or are victims of crimes, request asylum, etc. Children are bearers of rights and in this context it is necessary that procedures are made more child-friendly in order to support them in the best possible way should they need to invoke judicial or non-judicial proceedings to have their rights protected.[4]

21. For children, there are many legal, social, cultural and economic obstacles to their access to court, the lack of legal capacity probably being the most important one. Very often, parents or guardians legally represent them. But when the legal representative does not want to act on their behalf, or is unable to do so, and when competent public authorities do not instigate a procedure, children often have no way to defend their rights or act against violations. In those cases, and if a special representative has not been appointed by the competent authority, they cannot enjoy the basic right to bring a matter to court, even though the ECHR contains several fundamental principles to this effect (see Article 6, which includes, *inter alia*, the right to a fair trial). And while this Convention includes human rights for "everyone", bringing a case to the court is particularly difficult for children. Despite the fact that the Court has some case law on children's rights issues, courts, both national and international, are rarely accessible to children, and adults remain the ones who usually initiate proceedings on their behalf.[5] Therefore, children's access to justice needs to be addressed in the guidelines on child-friendly justice.[6]

22. The Guidelines on child-friendly justice aim to deal with the status and position of children and the way in which they are treated in judicial and non-judicial proceedings. However, before bringing cases to court, it may be in the child's best interests to turn to methods of alternative dispute resolution, such as mediation. These guidelines cover proceedings both in and outside court.

23. They are meant to stimulate discussion on children's rights in practice and encourage member states to take further steps in turning them into reality and filling in existing lacunae. They are not intended to affect issues of substantive law or substantive rights of children nor are of legally binding nature. Most of the guidelines will only necessitate a change in approach in addressing the views and needs of children.

24. They also aim to serve as a practical means for member states in adapting their judicial and non-judicial systems to specific needs of children in criminal, administrative and civil justice procedures, irrespective of their status or capacity. They should also be used in very specific areas of law, such as youth protection legislation existing in several member states.

25. In this context, the guidelines seek to facilitate the implementation of the guiding principles of the United Nations Convention on the Rights of the Child. Equally, all rights stipulated by the ECHR and confirmed by the Court shall apply with equal force to children as they do to adults.

2. Information about the Council of Europe's work on child-friendly justice and its progress is available on the website: www.coe.int/childjustice.

3. Persons up to 18 years of age.

4. U. Kilkelly, "Youth courts and children's rights: the Irish experience", in *Youth Justice,* p. 41: "The Convention of the Rights of the Child, adopted in 1989, strengthened this protection by providing for a range of due process standards that both recognised the child's right to a fair trial, but went further in recognising the need to adapt the trial process to the needs and rights of children."

5. F. Tulkens, *International justice for children,* Monograph 3, Council of Europe publishing, 2009, p. 17-33.

6. This is all the more necessary given that the terms of reference of the Group of specialists on child-friendly justice include looking for lacunae in these matters.

26. As the gap between these provisions and children's actual rights is striking, the explanatory memorandum makes frequent references to good practices, factual and legal, found in member states and in the case law. They may serve as useful information and inspiration.

Preamble

27. Major international organisations dealing with human rights, such as the United Nations and the Council of Europe, have already developed significant standards and guidelines referring to children's rights. They will be considered in the appropriate place. The preamble mentions those standards which are particularly relevant in this area without preventing member states from introducing or applying higher standards or more favourable measures. It also calls upon member states to speedily ratify relevant Council of Europe conventions concerning children's rights. This is a practical measure as several of these instruments have not been ratified by a high number of states.[7]

I. Scope and purpose

28. The scope and the purpose of the instrument are dealt with in paragraphs 1-3. As already indicated, the guidelines apply to criminal, civil or administrative law, and aim to ensure that all of the rights of children in such proceedings are fully respected, while striking the right balance with the rights of other parties involved.

II. Definitions

29. The definition of "child" is formulated in accordance with Article 1 of the United Nations Convention on the Rights of the Child, and Article 1.1 of the European Convention on the Exercise of Children's Rights (ETS No. 160). The ECHR grants rights to "everyone", and does not exclude persons under the age of 18. There may be cases where a person under the age of 18 is not considered a child, for example in cases of emancipation, existing in several member states.

30. The definition of "parent" in paragraph b encompasses all persons with parental responsibilities, who may not always be the biological parents, but also other persons holding parental responsibilities, such as guardians or appointed legal representatives.

31. While "child-friendly" justice is defined in paragraph c, the text also insists that its scope is broader than the actual justice system and court proceedings. It is aimed at all professionals dealing with children in and outside judicial proceedings. Sectors such as police, social and mental health services are also responsible for making justice more child-friendly. The guidelines strive to ensure that children's rights are known and scrupulously respected by all these professionals.

III. Fundamental principles

A. Participation[8]

32. The principle of participation, that is, that children have the right to speak their mind and give their views in all matters that affect them is one of the guiding principles of the United Nations Convention on the Rights of the Child.[9] While this does not mean that their opinion will always be adhered to, guidelines require that their opinions be taken into account seriously and given due respect, according to their age, maturity and the circumstances of the case, subject to national procedural law.

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[7]. PACE document (AS/Jur (2009) 40) "The specificity and added value of the acquis of the Council of Europe treaty law".

[8]. For more information, see General Comment No. 12 on the Right of the Child to be heard (CRC/C/GC/12, 1 July 2009) and comments under IV, D, 3, the right to be heard. See also Committee of Ministers' Recommendation No.R(98)8 on children's participation in family and social life, 18 September 1998, paragraph 4: "participation is a decisive factor for securing social cohesion and for living in a democracy in accordance with the values of a multicultural society and the principles of tolerance"; paragraph 5: "participation of children is crucial in influencing the conditions of their own lives, in that participation is not only involvement in institutions and decision-making but above all a general pattern of democracy relevant to all areas of family and social life". See furthermore European Court of Human Rights (Grand Chamber) judgment of 16 December 1999, *T. v. UK*, No. 24724/94, paragraph 83, and judgment of 16 December 1999, *V. v. UK*, No. 24888/94, paragraph 85: "[...] Article 6, read as a whole, guarantees the right of an accused to participate effectively in his criminal trial".

[9]. United Nations Convention on the Rights of the Child, Article 12.

33. The reference made to the term "capable of forming his or her own views"[10] should not be seen as a limitation, but rather a duty on the authorities to fully assess the child's capacity as far as possible. Instead of assuming too easily that the child is unable to form an opinion, states should presume that a child has, in fact, this capacity. It is not up to the child to prove this. In line with children's rights legislation, the text of Part III A.2 underlines the essential message that children are bearers of rights.

34. States are discouraged from introducing standardised age limits.[11] The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime also state that "age should not be a barrier to a child's right to participate fully in the justice process." [12]

35. In family cases, children should be included in the discussions prior to any decision which affects their present and/or future well-being. All measures to ensure that children are included in the judicial proceedings should be the responsibility of the judge, who should verify that children have been effectively included in the process and are absent only when children themselves have declined to participate or are of such maturity and understanding that their involvement is not possible. Voluntary organisations and child ombudspersons should also make all efforts to ensure that children are included in family law proceedings and are not faced with a *fait accompli*.[13]

In a case dealing with an accused minor with a low level of understanding, the Court found that "effective participation in this context presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed. It means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said in court. The defendant should be able to follow what is said by the prosecution witnesses and, if represented, to explain to his own lawyers his version of events, point out any statements with which he disagrees and make them aware of any facts which should be put forward in his defence."[14] Moreover, it is "essential that he be tried in a specialist tribunal which is able to give full consideration to, and make proper allowance for, the handicaps under which he labours, and adapt its procedure accordingly."[15]

Similarly, in the case of *Sahin v. Germany*, the Court concluded in a custody case that "it would be going too far to say that domestic courts are always required to hear a child in court on the issue of access to a parent not having custody, but this issue depends on the specific circumstances of each case, having due regard to the age and maturity of the child concerned."[16]

Lastly, in another custody case, *Hokkannen v. Finland*, the Court judged a 12 year-old girl "sufficiently mature for her views to be taken into account and that access therefore should not be accorded against her wishes".[17]

B. Best interests of the child

36. The child's best interests should be a primary consideration in all cases involving children. The assessment of the situation needs to be done accurately. These guidelines promote the development of multidisciplinary methods for assessing the best interests of the child acknowledging that this is a complex exercise. This assessment becomes even more difficult when these interests need to be balanced with the interests of other involved parties, such as other children, parents, victims, etc. This should be done professionally; on a case-by-case basis.

37. The best interests of the child must always be considered in combination with other children's rights, for example, the right to be heard, the right to be protected from violence, the right not to be separated from parents, etc.[18] A comprehensive approach must be the rule.

[10]. *Ibid.*, Article 12.1.
[11]. General Comment No. 12 on the Right of the Child to be heard, paragraphs 20-21 (CRC/C/GC/12, 1 July 2009).
[12]. United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, 22 July 2005), paragraph 18.
[13]. Some member states penalise parents who fail to honour custody and access commitments notwithstanding the fact that it may be the child who refuses to comply. In other states, parents may receive custodial sentences for failing to adhere to a court decision while such eventuality could be avoided by including the child in any decision made on his or her behalf.
[14]. European Court of Human Rights (Fourth Section), judgment of 15 June 2004, *S.C. v. UK*, No. 60958/00, paragraph 29.
[15]. European Court of Human Rights, *ibid*., paragraph 35.
[16]. European Court of Human Rights (Grand Chamber), judgment of 8 July 2003, *Sahin v. Germany*, No. 30943/96, paragraph 73.
[17]. European Court of Human Rights (Chamber), judgment of 23 September 1994, *Hokkanen v. Finland*, No. 19823/92, paragraph 61.

[18]. For practical suggestions see UNHCR Guidelines on Determining the Best Interests of the Child, 2008 (http://www.unhcr.org/refworld/docid/48480c342.html).

38. It is remarkable how little use is made of the "best interests" principle in cases of juvenile justice, contrary to family law matters. There is a worrying trend in many Council of Europe member states towards treating young offenders like adults.[19] It goes without saying that the rights of all children need to be respected, including the rights of those children who breach the law. A strictly punitive approach is not in accordance with the leading principles of juvenile justice as formulated in Article 40 of the United Nations Convention on the Rights of the Child.[20] Interventions of a more socio-educational nature are much more in line with this instrument and have proven to be more effective in practice as well.[21]

In several family law cases, the European Court of Human Rights has stated that domestic courts should assess the difficult question of the child's best interests on the basis of a reasoned, independent and up-to-date psychological report, and that the child, if possible and according to his or her maturity and age, should be heard by the psychologist and the court in access, residence and custody matters.[22]

In the case of *Bronda v. Italy*, the interests of the child were deemed to override that of other parties involved: "[…] while a fair balance has to be struck between S.'s interest in remaining with her foster parents and her natural family's interest in having her to live with them, the Court attaches special weight to the overriding interests of the child, who, now aged fourteen, has always firmly indicated that she does not wish to leave her foster home. In the present case, S.'s interest outweighs that of her grandparents."[23]

A similar statement was made by the Court in the already mentioned case of *Sahin v. Germany*: "Article 8 requires that the domestic authorities should strike a fair balance between the interests of the child and those of the parents and that, in the balancing process, particular importance should be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents. In particular, a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development."[24]

In the adoption case of *Pini and Others v. Romania*, the Court ruled with regard to the child's refusal to be adopted by a foreign family: "in such matters […] the child's interests may, depending on their nature and seriousness, override those of the parent."[25]

C. Dignity

39. Respecting dignity is a basic human rights requirement, underlying many existing legal instruments.[26] Although various provisions of the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime are relevant in this context, particular attention should be paid to its statement that "every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected."[27]

40. The text of C.2 repeats the provision of Article 3 of the ECHR.

D. Protection from discrimination

41. The prohibition of discrimination is also a well-established principle in international human rights law. Article 2 of the United Nations Convention on the Rights of the Child is viewed as one of its guiding principles. The text of D.1 mentions several well-known grounds for discrimination.

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19. See T. Hammarberg (http://www.coe.int/t/commissioner/Viewpoints/090202_en.asp). (https://wcd.coe.int/ViewDoc.jsp?id=1017235&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679).

20. General Comment No. 10 on Children's Rights in Juvenile Justice (CRC/C/GC/10, 25 April 2007), paragraph 71. Also see Committee of Ministers' Recommendation No. R (87) 20 on social reactions to juvenile delinquency.

21. General Comment No. 10 on Children's Rights in Juvenile Justice (CRC/C/GC/10, 25 April 2007).

22. Cf. particularly European Court of Human Rights (Grand Chamber), judgment of 13 July 2000, *Elsholz v Germany*, No. 25735/94, paragraph 53, and judgment of 8 July 2003, *Sommerfeld v Germany*, No. 31871/96, paragraphs 67-72. See also the partly dissenting opinion of Judge Ress joined by Judges Pastor Ridurejo and Türmen in *Sommerfeld v. Germany* (*ibid*.), paragraph 2.

23. European Court of Human Rights (Chamber), judgment of 9 June 1998, *Bronda v. Italy*, No. 40/1997/824/1030, paragraph 62.

24. European Court of Human Rights (Grand Chamber), judgment of 8 July 2003, *Sahin v. Germany*, No. 30943/96, paragraph 66.

25. European Court of Human Rights (second section), judgment of 22 June 2004, *Pini and Others v. Romania*, Nos. 78028/01 and 78030/01, paragraph 155.

26. See, for example, the preamble to the International Covenant on Civil and Political Rights, and the preamble to and Article 40 paragraph 1 of the United Nations Convention on the Rights of the Child.

27. United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, 22 July 2005), III, 8, a and I, 6.

42. On the specific question of "race", the Council of Europe's European Commission against Racism and Intolerance (ECRI) in its General Policy Recommendation No. 7 on national legislation to combat racism and discrimination, indicates: "Since all human beings belong to the same species, ECRI rejects theories based on the existence of different "races". However, in this Recommendation, ECRI uses this term in order to ensure that those persons who are generally and erroneously perceived as belonging to "another race" are not excluded from the protection provided for by the legislation".

43. Some categories of particularly vulnerable children may be in need of special protection in this respect. The text lists some of these categories; however, the list does not purport to be exhaustive, as other grounds for discrimination cannot be excluded.

44. Another important factor of discrimination in the area of children's rights is age and capacity. Very young children or children without full capacity to pursue their rights are also bearers of rights. For these children, alternative systems of representation need to be developed in order to avoid discrimination.

E. Rule of law[28]

45. Without trying to define the concept of "the rule of law",[29] several of its elements are pointed out in E.1 and E.2. The whole text has been influenced by the opinion of the Court that "the rule of law, one of the fundamental principles of a democratic society, is inherent in all the articles of the Convention".[30] Therefore, its impact should be felt in all proceedings involving children.

46. The rule of law establishes, *inter alia*, the fundamental principle that everyone is accountable to clearly established and publicised laws and has enforceable rights. This principle applies irrespective of age so that member states are expected to respect and support fundamental rights for all, including children. The application of the rule of law with respect to children necessitates, *inter alia*, enforcement of the right to the presumption of innocence and the right to a fair trial, including independent legal assistance, effective access to a lawyer or other institution or entity which according to national law is responsible for defending children's rights.

47. For children, the principles of *nullum crimen sine lege* and *nulla poena sine lege* are just as valid as they are for adults and are a cornerstone of a democracy's criminal law system.[31] However, when dealing with anti-social – although not criminal – behaviour of children, there has been a trend in some member states to apply far-reaching interventions, including deprivation of liberty. Under the pretext of the protection of society from anti-social behaviour, children are drawn into intervention schemes in a manner that would not be tolerated if applied to adults. Standard legal guarantees, such as the burden of proof attributable to the state and the right to a fair trial, are not always present. In many countries, the basic principles of law in criminal matters are not applied as fully for children as they are for adults. Children are still punished for so-called "status" offences (acts that are not defined as crimes in law and would go unpunished when committed by an adult).[32]

48. In order for the rule of law to be effectively and adequately observed, particularly in relation to children, member states are required under E.3 to introduce and/or maintain independent and effective complaints mechanisms, bearing in mind their suitability to the age and understanding of the child.

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[28]. See also the report by the Registry of the European Court of Human Rights, "Access of children to justice – Specific focus on the access of children to the European Court of Human Rights" and its case-law related to children's access to national jurisdictions' in Compilation of texts related to child-friendly justice, Directorate General of Human Rights and Legal Affairs, 2009, p. 11-19.

[29]. Brian Z. Tamanaha traced the idea back to Aristotle: "It is better for the rule of law to rule than one of the citizens'", and continues: "so even the guardians of the laws are obeying the laws". Cited from Tom Bingham, *The Rule of Law*, Allen Lane, Penguin Group, 2010, page 3.

[30]. Ukraine-Tyumen v. Ukraine, no. 22603/02, § 49, 22 November 2007.

[31]. ECHR, Article 7, United Nations Convention on the Rights of the Child, Article 40, paragraph 2,a.

[32]. See CRIN "Report on Status Offences" on http://www.crin.org/docs/Status_Offenses_doc_2_final.pdf

IV. Child-friendly justice before, during and after judicial proceedings

A. General elements of child-friendly justice

49. These elements of child-friendly justice are relevant for all possible actors in or outside court proceedings and apply irrespective of the child's status, and apply also to specific groups of particularly vulnerable children.

1. Information and advice

50. In every individual case, from the very first contact with the justice system and on each and every step of the way, all relevant and necessary information should be given to the child.[33] This right applies equally to children as victims, alleged perpetrators of offences or as any involved or affected party.[34] Although it is not always practical to provide information at the beginning of the child's involvement with the competent authorities, this should be done as soon as possible. However, there might be situations where information should not be provided to children (when contrary to their best interests).

51. Children need to be informed of their rights,[35] but also of instruments they can use to actually exercise their rights or defend them where necessary.[36] This is the first condition for protecting these rights. In Part IV.A. 1.,Guideline 1 provides a detailed, but not exhaustive, list of information children and their parents should receive.

52. Children may experience a lack of objective and complete information. Parents may not always share all pertinent information, and what they give may be biased. In this context, the role of children's lawyers, ombudspersons and legal services for children is very important.

53. Guideline 2 reaffirms the right of the child to receive the information and advice in understandable language, adapted to age, maturity and abilities.

54. Information on the procedural system includes the need for detailed information on how the procedure will take place, what the standing and role of the child will be, how the questioning will be carried out, what the expected timing will be, the importance and impact of any given testimony, the consequences of a certain act, etc. Children need to understand what is happening, how things could or would move forward, what options they have and what the consequences of these options are. They need to be informed of possible alternatives to proceedings. In some cases, mediation instead of court intervention may be more appropriate, while in other circumstances recourse to a court may offer more guarantees to a child. The different consequences of such a choice need to be clearly explained to the child, so that a well-informed decision can be made, although the child may not necessarily be the decision-maker in each case. This information could also be provided via a variety of child-friendly material containing relevant legal information (Guideline 4).

55. Guideline 5 imposes the obligation to provide information on all charges against the child, promptly and directly, both to child and to the parents, and the rights the child shall enjoy in such cases. The child also needs to be given information about prosecutorial decisions, relevant post-trial developments and on how the outcome of the case will be determined. Information should also be given regarding possible complaints mechanisms, available systems of legal aid, representation or other possible advice they may be entitled to. When a judgment is delivered, the motivation ought to be provided in a way that the child can fully understand. This becomes even more important for children with special educational needs or low levels of literacy.[37]

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[33]. This is an important task of children's ombudspersons and children's rights organisations.

[34]. This right is also covered in a variety of instruments such as the United Nations Convention on the Rights of the Child, (Article 13 paragraph 1, 37 paragraph d, 40 paragraph 2,b,(ii), 42), the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res. 2005/20, 22 July 2005, VII) and the European Convention on the Exercise of Children's Rights (ETS No. 160, Article 3).

[35]. Article 42, United Nations Convention on the Rights of the Child.

[36]. This should not be limited to legal information, but should also, for example, include information on the existence of an ombudsperson or other services for children.

[37]. The information may have to be translated in a language the child understands (a foreign language, Braille or other) as is the case for adults, and the formal legal terminology will have to be explained so that the child can fully understand its meaning.

56. In the case of cross-border civil law and family disputes, depending on maturity and understanding, the child should be provided with professional information relating to access to justice in the various jurisdictions and the implications of the proceedings on his or her life. Children face particular challenges where there is a history of family conflict and/or abuse.

In the cases of both *V. and T. v. the United Kingdom*, the Court noted that effective participation in the courtroom presupposes that the accused has a broad understanding of the nature of the trial process, including the significance of any penalty which may be imposed. Therefore, juvenile defendants must be, in any case, represented by skilled lawyers experienced in dealing with children. [38]

In some Council of Europe member states, private or subsidised services are available for children and young people where they can get information on children's rights in general or basic information on the legal issues of their own case or situation. In certain member states, such as Belgium and the Netherlands, there are "children's rights shops",[39] which could refer them to a lawyer, provide them with assistance in exercising their rights (for example, writing to a judge to be heard in a case), etc.

2. Protection of private and family life

57. Anonymity and protection of personal data in relation to the mass media may be necessary for the child, as stipulated by several instruments.[40] In this respect, special mention should be made of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108)[41], which lists the set of commonly accepted standards concerning in particular the collection and processing of data and data quality. As in the case of the ECHR, children enjoy all rights under this convention even though it does not explicitly refer to children's rights. Additionally, its Article 6 provides for special safeguards when it comes to sensitive data, such as personal data related to criminal convictions. Other categories of data could be defined as sensitive by domestic law or treated as such by public authorities allowing for the better protection of children's privacy. By way of example, one instrument[42] lists the following categories: disciplinary proceedings, recording cases of violence, medical treatment in school, school orientation, special education for disabled people and social aid to pupils from poor families.

58. In its General Comment No.10 on Children's Rights in Juvenile Justice,[43] the United Nations Committee on the Rights of the Child recommends, among others, proceedings in camera, preserving confidentiality of records, delivering judgment which will not reveal the child's identity, etc. The Court includes the possibility of having cases tried behind closed doors when the interests of the child or their privacy require it,[44] and Guideline 9 reminds member states of this good practice. This principle should, however, be reconciled with the principle of free access to judicial proceedings, which exists in many member states.

59. Other possible ways to protect the privacy in the media are, *inter alia*, granting anonymity or a pseudonym, using screens or disguising voices, deletion of names and other elements that can lead to the identification of a child from all documents, prohibiting any form of recording (photo, audio, video), etc.

[38]. European Court of Human Rights (Grand Chamber), judgment of 16 December 1999, *T. v. UK*, No. 24724/94, paragraph 88, and judgment of 16 December 1999, *V. v. UK*, No. 24888/94, paragraph 90.
[39]. The "Kinderrechtswinkel" in Ghent and Bruges and the "Service Droits des jeunes" in most major cities in the French community in Belgium.
[40]. By way of example, Article 11.3 of the Convention on Action against Trafficking in Human Beings (CETS No. 197) deals with privacy and protects personal data while urging states to set up regulatory measures for the press. The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, 22 July 2005), paragraph X, 27, states: "Information related to a child's involvement in the justice process should be protected. This can be achieved through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child who is a victim or a witness in the justice process". This is also described in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985, Article 8): "The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling. In principle, no information that may lead to the identification of a juvenile offender shall be published."
[41]. This instrument has a global vocation as it is open to the accession of non-member states of the Council of Europe, if their legislation meets the convention's requirements.
[42]. Opinion 2/2009 of the EU Data Protection Working Party on the Protection of Children's Personal Data (General guidelines and the special case of schools).
[43]. General Comment No. 10 on Children's Rights in Juvenile Justice (CRC/C/GC/10, 25 April 2007).
[44]. Rules of the European Court of Human Rights, Article 63.

60. Member states have positive obligations in this respect. Guideline 7 reiterates that monitoring on either legally binding or professional codes of conduct for the press is essential, given the fact that any damage made after publication of names and/or photos is often irreparable.

61. Although the principle of keeping identifiable information inaccessible to the general public and the press remains the guiding one, there might be cases where exceptionally the child may benefit if the case is being revealed or even publicised widely, for example, where a child has been abducted. Equally, the issue at stake may benefit from public exposure to stimulate advocacy or awareness raising.

62. The issue of privacy is particularly relevant in some measures intended to tackle anti-social behaviour of children. More specifically, the implementation of so-called Anti-Social Behaviour Orders (ASBOs) in the United Kingdom, including the policy of "naming and shaming", shows that in such cases personal data is not always kept away from the general public. Guideline 10 imposes a strict obligation in this respect on all professionals working with children except where there is a risk of harm to the child (see Article 12 of the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, CETS No. 201).

In the case of *B. and P. v. the United Kingdom*, the Court decided that proceedings concerning residence of children after divorce or separation are prime examples of cases where the exclusion of the press and public may be justified in order to protect the privacy of the child and other parties and to avoid prejudicing the interests of justice.[45]

Furthermore, in the case of *V. v. the United Kingdom* the Court stated: "It follows that, in respect of a young child charged with a grave offence attracting high levels of media and public interest, it would be necessary to conduct the hearing in such a way as to reduce as far as possible his or her feelings of intimidation and inhibition." [46]

In the already mentioned cases of *V. and T. v. the United Kingdom*, of criminal proceedings against two young boys who murdered a toddler, the court stated *inter alia*.: "[…] it is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings."[47] Furthermore, "it follows that, in respect of a young child charged with a grave offence attracting high levels of media and public interest, it would be necessary to conduct the hearing in such a way as to reduce as far as possible his or her feelings of intimidation and inhibition."[48]

3. Safety (special preventive measures)

63. Concerning children as victims, these guidelines are inspired by the principles of the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime,[49] and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, which calls for providing for the safety of children, their families and witnesses on their behalf from intimidation, retaliation and repeated victimisation.[50]

64. Guideline 11 recalls that children, particularly vulnerable ones, should be protected from harm, whatever form it takes. It is inspired by many existing provisions to this effect.

65. Vetting of personnel in children's services for child protection, as recommended by Guideline 12 has been introduced in certain member states, involving a check of criminal records and preliminary measures to be taken when a person has allegedly committed criminal offences against children. This exercise should obviously respect the presumption of innocence, and the independence of justice.

[45]. European Court of Human Rights *B. and P. v. UK*, judgment of 24 April 2001, Nos. 36337/97 et 35974/97, paragraph 38.
[46]. European Court of Human Rights (Grand Chamber), judgment of 16 December 1999, *V. v. UK*, No. 24888/94, paragraph 87.
[47]. European Court of Human Rights (Grand Chamber), judgments of 16 December 1999, *T. v. UK*, No. 24724/94, paragraph 84, and *V. v. UK*, No. 24888/94, paragraph 86.
[48]. European Court of Human Rights (Grand Chamber), judgments of 16 December 1999, *T. v. UK*, No. 24724/94, paragraph 85, and *V. v. UK*, No. 24888/94, paragraph 87.
[49]. United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, 22 July 2005).
[50]. Article 31, 1, *f.*

66. Guideline 13 recalls the fundamental principle of the special need for protection when the alleged perpetrator is a parent, another member of the family, or a primary caregiver.

4. Training of professionals

67. Training in communication skills, in using child-friendly language, and developing knowledge on child psychology, is necessary for all professionals working with children (police, lawyers, judges, mediators, social workers and other experts), as stipulated by Guideline 14. However, few of them have knowledge of children's rights and procedural matters in this context.

68. Children's rights could and should be part of the curriculum, in schools and in specific fields of higher education (law, psychology, social work, police training, etc.). This should cover the specifics of children's rights and legislation pertaining to children's issues, such as family law, juvenile justice, asylum and immigration law, etc. Member states are encouraged to set up specific training courses.

69. The aforementioned Toledo Conference (see paragraph 6 above) concluded: "All professionals – in particular judges, psychologists and lawyers – dealing with children in justice should receive appropriate information, awareness raising and training on appropriate interviewing techniques". [51]

For several years now, the Flemish Bar Association and its Youth Lawyer Commission has been offering its members a two-year course on children's rights. The legal information is complemented with basic training in child psychology and development and practical training such as communicating with children. Attendance of all modules is obligatory in order to obtain a certificate as a "youth lawyer". In 2010, some 400 youth lawyers were trained.[52]

5. Multidisciplinary approach

70. The text of the guidelines as a whole, and in particular Guidelines 16-18, encourage member states to strengthen the interdisciplinary approach when working with children.

71. In cases involving children, judges and other legal professionals should benefit from support and advice by other professionals of different disciplines when taking decisions which will impact directly or indirectly on the present or future well-being of the child, for example, assessment of the best interests of the child, possible harmful effects of the procedure on the child, etc.

72. A multidisciplinary approach to children in conflict with the law is particularly necessary. The existing and growing understanding of children's psychology, needs, behaviour and development is not always sufficiently shared with professionals in the law enforcement areas.

In Iceland, Norway and Sweden, cases of abuse and violence can be dealt with in so-called "children's houses". Professionals from social services, forensic medical experts, paediatricians, the police and prosecutors' offices work together, primarily in the initial stages of a police or social services investigation. They organise and allocate the different tasks to be carried out. Interviews with the children concerned take place in these houses, with the possibility of a third party listening in by video link in an adjacent room. There are also rooms for medical examination and counselling.

[51]. http://www.coe.int/t/dghl/standardsetting/children/Toledoconference_en.asp
[52]. More information (in Flemish) at www.jeugdadvocaat.be.

6. Deprivation of liberty

73. Particular attention should be paid to the way detained children are treated given their inherent vulnerability. Practical measures for detention of children are suggested in many Council of Europe instruments, for example, Recommendation CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures, or the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).[53] As indicated in the former instrument, special efforts must be undertaken to avoid pre-trial detention. International children's rights bodies are very critical about its use and are seeking to reduce it.[54] However, pre-trial detention might in certain cases still be necessary, for example, to avoid the risk of tampering with evidence, influencing witnesses, or when there is a risk of collusion or flight, etc.

74. Since there are already numerous standards on the rights of juveniles deprived of their liberty, [55] the guidelines do not need to repeat them. The main principle is that no other children's right shall be restricted except the right to liberty, as a consequence of the deprivation of liberty. As Guidelines 19 and 20 clearly stipulate, remedies that involve detention, in whatever form, need to be avoided as much as possible and should only be a measure of last resort, used for the shortest time possible and restricted to serious cases.[56] This is a vital legal obligation. In addition, it is common knowledge that detention does not diminish the risk of recidivism.

75. As already indicated, the sections on the deprivation of liberty and the police do not purport to compile an exhaustive list of rights and safeguards, but represent an absolute minimum of rights children should enjoy. Guideline 21 should be read in this sense.

76. The issue of whether or not to detain children with adults is not a new one. In some cases, such as those involving infants, it can be in their best interests not to be separated from a detained parent, or in the case of children of immigration detainees who should not be separated from their family. Several Council of Europe member states believe that in large, sparsely populated areas, it may exceptionally be in the best interests of the child to be detained in adult facilities (facilitating visits from parents who may reside hundreds of kilometres away, for example). However, such cases require particular vigilance on the part of detaining authorities, in order to prevent the abuse of children by adults.

77. However, the United Nations Committee on the Rights of the Child has been very clear on this issue, based on Article 37.*c*, of the United Nations Convention on the Rights of the Child. The above-mentioned Recommendation CM/Rec(2008) 11 also states that juveniles shall not be detained in institutions for adults, but in institutions specially designed for them.

78. Several references recall that the guidelines do apply to children seeking asylum and that specific attention should be given to this particularly vulnerable group; unaccompanied minors, whether or not they are asylum-seekers, should not be deprived of their liberty solely as a result of the absence of residence status (Guideline 22).

In the case of *Guvec v. Turkey*, the Court reiterated its comments on excessive periods of detention. It expressly stated: "In at least three judgments concerning Turkey, the Court has expressed its misgivings about the practice of detaining children in pre-trial detention (see *Selçuk v. Turkey*, No. 21768/02, paragraph 35, 10 January 2006; *Koşti and Others v. Turkey*, No. 74321/01, paragraph 30, 3 May 2007; the aforementioned case of *Nart v. Turkey*, § 34) and found violations of Article 5, paragraph 3 of the Convention for considerably shorter periods than that spent by the applicant in the present case. For example, in Selçuk the applicant had spent some four months in pre-trial detention when he was 16 years old and in Nart the applicant had spent 48 days in detention when he was 17 years old. In the present case, the applicant was detained from the age of 15 and was kept in pre-trial detention for a period in excess of four-and-a-half

[53]. CPT standards (CPT/inf/E (2002) 1, Rev 2009 on http://www.cpt.coe.int/en/docsstandards.htm).
[54]. See, for example, the Concluding Observations for Belgium: "The Committee recommends that the state party: […] (c) […] ensure, in accordance with Article 37 of the Convention, that the deprivation of liberty is only used as a measure of last resort, for the shortest possible time, that guarantees of due process are fully respected and that persons under 18 are not detained with adults." (CRC/C/15/Add. 178, paragraph 32, *c*, 13 June 2002),
[55]. United Nations Convention on the Rights of the Child, Articles 37 and 40.
[56]. Recommendation of the Committee of Ministers Rec(2008) 11, paragraph 59.1.

years. In the light of the foregoing, the Court considers that the length of the applicant's detention on remand was excessive and in violation of Article 5, paragraph 3 of the Convention."[57]

[57]. European Court of Human Rights (Second Section), judgment of 20 January 2009, *Guvec v. Turkey*, N° 70337/01, paragraphs 109-110.

B. Child-friendly justice before judicial proceedings

79. A complex but important issue is that of the minimum age of criminal responsibility. This age ranges among the member states of the Council of Europe from as young as 8 to the age of majority. The text of Guideline 23 was inspired by Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures.[58] The United Nations Convention of the Rights of the Child does not set any age, but General Comment No. 10 on Children's Rights in Juvenile Justice advises member states not to set this minimum age too low. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice conveys a similar message. The European Network of Children's Ombudspersons (ENOC) advocates that the age be raised to 18 and recommends the development of innovative systems to respond to all offenders under the age of majority that genuinely focus on their (re)education, reintegration and rehabilitation.

80. In general, a preventive and reintegrating approach should be promoted and implemented in matters of juvenile justice. The criminal law system should not automatically be set in motion by minor offences committed by children, when more constructive and educational measures can be more successful. Moreover, member states should react to offences in proportion not only to the circumstances and gravity of an offence, but also to age, lesser culpability and needs of the child, and the needs of society.

81. Guidelines 24-26 recall that in several member states attention has been focused on the settlement of conflicts outside courts, *inter alia* by family mediation, diversion and restorative justice. This is a positive development and member states are encouraged to ensure that children can benefit from these procedures, providing that they are not used as an obstacle to the child's access to justice.

82. Such practices already exist in many Council of Europe member states and may refer to practices before, during and after judicial proceedings. They become particularly relevant in the area of juvenile justice. These guidelines do not give preference to any non-judicial alternatives, and should also be implemented within them, in particular in family conflicts, which involve not only strictly legal issues. The law has its limitations in this area and may have harmful effects in the long run. Mediated arrangements are reported to be more respected because the concerned parties are actively involved. Children may be able to play a role in them as well. Mandatory referral to mediation services, prior to court procedures, could also be considered: this is not to force people to mediate (which would be contradictory to the whole idea of mediation), but to give everyone the opportunity to be aware of such a possibility.

83. While there is a certain belief that children should be kept outside courts as much as possible, court procedure is not necessarily worse than an outside court alternative, as long as it is in line with the principles of child-friendly justice. Just like court settings, alternatives can also involve risks with regard to children's rights, such as the risk of diminished respect for fundamental principles like the presumption of innocence, the right to legal counsel, etc. Any choice made should therefore look into the distinct quality of a given system.

84. In General Comment No. 12, the United Nations Committee on the Rights of the Child recommended that: [59] "In case of diversion, including mediation, a child must have the opportunity to give free and voluntary consent and must be given the opportunity to obtain legal and other advice and assistance in determining the appropriateness and desirability of the diversion proposed." Guideline 26, however, requires that children should be guaranteed equivalent levels of safeguards in both judicial and out-of-court proceedings.

85. To sum up, the text of the guidelines encourages access to national courts for children as bearers of rights, in accordance with the jurisprudence of the Court, to which they have access if they so wish. However, such access is balanced and reconciled with alternatives to judicial proceedings.

[58]. Cf footnote 58.
[59]. General Comment No. 12 on the right of the child to be heard (CRC/C/GC/12, 1 July 2009), paragraph 59.

In the canton of Fribourg, Switzerland, a mediation scheme has been worked out for children in conflict with the law. Searching for a balance between restoration and retribution, mediation considers the rights and interests of the victim and of the offender. In cases where certain criteria are met, the judge can refer the case to the mediator. While the mediator is in charge of the mediation as such, it is the judge who remains in charge of the criminal case. Whether or not an agreement is found between the parties, the outcome of the mediation would be communicated to the judge, who can either pronounce the agreement (in writing) or continue the proceedings, in case no agreement was reached.

In Norway, couples filing for a divorce with children under 16 must attempt mediation before being able to start a court procedure. The purpose is to help parents to reach an amicable agreement regarding where children should live, concerning the exercise of parental responsibilities and visiting rights, to ensure that the children's best interests are taken into account.

C. Children and the police

86. The police should also apply the guidelines on child-friendly justice. This applies to all situations where children might come in contact with the police, and it is, as stipulated by Guideline 27, of particular importance when dealing with vulnerable children.

87. It is obvious that a child-friendly attitude should also be present in potentially risky situations, such as the arrest or questioning of children, covered by Guidelines 28 and 29. Save in exceptional cases, parents need to be promptly notified of the arrest of their child, and the child should always have access to a lawyer or any other entity, which according to national law is responsible for defending children's rights, and the right to notify parents or a person whom they trust. Contact with youth protection services should be granted as from the moment of arrest.[60] Only if the parents are not available should another person whom the child trusts be contacted (for example, his or her grandparents).

88. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has developed a series of standards which apply to detention of children by the police. In addition, in its comments on the European draft rules for juvenile offenders,[61] it has pointed out that these rules should expressly stipulate that children detained by the police should not be required to make any statement or sign any document related to the offence of which they are suspected without a lawyer or trusted person being present to assist them. These standards are supported by Guideline 30. States might usefully consider introducing special police units, specially trained for these tasks.

In *Okkali v. Turkey*, the Court reviewed the case of a 12 year-old boy under police arrest, who claimed he had suffered ill-treatment. The Court considered that he should have enjoyed greater protection as a minor and that the authorities had failed to take account of his particular vulnerability. The Court added that in cases like this, a lawyer should be assigned to assist the child and the parents (or legal representatives) need to be informed of the detention.[62]

In the case of *Salduz v. Turkey*, the Court considered Article 6, paragraph 1, of the ECHR to have been violated since a 17-year-old suspect did not have access to a lawyer during five days in police custody. The Court found that: "in order for the right to a fair trial under Article 6, paragraph 1, to remain sufficiently 'practical and effective', access to a lawyer should be provided, as a rule, from the first interrogation of a suspect by the police […]".[63] The Court also noted that one of the specific elements of this case was the applicant's age. Having regard to a significant number of relevant international legal instruments concerning legal assistance to minors in police custody, the Court stressed the fundamental importance of providing access to a lawyer where the person in police custody was a minor.[64]

[60]. A recent judgment by a Belgian juvenile court (Antwerp, 15 Feb 2010) acquitted a juvenile offender because the judge found that his defence rights had been violated since he had not received legal counsel at the police hearing, where he claimed to have been forced to admit to the said offences. The judge concluded that Article 6 of the ECHR had been violated.
[61]. CPT, 18th General Report (2007-2008), paragraph 24.
[62]. European Court of Human Rights (Second Section), judgment of 17 October 2006, *Okkali v. Turkey*, No. 52067/99, paragraphs 69 et seq.
[63]. European Court of Human Rights (Grand Chamber), judgment of 27 November 2008, *Salduz v. Turkey*, No. 36391/02, paragraph 55.
[64]. *Ibid*, paragraphs 56-62.

D. Child-friendly justice during judicial proceedings

89. These elements of child-friendly justice should be applied in all proceedings: civil, criminal and administrative.

1. Access to court and to the judicial process

90. Although children are legally considered to be bearers of rights, as stipulated by Guideline 34, they are often not capable of exercising them effectively. In 1990, the Parliamentary Assembly of the Council of Europe underlined in its Recommendation 1121 (1990) on the rights of children that "children have rights they may independently exercise themselves even against opposing adults."[65] The United Nations Convention on the Rights of the Child contains a certain right of initiative for court action by the child in Article 37.*d*, where a child can challenge the legality of his or her deprivation of liberty. At present, there is strong support for the establishment of a complaints procedure under this convention.[66] This will hopefully give children the same kind of remedies to fight violations of their rights as granted to adults under several other universal human rights conventions.

91. In the same context, the ECHR gives "everyone" whose human rights are violated, the right to "an effective remedy before a national authority".[67] This wording clearly includes children. The result is that children can bring their cases to the Court, although they are often not entitled to bring legal proceedings under their domestic law.[68]

92. Given the fact that most legislation on legal incapacity of children is drafted with a view to protecting the children, it is nevertheless essential that this lack of capacity is not used against them when their rights are being violated or when no one else defends these rights.

93. Guideline 34 also recommends that member states' legislation facilitate, where appropriate, access to court for children with sufficient understanding or their rights. It also recommends the use of remedies to protect these rights, upon receiving adequate legal advice.

94. Attention must be given to the strong link between issues of access to justice, proper legal counselling[69] and the right to voice an opinion in court procedures. It is not the aim of these guidelines to encourage children to address the courts for no apparent reason or legal ground. It goes without saying that children, like adults, should have a solid legal basis to bring a case to court. Where the child's rights have been violated or need defending and whenever the legal representative does not do so on behalf of the child, there should be the possibility to have the case reviewed by a judicial authority. Access to court for children may also be necessary in cases where there can be a conflict of interests between the child and the legal representative.

95. Access to court can be based on a set age limit or on the notion of a certain discernment, maturity or level of understanding. Both systems have advantages and disadvantages. A clear age limit has the advantage of objectivity for all children and guarantees legal certainty. However, granting children access based on their own individual discernment gives the opportunity for adaptation to every single child, according to their levels of maturity. This system can pose risks due to the wide margin of appreciation left to the judge in question. A third possibility is a combination of both: a set legal age limit with a possibility for a child under this age to challenge this.[70] This may, however, raise the additional problem that the burden of proof of capacity or discernment lies with the child.

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[65]. Recommendation 1121 (1990) on the rights of children, paragraph 6.
[66]. The campaign for a complaints mechanisms for the United Nations Convention on the Rights of the Child.
[67]. Article 13.
[68]. See report by the Court's Registry, *o.c.,* p. 5: "Children may thus apply to the Court even when they are not entitled, in domestic law, to bring legal proceedings".
[69]. This also serves to convince the child not to start a procedure where there is in fact no legal ground or chance of succeeding.
[70]. By way of example, Belgian legislation sometimes uses an age limit, and sometimes the level of discernment.

96. No age limit is set in these guidelines, as it tends to be too rigid and arbitrary and can have truly unjust consequences. It also cannot fully take into account the diversity in capacities and levels of understanding between children. These can vary greatly depending on the individual child's development capacities, life experiences, cognitive and other skills. A 15 year-old can be less mature than a 12 year-old, while very young children may be intelligent enough to assess and understand their own specific situation. The capability, maturity and level of understanding are more representative of the child's real capacities than his or her age .

97. While recognising that all children, regardless of age or capacities, are bearers of rights, age is in fact a major issue in practice, as very young children, or children with certain disabilities, will not be able to effectively protect their rights on their own. Member states should therefore set up systems in which designated adults are able to act on behalf of the child: they can be either parents, lawyers, or other institution or entities which, according to national law, would be responsible for defending children's rights. These persons or institutions should not only become involved or recognised when procedures are already pending, but they should also have the mandate to actively initiate cases whenever a child's right has been violated or is in danger of being violated.

98. Guideline 35 recommends that member states remove all obstacles for the children's access to court. It gives examples such as the cost of proceedings and the lack of legal counsel, but recommends that other obstacles also be removed. Such obstacles may be of a different nature. In case of a possible conflict of interests between children and their parents, the requirement of parental consent should be avoided. A system needs to be developed whereby the undue refusal of a parent cannot keep a child from having recourse to justice. Other obstacles to access to justice may be of a financial or psychological nature (see legal aid). Procedural requirements should be limited as far as possible.[71]

99. In some cases, a child cannot challenge certain acts or decisions during his or her childhood, due to trauma, in cases of, for example, sexual abuse or highly conflictual family matters.

100. In such cases, Guideline 36 recommends that access to court should be granted for a period of time after the child has reached the age of majority. It therefore encourages member states to review their statutes of limitations. The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201) could usefully serve as an inspiration in this regard.[72]

The Court, in the case of *Stubbings and Others v. the United Kingdom*[73], considered that "there has been a developing awareness in recent years of the range of problems caused by child abuse and its psychological effects on victims, and it is possible that the rules on limitation of actions applying in member states of the Council of Europe may have to be amended to make special provision for this group of claimants in the near future."[74]

2. Legal counsel and representation[75]

101. If children are to have access to justice which is genuinely child-friendly, member states should facilitate access to a lawyer or other institution or entity which according to national law is responsible for defending children's rights, and be represented in their own name where there is, or could be, a conflict of interest between the child and the parents or other involved parties. This is the main message of the Guideline 37. The European Convention on the Exercise of Children's Rights (ETS No. 160)[76] states: "Parties shall consider granting children additional procedural rights in relation to proceedings before a judicial authority affecting them, in particular […] a separate representative […] a lawyer".[77]

[71]. A too restrictive or purely technical approach on representation should be avoided. See I. Berro-Lefèvre, *o.c.,* p. 71.
[72]. Article 33.
[73]. European Court of Human Rights (Chamber), judgment of 22 October 1996, *Stubbings and Others v. UK*, Nos. 22083/93; 22095/93, paragraph 56. http://www.coe.int/t/dghl/standardsetting/childjustice/MJU-28(2007)INFO1%20e.pdf.
[74]. Paragraph 56.
[75]. See ChildONEurope, *Survey on the national systems of children's legal representation,* March 2008 (www.childoneurope.org). Several models are illustrated in this survey.
[76]. ETS No. 160.
[77]. Article 5, b.

102. Guideline 38 makes the recommendation to provide children with access to free legal aid. This should not necessarily require a completely separate system of legal aid. It might be provided in the same way as adults, or under more lenient conditions, and be dependent on the financial means of the holder of the parental responsibility or the child him or herself. In any case, the legal aid system has to be effective in practice.

103. Guideline 39 describes the professional requirements for the lawyers representing children. It is also important that the legal fees of the child's lawyer are not charged to his or her parents either, directly or indirectly. If a lawyer is paid by the parents, in particular in cases with conflicting interests, there is no guarantee that he or she will be able to independently defend the child's views.

104. A system of specialised youth lawyers is recommended, while respecting the child's free choice of a lawyer. It is important to clarify the exact role of the child's lawyer. The lawyer does not have to bring forward what he or she considers to be in the best interests of the child (as does a guardian or a public defender), but should determine and defend the child's views and opinions, as in the case of an adult client. The lawyer should seek the child's informed consent on the best strategy to use. If the lawyer disagrees with that the child's opinion, he or she should try to convince the child, as he or she would with any other client.

105. The lawyer's role is different from the guardian *ad litem*, introduced by Guideline 42, as the latter is appointed by the court, not by "a client" as such, and should help the court in defining what is in the best interests of the child. However, combining the functions of a lawyer and a guardian *ad litem* in one person should be avoided, because of the potential conflict of interests that may arise. The competent authority should in certain cases appoint either a guardian ad litem or another independent representative to represent the views of the child. This could be done on the request of the child or another relevant party.

In Georgia, the right to legal aid for persons under the age of 18 in criminal cases is granted *ex officio*, since they are considered to be "socially vulnerable". No other condition is required for those children to benefit from this service.

3. Right to be heard and to express views

106. General Comment No. 12 of the United Nations Committee on the Rights of the Child interprets the right of the child to be heard, which is one of the four guiding principles of the United Nations Convention on the Rights of the Child, using the words "shall assure" which is a legal term of special strength which leaves no leeway for states parties' discretion.[78] This comment elaborates on the fact that age alone cannot determine the significance of a child's views.[79] In its General Comment No. 5, the Committee rightly notes that "appearing to listen to children is relatively unchallenging; giving due weight to their views requires real change."[80]

107. Article 3 of the European Convention on the Exercise of Children's Rights (ETS No. 160) combines the right to be heard with the right to be informed: in judicial proceedings, children should receive all relevant information, be consulted and express their views and be informed of the possible consequences of compliance with these views and the possible consequences of any decision.

108. In these guidelines, reference is made to concepts such as "age and maturity" and "sufficient understanding", which implies a certain level of comprehension, but does not go as far as to demand from the child a full comprehensive knowledge of all aspects of the matter at hand.[81] Children have the right to give their views freely, without any pressure and without manipulation.[82]

109. The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime use the wording "child sensitive" as "an approach that balances the child's right to protection and that takes into account the child's individual needs and views".[83]

[78]. General Comment No. 12 on the right of the child to be heard (CRC/C/GC/12, 1 July 2009), paragraph 19.
[79]. *Ibid*, paragraph 28-31.
[80]. General Comment No. 5 on General measures of implementation of the United Nations Convention on the Rights of the Child (CRC/GC/2003/5), Article 12.
[81]. For more information, see CRIN Review: "Measuring maturity. Understanding children's 'evolving capacities'", 2009.
[82]. General Comment No. 12 on the right of the child to be heard (CRC/C/GC/12, 1 July 2009), paragraph 22.
[83]. United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, 22 July 2005).

110. Laws should be clearly formulated in order to ensure legal equality for all children. Irrespective of age, in particular when a child takes the initiative to be heard, a sufficient level of understanding should be presumed. Age, however, still plays a major role in "granting" children their basic right to be heard in matters that affect them (Guideline 45). However, it must be pointed out that, in some circumstances, it is the child's duty to be heard (that is, to give evidence).

111. Children need to know precisely what will happen and what the status of their given opinion or statement will be.[84] The judge should not refuse to hear the child without good reasons unless this is in the best interests of the child (Guideline 47). They should be clearly informed that if a judge does hear them, this does not mean they will "win" the case. In order to gain or obtain the trust and respect for the given judgment, particular effort should be made by the child's lawyer to explain why the child's opinion has not been followed or why the given decision has been made, as is done for adults (Guideline 48).

112. Furthermore, children have the right to express their views and opinion on any issue or case that involves or affects them. They should be able to do so regardless of their age, in a safe environment, respectful of their person. They have to feel at ease when they talk to a judge or other officials. This may require the judge to omit certain formalities, such as wearing a wig and gown or hearing the child in the courtroom itself; by way of example, it can be helpful to hear a child in the judge's chambers.

113. It is important that the child can speak freely and that there is no disruption. This may in practice mean that no other people should be allowed in the room (for example, the parents, the alleged perpetrator), and that the atmosphere is not disturbed by unwarranted interruption, unruly behaviour or transit of people in and out of the room.

114. Judges are often untrained in communicating with children and specialised professionals are seldom called upon to support them in this task. As already indicated (paragraph 96 above), even young children can state their views clearly, if they are assisted and supported correctly. Judges and other professionals should actually look for the child's own views, opinions and perspective on a case.

115. Depending on the wishes and the interests of the child, serious consideration should be given to who will listen to the child, presumably either the judge or an appointed expert.[85] Some children may prefer to be heard by a "specialist" who would then convey his or her point of view to the judge. Others, however, make it clear that they prefer to talk to the judge himself or herself, since he or she is the one who will make the decision.

116. While it is true that there is a risk of children being manipulated when they are heard and express their views (for example, by one parent against the other), all efforts should be made not to let this risk undermine this fundamental right.

117. The United Nations Committee on the Rights of the Child warns against a tokenistic approach and unethical practices,[86] and lists the basic requirements for effective and meaningful implementation of the right to be heard.[87] Processes for hearing children should be transparent and informative, voluntary, respectful, relevant, child friendly, inclusive, carried out by trained staff, safe and sensitive to risk, and, finally, accountable.

[84]. European Convention on the Exercise of Children's Rights, Article 3c.
[85]. The United Nations Committee on the Rights of the Child recommends that children are heard directly. General Comment No. 12 on the Right of the Child to be heard (CRC/C/GC/12, 1 July 2009), paragraph 35.
[86]. General Comment No. 12 on the Right of the Child to be heard (CRC/C/GC/12, 1 July 2009), paragraph 132: "The Committee urges states parties to avoid tokenistic approaches, which limit children's expression of views, or which allow children to be heard, but fail to give their views due weight. It emphasizes that adult manipulation of children, placing children in situations where they are told what they can say, or exposing children to risk of harm through participation are not ethical practices and cannot be understood as implementing Article 12."
[87]. General Comment No. 12 on the Right of the Child to be heard (CRC/C/GC/12, 1 July 2009), paragraph 133-134.

In a case of inter-country adoption with Italian adopters of Romanian children (case of *Pini and Others v. Romania*), the Court was very clear on the right of the children to be heard and that their views be taken seriously: "It must be pointed out that in the instant case the children rejected the idea of joining their adoptive parents in Italy once they had reached an age at which it could be reasonably considered that their personality was sufficiently formed and they had attained the necessary maturity to express their opinion as to the surroundings in which they wished to be brought up".[88] "The children's interests dictated that their opinions on the subject should have been taken into account once they had attained the necessary maturity to express them. The children's constant refusal, after they had reached the age of 10, to travel to Italy and join their adoptive parents carries a certain weight in this regard."[89]

In the case of *Hokkanen v. Finland*, a father claimed custody of his daughter who had been living with her grandparents for years. The child did not want to live with her father and the Court agreed that "the child had become sufficiently mature for her views to be taken into account and that access should therefore not be accorded against her wishes". [90]

4. Avoiding undue delay

118. Cases in which children are involved need to be dealt with expeditiously, and a system of prioritising them could be considered.[91] The urgency principle is set out in Guideline 50. It should be borne in mind that children have a different perception of time from adults and that the time element is very important for them: for example, one year of proceedings in a custody case may seem much longer to a 10-year old than to an adult. The rules of court should allow for such a system of prioritising in serious and urgent cases, or when possibly irreversible consequences could arise if no immediate action is taken (Guideline 51 covering family law cases).

119. Other examples of this principle can be found in relevant Council of Europe instruments. One of them demands that states ensure that the investigations and criminal proceedings are treated as a priority and carried out without any unjustified delays.[92] This is also very important to allow victims to be able to start their recovery. Another instrument specifically recommends "ensuring that minors are treated more rapidly, avoiding undue delay, so as to ensure effective educational action."[93]

120. Respecting the best interests of the child might require flexibility on the part of judicial authorities, while enforcing certain decisions, in accordance with the national law, as indicated by Guideline 53.

In two cases against Germany, the time element was discussed by the Court, which found that in cases of parent-child relationships there is a duty to exercise exceptional diligence in view of the fact that the risk of passage of time may result in a *de facto* determination of the matter and that the relation of a child with one of its parents might be curtailed.[94]

In the case of *Paulsen-Medalen and Svensson v. Sweden*, the Court found that Article 6, paragraph 1 had been violated since the authorities had not acted with the required exceptional diligence when handling a dispute on access.[95]

[88]. European Court of Human Rights (Second Section), judgment of 22 June 2004, *Pini and Others v. Romania*, Nos. 78028/01 and 78030/01, paragraph 157.
[89]. *Ibid*, paragraph 164.
[90]. (Chamber), judgment of 23 September 1994, *Hokkanen v. Finland*, No. 19823/92; paragraph 61.
[91]. Cf. Art 41 of the Rules of the European Court of Human Rights. This should be used more frequently according to I. Berro-Lefevre, *o.c.,* p. 76.
[92]. Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, (CETS No. 201, Article 30, paragraph 3).
[93]. Council of Europe Committee of Ministers' Recommendation No. R (87)20 on social reactions to juvenile delinquency, paragraph 4.
[94]. See European Court of Human Rights (Grand Chamber), judgment of 13 July 2000, *Elsholz v. Germany*, No. 25735/94, paragraph 49, and judgment of 8 July 2003, *Sommerfeld v. Germany*, No. 31871/96, paragraph 63.
[95]. European Court of Human Rights (Chamber), judgment of 19 February 1998, *Paulsen-Medalen and Svensson v. Sweden*, No. 16817/90, paragraph 42.

Avoiding undue delay is also important in criminal cases. In the case of *Bouamar v. Belgium*, an especially speedy judicial review was demanded in cases of detention of minors. Unjustified lapses of time were hardly considered to be compatible with the speed required by the terms of Article 5, paragraph 4 of the ECHR.[96]

5. Organisation of the proceedings, child-friendly environment and child-friendly language

121. Child-friendly working methods[97] should enable children to feel safe. Being accompanied by a person whom they can trust can make them feel more comfortable in the proceedings. The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201)[98] stipulates that a child may be accompanied by his or her legal representative or an adult of his or her choice, but that the person should be considered to be suitable. A reasoned decision can be taken against the presence of a given accompanying person.

122. The architectural surroundings can make children very uncomfortable. Court officials should familiarise children, *inter alia*, with the layout of the court, and identities of the officials involved (Guideline 55). Even for adults, courthouses can be rather oppressive or intimidating (Guideline 62). While this is difficult to change, at least for the existing court facilities, there are ways in which treatment of children in these courthouses can be improved by working with children in a more child-sensitive way.

123. Court facilities may include, where possible, special interview rooms, which take the best interests of the child into account. Equally, child-friendly court settings may mean that no wigs or gowns or other official uniforms and clothing are worn. This can be implemented in view of the child's age or the function of the official. Depending on the circumstances and on the views of the child, it may well be that, for example, uniforms make it clear to the child that he or she is talking to a police officer and not to a social worker, which has its relevance. This could also add to the feeling of the child that matters affecting him/her are taken seriously by the competent authority. To sum up, the setting may be relatively formal, but the behaviour of officials should be less formal and, in any case, should be child-friendly.

124. More importantly, child-friendly justice also implies that children understand the nature and scope of the decision taken, and its effects. While the judgment and the motivation thereof cannot always be recorded and explained in child-friendly wording, due to legal requirements, children should have those decisions explained to them, either by their lawyer or another appropriate person (parent, social worker etc.).

125. Specific youth courts, or at least youth chambers, could be set up for offences committed by children.[99] As far as possible, any referral of children to adult courts, adult procedures or adult sentencing should not be allowed.[100] In line with the requirement of the specialisation in this area, specialised units could be established within law enforcement authorities (Guideline 63).

In several cases against the United Kingdom involving juvenile offenders, the Court stressed that special measures have to be taken to modify the adult courts' procedure in order to attenuate the rigours of an adult trial in view of the defendant's young age. For example, the legal professionals should not wear wigs and gowns and the juvenile defendant should not be seated in a raised dock, but instead be allowed to sit next to his legal representative or social worker. Hearings should be conducted in a way that their feelings of intimidation and inhibition could be reduced as far as possible.

Following the cases of *T and V v. the United Kingdom*, where the national court settings were considered to be intimidating for a child, a Practice Direction for Trial of Children and Young Persons in the Crown Court was drafted. The aim is to avoid intimidation, humiliation or distress for the child on trial. Elements of this practice direction are *inter alia*: the possibility for the child to visit the courtroom before the trial to become familiarised with it, the possibility of police support to avoid intimidation or abuse by the press, no wigs or gowns to be worn, the explanation of the procedure in terms the child can understand, restricted attendance of court's hearings, etc.

[96]. European Court of Human Rights (Chamber), judgment of 29 February 1988, *Bouamar v. Belgium*, No. 9106/80, paragraph 63.
[97]. See W. McCarney in Council of Europe, *International justice for children*, 2008, pp. 119-127.
[98]. Article 35, 1, *f*.
[99]. United Nations Convention on the Rights of the Child, Article 40.3.
[100]. Council of Europe Committee of Ministers' Recommendation No. R(87)20 on social reactions to juvenile delinquency, proceedings against minors, paragraph 5.

The Polish Ministry of Justice promotes and implements the concept of child-friendly interview rooms in co-operation with an NGO. The main goal is to protect child witnesses and victims of crime, especially crimes involving sexual and domestic violence, through putting into practice principles of interviewing children in child-friendly conditions and by competent staff. The procedure ensures that children are interviewed by a judge in the presence of a psychologist. Other persons involved (prosecutor, lawyer, the accused, the private complainant) are present in a separate room and have the possibility to participate in the interview thanks to communication systems between rooms, two-way mirrors and/or live broadcasting. Important details to make children feel more comfortable include *inter alia*: guaranteed privacy (soundproof door between interviewing room and other rooms/premises); room equipped in accordance with the child's needs in order to ensure physical and mental safety of the child during the interview, in the use of neutral colours and furnishings in the room which ensure that children can spend time comfortably (two sizes of tables and chairs, a sofa or armchair, soft carpet); equipped with materials and other items useful in gathering information from a child (coloured pencils, paper, dolls, etc.).

6. Evidence/statements by children

126. The issue of collecting evidence/statements from children is far from being simple. As standards are rare in this area (such as the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime),[101] the need was felt to address these issues, as the conduct of such interviews with regard to evidence/statements requires practical guidance.

127. As stipulated by Guideline 64, this should as far as possible be carried out by trained professionals. In the same context, Guideline 66 recommends that when more than one interview is needed, they should be carried out preferably by the same person for reasons of consistency and mutual trust, but that the number of interviews should be as limited as possible (Guideline 67).

128. For obvious reasons, specific arrangements should be made for gathering evidence, especially from children victims, in the most favourable conditions. Allowing evidence to be given via audio, video or TV link are examples of these practices, as is providing testimony to experts prior to the trial, and avoiding visual or other contact between the victim and the alleged perpetrator (Guideline 68), or giving evidence without the presence of the alleged perpetrator (Guideline 69). However, in particular cases, such as sexual exploitation, video recordings for interviews may be traumatic for victims. The possible harm or secondary victimisation resulting from such recordings therefore needs to be carefully assessed and other methods, such as audio recording, will need to be considered to avoid revictimisation and secondary trauma.

129. Member states' procedural laws and legislation in this domain vary considerably, and there might be less strict rules on giving evidence by the children. In any case, member states should give priority to the child's best interests in the application of legislation regarding evidence. Examples provided by Guideline 70 includes the absence of the requirement for the child to take oath or other similar declarations. These guidelines do not intend to affect the guarantees of the right to a defence in the different legal systems; however, they do invite member states to adapt, where necessary, some elements of the rules on evidence so as to avoid additional trauma for children. In the end, it will always be the judge who will consider the seriousness and validity of any given testimony or evidence.

130. Guideline 70 also indicates that these adaptations to children should not in themselves diminish the value of a given testimony. However, preparing a child witness to testify should be avoided because of the risk of influencing the child too much. Establishing model interview protocols (Guideline 71) should not necessarily be the task of the judges, but more of national judicial authorities.

[101]. United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, 22 July 2005), paragraph XI, 30, d.: "Use child-sensitive procedures, including interview rooms designed for children, interdisciplinary services for child victims integrated in the same location, modified court environments that take child witnesses into consideration, recesses during a child's testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, an appropriate notification system to ensure the child goes to court only when necessary and other appropriate measures to facilitate the child's testimony." It should be borne in mind that these guidelines are about giving testimony in general, and not only criminal proceedings.

131. Although using audio or video recording of children's statement has some advantages, as it serves to avoid repetition of often traumatic experiences, direct testimony in front of an interrogating judge may be more appropriate for children who are not victims, but alleged perpetrators of crimes.

132. As already indicated, age should not be a barrier for the child's right to fully participate in the judicial process.[102] Their testimonies should not be presumed to be invalid or untrustworthy simply on the basis of their age, according to Guideline 73.

133. Where children are to be asked or they express the wish to give evidence in family proceedings, due regard should be given to their vulnerable position in that family and to the effect such testimony may have on present and future relationships. All possible efforts should be made to ensure that the child is made aware of the consequences of the testimony and supported in giving evidence by any of the means already referred to.

The Court has recognised the specific features of proceedings concerning sexual offences. In the case of *S.N. v. Sweden*, the Court found that: "such proceedings are often conceived of as an ordeal by the victim, in particular when the latter is unwillingly confronted with the defendant. These features are even more prominent in a case involving a minor. In the assessment of the question of whether or not in such proceedings an accused has received a fair trial, account must be taken of the right of respect for the private life of the perceived victim. Therefore, the Court accepts that in criminal proceedings concerning sexual abuse certain measures may be taken for the purpose of protecting the victim, provided that such measures can be reconciled with an adequate and effective exercise of the rights of the defence".[103]

In the same case, attention was also given to the possibly leading nature of some questions. To avoid the negative effects thereof, forensic psychology experts, with specific training and knowledge, could be called upon.[104]

In the case of *W.S. v. Poland*, the Court suggested possible ways to test the reliability of a young child victim and pointed out that this could be done in a less invasive manner than via direct questioning. Several sophisticated methods might be applied, such as having the child interviewed in the presence of a psychologist with questions being put in writing by the defence, or in a studio enabling the applicant or his lawyer to be present at such an interview, via video-link or one-way mirror.[105]

E. Child-friendly justice after judicial proceedings

134. There are many measures which may be taken to make justice child-friendly after judicial proceedings have taken place. This starts with the communication and explanation of the given decision or judgment to the child (Guideline 75). This information should be supplemented with an explanation of possible measures to be taken, including an appeal or address to an independent complaint mechanism. This should be done by the child's representative, that is, the lawyer, guardian *ad litem*, or legal representative, depending on the legal system. Guidelines 75, 77 and 81 refer to those children's representatives.

135. Guideline 76 recommends that steps be taken without delay to facilitate the execution of decisions/rulings involving and affecting children.

136. In many cases, and in particular in civil cases, the judgment does not necessarily mean that the conflict or problem is definitely settled: family matters are good example, and they are dealt with by Guidelines 78 and 79. In this sensitive area, there should be clear rules on avoiding force, coercion or violence in the implementation of decisions, particularly, for example, visitation arrangements, to avoid further traumatisation. Therefore, parents should rather be referred to mediating services or neutral visitation centres to end their disputes instead of having court decisions executed by police. The only exception is when there is a risk to the well-being of the child. Other services, such as family support services, also have a role to play in the follow-up of family conflicts, to ensure the best interests of the child.

[102]. *Ibid*, paragraph VI, 18.
[103]. European Court of Human Rights (First Section), judgment of 2 July 2002, *S.N. v. Sweden*, No. 34209/96, paragraph 47.
[104]. *Ibid*, paragraph 53.
[105]. European Court of Human Rights (Fourth Section), judgment of 19 June 2007, *W.S. v. Poland*, No. 21508/02, paragraph 61.

In cases of enforcement of decisions on family law issues, such as access and custody rights, the Court held on several occasions that what is decisive is the question of whether national authorities have taken all necessary steps to facilitate the execution as can reasonably be demanded in the special circumstances of each case.

In Austria, the *Besuchscafe* offers children the possibility to stay in touch with both parents after a divorce or separation in a safe and supportive setting. The right of access can be provided in special premises under the supervision of trained staff, to avoid conflicts between the parents, whenever a visitation right is exercised. This kind of accompanied visitation can be ordered by the court or requested by one or both parents. The central issue is the well-being of the child and avoiding a situation where the child is caught in the middle of a conflict between the parents.

137. Guidelines 82 and 83 deal with children in conflict with the law. Particular attention is paid to successful reintegration into society, the importance of non-disclosure of criminal records outside the justice system, and legitimate exceptions to this important principle. Exceptions could be made for serious offences, *inter alia*, for reasons of public safety, and, when employment of people for jobs working with children is concerned, if a person has a history of committing child abuse, for example. Guideline 83 aims at protecting all categories of children, not only the particularly vulnerable ones.

138. In the case of *Bouamar v. Belgium*, the Court reviewed the issue of a juvenile offender who was put in and out of an adult prison nine times. Although detaining minors in adult prisons was at the time allowed under the youth protection law, the European Court of Human Rights concluded that: "the nine placement orders, taken together, were not compatible with under sub-paragraph *d*, Article 5.1.. The repeated incarceration had the effect of making each placement order less and less "lawful" under sub-paragraph *d*, Article 5.1, especially as the Crown Counsel never instituted criminal proceedings against the applicant in respect of the offences alleged against him."[106]

The British foundation Barnardo's developed the Children's Advocacy Service for young people in several institutions for young offenders throughout the United Kingdom, providing them with independent advocacy, assisting them with issues relating to welfare, care, treatment and planning for resettlement while they are detained. Besides face-to-face meetings within one week of incarceration, young people can contact the service or rely on a free helpline. The advocacy service helps young people to understand the system and get in contact with the relevant professionals to help them solve their problems.

V. Promoting other child-friendly actions

139. It goes without saying that a real improvement in the area of children's rights and child-friendly justice requires a proactive approach by the Council of Europe member states, which are being encouraged to carry out a number of different measures.

140. Sub-paragraphs *a-d* encourage research into this area, exchange of practices and co-operation, and the awareness-raising activities in particular by creating child-friendly versions of legal instruments. They also express support for well-functioning information offices for children's rights.

141. Investing in children's rights education and the dissemination of children's rights information is not only an obligation under the United Nations Convention on the Rights of the Child,[107] but is also a preventive measure against violations of children's rights. Knowing one's rights is the first prerequisite of "living" one's rights and being able to recognise their violation or potential violation.[108]

Many organisations have been making child-friendly versions of the United Nations Convention on the Rights of the Child and other relevant documents on children's rights. One example is the child-friendly version of the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, by UNICEF and the United Nations Office on Drugs and Crime.

[106]. European Court of Human Rights (Chamber), judgment of 29 February 1988, *Bouamar v. Belgium*, No. 9106/80, paragraphs 52-53.
[107]. Article 42: "States parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike".
[108]. See also Berro-Lefèvre, *o.c.,* pp. 74-75.

142. Measures envisaged under sub-paragraphs *e-g* aim to facilitate children's access to courts and complaints mechanisms, and consider a number of possible measures in this respect (establishment of specialised judges and lawyers, facilitation of the role of civil society and independent bodies at national, regional and universal level). In this domain, states should envisage the use of collective complaints. A good example of the collective complaints mechanism of the revised European Social Charter (ETS No. 163) is that it is accessible, no individual victim is needed and not all domestic remedies need to be exhausted. Children's ombudspersons, children's rights NGOs, social services, etc. should be able to lodge complaints or start procedures in the name of a specific child.

143. It is worth noting that new strategies are also promoted at international level, such as the aforementioned campaign in favour of a complaints procedure under the United Nations Convention on the Rights of the Child.

144. Sub-paragraphs *h-i* focus attention on the need for appropriate education, training and awareness-raising measures, while sub-paragraphs *j-k* express support for appropriate specialised structures and services.

VI. Monitoring and assessment

145. Member states are encouraged to carry out a number of measures to implement these guidelines. They should ensure their wide dissemination among all authorities responsible for or otherwise involved with the defence of children's rights. One possibility would be the dissemination of the guidelines in its child-friendly versions.

146. Member states should also ensure a review of domestic legislation, policies and practice in keeping with these guidelines, and a periodic review of working methods in this area. They are also invited to prescribe specific measures for complying with the letter and spirit of these guidelines.

147. In this respect, the maintenance or establishment of a framework, including one or more independent mechanisms (such as ombudspersons or children's ombudspersons) is of paramount importance for the promotion and monitoring of the implementation of these guidelines.

148. Lastly, it is plain that the civil society organisations, institutions and bodies promoting and protecting the right of the child should be given an active role in the monitoring process.

31st Council of Europe Conference of Ministers of Justice

Vienna 2012

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

21 September 2012

MJU-31 (2012) RESOL. E

31st Council of Europe Conference of Ministers of Justice

Vienna, Austria, 19 – 21 September 2012

RESOLUTION

on

Responses of justice to urban violence

THE MINISTERS participating in the 31st Council of Europe Conference of Ministers of Justice (Vienna, Austria, 19-21 September 2012),

1. Welcoming the report of the Minister of Justice of Austria "Urban Violence – Juveniles – New Media. Tackling the current challenges in Austria" and the contributions made by the delegations attending the Conference;

2. Recalling the European Convention on Human Rights and its Protocols and the relevant case law of the European Court of Human Rights;

3. Recalling moreover the United Nations Convention on the Rights of the Child, the Committee of Ministers' Recommendations (2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, (2008)11 on the European Rules for juvenile offenders subject to sanctions and measures and (2009)10 on integrated national strategies for the protection of children from violence, the Committee of Ministers Guidelines on Child-Friendly Justice (2010), as well as the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No 108) and its Additional Protocol (CETS No. 181);

4. Concerned about the rise of intensive and at times unexpected outbreaks of collective violence in some major urban areas in Europe, such as riots, arson, muggings and looting in which juveniles are often involved as perpetrators and/or victims;

5. Noting that these outbreaks seem at least partly prepared by organised groups and that they lead to a general feeling of insecurity and to substantial economic losses and conscious that there is great public interest in having such outbreaks stopped as soon as possible and in having those responsible brought to justice;

6. Recognising that European societies are currently facing a deep economic and social crisis, which exacerbates unemployment and financial hardship and is conducive to the deterioration of living conditions and the social climate in certain urban areas;

7. Aware of the fact that these factors may contribute to increased social tension and to the feeling of social exclusion and neglect, especially among juveniles who are vulnerable when confronted with instigators who incite riots and other forms of urban violence, notably through Internet, social networks and other information and communication technologies;

8. Underlining that acts of urban violence may range from minor offences to very serious crimes and that therefore the response of the criminal justice system should take into consideration the specific circumstances of each individual case and should be based on the principle of proportionality;

9. Resolved to ensure the Human Rights of juvenile perpetrators and victims of urban violence as well as maintain public safety and prevent disorder and crime, as necessary in a democratic society;

10. Considering that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child should be a primary consideration;

11. Considering that legal responses to criminal behaviour by juveniles should respect their rights and, where appropriate, take due account of their views, educational, development and other specific needs in accordance with their age and level of maturity;

12. Aware that deprivation of liberty often has harmful effects on the personal and social development of juveniles and should therefore be used only as a measure of last resort, for the shortest appropriate period of time;

13. Conscious of the fact that justice systems are designed primarily to deal with adults and therefore convinced that any measures should take a multi-disciplinary and a multi-agency approach in order to address effectively the variety of problems juveniles may face;

14. Mindful of the importance of promoting the involvement of the parents, family, carers and guardians concerned in prevention measures as well as during criminal proceedings and the execution of sanctions in order to help with the social integration of children and thus prevent their involvement in acts of urban violence;

15. Underlining the need to develop child-friendly justice and to divert, where possible, juveniles away from the formal criminal justice system and ordinary criminal proceedings to more adapted forms of response, such as mediation and restorative justice taking into consideration the interests of victims and their protection;

16. Aware of the rapid development and broad availability of Internet-based communication technologies such as social networks and instant messaging, and of the fact that persons participating in acts of urban violence often use modern telecommunication technologies in the preparation of and during such acts; but also noting the potential of new technologies as a tool for anticipating and preventing violence, gathering evidence and ensuring accountability of instigators and perpetrators of violence;

17. Determined to take the measures necessary in the context of urban violence to promote a rapid, appropriate and effective response of the justice system with regard to juvenile perpetrators and victims, to protect public order, avoid the feeling of insecurity in society and prevent the deterioration of social peace;

18. With regard to juveniles as perpetrators and victims of urban violence, agree to share best practices and use the lessons learned to consider:

    a) adopting or strengthening justice systems appropriate for juveniles in particular for tackling the growing problem of urban violence;

    b) developing restorative justice measures adapted to the needs of juveniles and using them, where appropriate, in criminal procedure;

    c) developing specialised training programmes appropriate for professionals, such as judges, prosecutors, police officers, social workers, mediators, probation and prison staff;

19. Invite the Committee of Ministers to instruct the relevant Council of Europe bodies to promote consultations with juveniles and their families in their future work related to prevention and education;

20. Invite the Committee of Ministers to instruct the European Committee on Crime Problems (CDPC) to examine:

    a) the experiences of member states with regard to preventing the involvement of juveniles in urban violence as perpetrators and/or victims and recommend, as necessary, suitable measures, in particular related to prevention and the criminal justice systems;

    b) the existing laws and practices in Europe concerning the sanctioning and treatment of juveniles involved in acts of urban violence as well as practices regarding the involvement of families, to draw up best practices in this regard and recommend, as necessary, suitable measures, in particular related to the criminal justice systems;

    c) the existing laws and practices in Europe regarding restorative justice and recommend, as necessary, specific restorative justice measures aimed at dealing with the phenomenon of urban violence and adapted to the needs of juveniles at all stages of the criminal justice procedure;

21. With regard to organised groups and their new ways of communicating, invite the Committee of Ministers to instruct the European Committee on Crime Problems (CDPC) to examine, in cooperation with other relevant Steering Committees ways to promote dialogue and cooperation between law enforcement authorities, telecommunication providers and Internet service providers in order to facilitate prevention of urban violence, as well as gathering of evidence and ensuring accountability of instigators of violence, while guaranteeing full compliance with the European Convention on Human Rights;

22. Ask the Secretary General of the Council of Europe to present a report on the steps taken to give effect to this Resolution on the occasion of their next Conference.

EUROPEAN UNION

1. **2006/C 110/13**, Opinion of the European economic and social committee on the prevention of juvenile delinquency, **2006 (8 p.)**
2. **COM(2006)367 final**, Communication from the commission - Towards an EU Strategy on the Rights of the Child, **2006 (10 p.)**
3. **2009/C 295/01**, Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, **2009 (3 p.)**
4. **2010/C 115/01** Stockholm Programme - An open and secure Europe serving and protecting citizens, **2010 (38 p.)**
5. **COM(2011)60 final,** An EU agenda for the Rights of the Child, **2011 (18 p.)**

Opinion of the European Economic and Social Committee on The prevention of juvenile delinquency. Ways of dealing with juvenile delinquency and the role of the juvenile justice system in the European Union

(2006/C 110/13)

On 10 February 2005, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on: *The prevention of juvenile delinquency. Ways of dealing with juvenile delinquency and the role of the juvenile justice system in the European Union.*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 22 February 2006. The rapporteur was Mr Zufiaur Narvaiza.

At its 425th plenary session, held on 15 and 16 March 2006 (meeting of 15 March), the European Economic and Social Committee adopted the following opinion by 98 votes in favour, no votes against and one abstention:

1. **Introduction**

1.1 Juvenile delinquency is currently an aspect of crime causing growing concern in European societies and has, since the last century, been under continuous scrutiny on an international scale. It should however be pointed out that young people's behaviour often has a greater impact than that of adults, especially if it is negative, thus prompting society to take a particularly adverse view of young offenders. It is also useful to note that in many cases the victims of juvenile delinquency are young people themselves. As a result, the importance that European society attaches to juvenile delinquency means that effective responses must be found, which will have to be built principally on a three-fold foundation: prevention, punitive-educational measures, and the social integration or reintegration of minors and young offenders.

1.2 The EESC believes that shaping a common strategy to combat juvenile delinquency should be amongst the European Union's objectives to which most attention is given: not only because it affects a particularly vulnerable sector of the population (minors and young people, frequently belonging to groups at risk of social exclusion), but also because taking preventive action for today's young offenders means not only seeking their social rehabilitation, but also preventing the adult crime of tomorrow. Although there are already a number of projects and European policies which may have an indirect impact on preventing juvenile delinquency (the European Employment Strategy adopted at the Luxembourg European Council of November 1997, the European Social Agenda adopted at the Nice European Council in December 2000, the European Youth Pact promoting active citizenship adopted at the Brussels European Council of March 2005, etc.), as well as a range of youth-related agreements and resolutions [1] which also promote the normal process of integrating this sector of the population into society, there is a lack of instruments and measures geared specifically to juvenile delinquency.

1.3 It is no simple task to analyse the state of affairs in EU countries, as each country has its own definition of juvenile delinquency, based on different factors. For some countries, the concept covers behaviour by minors that corresponds to one of the types described in their legislation or criminal law code. In other countries, where the juvenile justice system is based on an educational or welfare model, the range of acts that are pursued under the justice system when committed by minors is extended to include acts which, if committed by an adult, would only be liable to proceedings through administrative or civil channels, or would not even lead to prosecution [2]. Furthermore, there are significant differences between punitive systems, in that some countries have drawn up laws on punishments for young offenders that include a specific punitive system, and others apply the same punishments to minors as adults while providing for certain limited and reduced punishments. In addition to this, there are differences between the ages of juvenile criminal responsibility: although there is greater agreement on the upper age limit (18, although it may be raised to 21 in some enlargement countries), the lower age limits vary significantly from age 7 to 16 [3].

1.4 Bearing in mind the limitations created by such differences, it should be pointed out that according to the comparative statistics of the EU Member States, juvenile delinquency accounts for an average of 15 % of all crime, although it can

[1] Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council, of 14 December 2000 on the social inclusion of young people (OJ C 374 of 28.12.2000); Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council of 27 June 2002 regarding the framework of European cooperation in the youth field (OJ C 168 of 13.7.2002); European Commission White Paper on a new impetus for European youth (COM(2001) 681 final); Communication from the Commission to the Council on European policies concerning youth (COM(2005) 206 final).

[2] This would apply to what are known as 'status offences' such as running away from home, sleeping rough, etc.

[3] There is a closer alignment on the upper limit between EU countries, with the juvenile justice system fully applying in all cases up to the age of 18, although there are some countries which allow for application, to different degrees and according to the case, to young people up to 21 (Austria, Germany, Greece, Italy, the Netherlands and Portugal). Differences in the minimum age of criminal responsibility are more marked: 7 in Ireland; 8 in Greece and Scotland; 10 in England and Wales, and France; 12 in the Netherlands and Portugal; 13 in Poland; 14 in Austria, Estonia, Germany, Hungary, Italy, Latvia, Lithuania, Slovenia and Spain; 15 in the Czech Republic, Denmark, Finland, Slovakia and Sweden, and 16 in Belgium. It should however be borne in mind that in most cases, for those aged between 7 and 13-15, the measures provided are not truly penal or are less rigorous than those laid down for ages between 13-15 and 18-21, detention in centres in many cases being completely ruled out.

rise to 22 % in some countries. In any event, it should be noted that the so-called 'unrecorded' crime rate (the percentage or number of offences which is not notified to the official social control authorities, i.e. the police and the courts) consists mostly of crime committed by minors. This is mainly because the offences are generally not serious and because the victims are often minors themselves, and are less likely to contact the relevant authorities.

1.5 Regardless of the picture provided by the statistics at any given time, there is clearly a widespread perception among European countries that juvenile delinquency is on the rise, and that the offences concerned are becoming more serious. Under these circumstances, the public is calling for more effective control mechanisms, leading many countries to stiffen their youth legislation. This serves to underline the need for coordination and guidance measures in order to facilitate European-level governance of this phenomenon, and also for well-designed information policies to help put the over-dramatised perception of the issue, mentioned in the first point of the opinion, into proper proportion.

1.6 Without wishing in any way to detract from the importance of examining the causes of juvenile delinquency (which the following section addresses, albeit in summary form) or the need for a detailed examination of prevention policies (which are also mentioned throughout the present document, but which must in any case be designed to deal with the causes), **the principal aim of the present opinion is to analyse the situation of minors who, on account of their behaviour which infringes the criminal law, are subject to the various juvenile justice systems and the available intervention mechanisms to protect, re-educate and reintegrate them into society, with a view to preventing recidivist behaviour**.

2. **Causes of juvenile delinquency**

2.1 Many different reasons or circumstances can prompt a minor to commit a crime, and experts in the field have not reached any general consensus on these. However, based on the most widely accepted causes and focusing more closely on those linked to economic and socio-environmental factors (insofar as these will be of most interest in the context of this opinion), we can highlight the following causes:

2.1.1 A broken home, or even difficulty in balancing family life and work, both of which increasingly often result in a lack of attention and an absence of constraints and control for children. As a result, young people sometimes try to fill these gaps by joining youth gangs focusing on some sort of common symbol (ideological, musical, ethnic, sports-related, etc.), but which are usually characterised by transgressive attitudes. They account for a large proportion of antisocial behaviour (vandalism, graffiti) or actual violence and other crime.

2.1.2 Socio-economic marginalisation or poverty, which also makes it difficult for the minor to integrate properly into society. This marginalisation occurs more frequently among young people from migrant families (unaccompanied child migrants being particularly vulnerable) and in certain 'ghettoes' in large cities. Such areas frequently suffer from a dehumanised urban environment liable to trigger feelings of distress and aggressiveness among their inhabitants.

2.1.3 Truancy and academic failure: at school, this already leads to labelling or social stigmatisation, which often paves the way for antisocial behaviour or delinquency.

2.1.4 Unemployment, which is at its highest among young people and often leads to situations of frustration and despair, creating a breeding ground for delinquent behaviour ([4]).

2.1.5 The broadcasting of violent images and attitudes by certain programmes via some media, or videogames for minors, which helps to create a system of values among young people in which violence is seen as acceptable behaviour.

2.1.6 Abuse of drugs and toxic substances which often causes the addict to commit crimes in order to support his/her addiction. Also, when suffering the effects of these substances or withdrawal symptoms, the usual inhibitions are lowered or removed. Excessive alcohol consumption (even if occasional) should also be mentioned here, as it plays a major role in vandalism and dangerous driving.

2.1.7 Personality and behaviour disorders, either in association with or independently of the factor outlined in the previous point. These usually conspire with other social or environmental factors to make young people act impulsively or unthinkingly, uninfluenced by socially accepted standards of behaviour.

([4]) C.f., in relation to this factor and the poverty referred to in point 2.1.2, the *Thematic Study on Policy Measures concerning Disadvantaged Youth*, currently being drawn up by the European Commission's DG Employment and Social Affairs, and coordinated by the Institute for Regional Innovation and Social Research (IRIS).

2.1.8 Shortcomings in the teaching and passing on of social and civic values — such as obeying rules, solidarity, generosity, tolerance, respect for others, critical self-awareness, empathy, high standards of work, etc., which are being replaced in our 'globalised' societies by more utilitarian values like individualism, competitiveness or hyper-consumption — which in certain circumstances can generate a degree of detachment from society.

2.2 This combination of factors occurs to varying degrees throughout the EU, in societies which are prosperous but where social breakdown has lead to this kind of antisocial or deviant behaviour.

2.3 In order to prevent violent behaviour and tackle juvenile delinquency, societies must devise strategies which combine preventive measures with active intervention and punishment. Preventive and intervention-based measures must be designed to ensure the social integration of all minors and young people, principally through the family, the community, peer groups, schools, vocational training and the labour market.

Judicial and punitive measures or responses must always be based on the principles of lawfulness, the presumption of innocence, the right to defence, a scrupulously fair hearing, respect for privacy, proportionality and flexibility. Both the judicial procedure itself, and the choice of measure, as well as its subsequent implementation, should be underpinned by the **principle of the best interest of the child** ([5]).

3. **The limitations of traditional juvenile justice systems**

3.1 Conventional juvenile justice systems encountered many difficulties in responding and adjusting to the modern reality of delinquency. European criminal justice systems for minors were therefore very slow, inefficient and economically unviable: long waiting periods were common, and the re-offending rates among young offenders were very high. At the same time, the traditional sources of informal social control (school, family, workplace, etc.) became progressively weaker.

3.2 Some countries (particularly the Scandinavian countries) moved away from the paternalistic *'protection model'*, which emerged in the early part of the 20th century, and under which young offenders were considered to be socially ill (combining and confusing them with other unprotected minors). towards the *'educational' or 'welfare model'*, a social or community model geared towards juvenile delinquency but which, as it fell outside the judicial system, denied minors the requisite legal protection.

3.2.1 Since the 1980s, various international agreements and treaties relating to juvenile justice (United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules'), 1985; United Nations Guidelines for the Prevention of Juvenile Delinquency ('The Riyadh Guidelines'), 1990; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990; and Recommendation No R (87) 20 of the Committee of Ministers of the Council of Europe on social reactions to juvenile delinquency) have been driving a gradual change within juvenile justice systems in European countries, with the introduction of the *'responsibility model'*. Of particular importance here is the Convention on the Rights of the Child, adopted by the UN General Assembly on 20 November 1989 and ratified by all EU Member States, for whom it is now a mandatory provision. Articles 37 and 40 deal with the present subject. Under the 'responsibility model', the legal position of the minor is strengthened and the juvenile justice system moves closer to the criminal justice system for adults, bestowing the same rights and guarantees on minors. The aim is to bring educational and judicial aspects together, applying a protective model and measures which are clearly educational in nature. In short, the model aims to 'teach responsibility'.

3.3 This model, derived from the above-mentioned international standards, has been progressively incorporated into the laws of the 25 EU Member States.

3.3.1 The responsibility model is based on the following principles:

— Prevention before crackdown: the best way to combat juvenile delinquency is to prevent the emergence of young offenders, and this requires suitable social, occupational, economic and educational assistance programmes (among which programmes to encourage and facilitate proper use of free time and leisure opportunities should not be overlooked).

— Reducing the use of the traditional justice system to the absolute minimum and establishing new justice systems especially geared to juvenile delinquency, leaving other situations which may affect minors (suffering from abandonment, abuse or maladjustment, for example) to other services (social welfare).

— Reducing punitive state intervention, at the same time implementing preventive strategies in the areas of child welfare services, social policy, the labour market, leisure provision and municipal policy in general, and similarly involving the community and other social groups more actively in settling conflicts and seeking viable alternatives, such as family, social workers, school, community, social organisations, etc.

([5]) Article 40 of the Convention on the Rights of the Child, adopted by the UN General Assembly on 20 November 1989.

— Minimising measures or punishments that deprive young people of their liberty, by restricting these to exceptional cases.

— Making the disciplinary response more flexible and diverse, with adaptable measures that can be tailored to the circumstances of the minor, in line with the conditions and progress made in treatment or in the application of the measure, as alternatives to detention.

— Giving young offenders the same rights and guarantees as adults in criminal proceedings (a fair and impartial hearing).

— Putting the official social control bodies involved in the juvenile justice system on a professional, specialist footing. In this context, specialised training should be provided for all those involved in the administration of justice for minors (police, judges, public prosecutors, lawyers and professionals who carry out the various sanctions).

4. **New trends in juvenile justice**

4.1 Alternatives do exist for dealing with juvenile delinquency, other than traditional detention arrangements. There is an international trend towards additional or complementary systems which allow minors to be treated more effectively and in a way that it is more beneficial to their personal and socio-professional development, while not excluding detention when unavoidable.

4.2 Good European practices in the field of juvenile justice fall into three main areas: prevention, educational treatment in the local community or centres, and socio-occupational integration.

4.2.1 Apart from prevention, which is discussed above, educational treatment should preferably be provided using resources or institutions belonging to the same social environment as the minors concerned, with the aim of equipping them with educational skills or requirements the lack of which caused them to come into conflict with the criminal law in the first place. These minors must be subject to thorough examination by specialists in a range of fields in order to identify educational gaps and determine how to provide them with skills which can reduce the risk of re-offending. Similarly, work needs to be done with the families, to ensure their cooperation and commitment in the process of educating and re-socialising these minors.

4.2.2 Furthermore, young offenders — together with other groups such as disabled people, ethnic minorities, the elderly, etc. — often belong to groups which are or may become socially excluded: their particular needs and difficulties, outlined above, mean that they require targeted help in achieving personal self-sufficiency. Otherwise, they are headed for failure and the ensuing inability to integrate into their environment, increasing the risk of re-offending and eventually being caught up in the adult criminal justice system.

4.2.3 These young people therefore need to be helped and guided in the process of integration using a wide variety of different paths (integration in social, cultural and linguistic terms, for example). There is no single path which can guarantee the social integration of young offenders, and neither are there any foolproof mechanisms to ensure that a fully-integrated person may not commit antisocial acts. However, there is broad agreement in viewing employment as a key means for drawing young offenders into the sphere of economic and social integration and stability.

4.3 With regard to the development of juvenile justice systems, and reflecting the points made in 3.2 and 3.3 above, it should be noted that, in response to the concept of **retributive justice** (paying for damage caused), the justice system has begun to be seen as a **reparative or restorative system** as a result of shift of emphasis in criminological policy towards the victim (victimology) and restoring a role to victims in the penal process. Restorative justice offers a paradigm for an approach which encompasses the victim, the perpetrator and the community in seeking solutions to the consequences of the conflict caused by the offence. The aim is to encourage reparation for the harm done, to reconcile the parties and strengthen a feeling of collective security. Restorative justice seeks to safeguard the interests of, on the one hand, the victim (with the offender having to recognise the harm done to the victim and to try to provide redress) and, on the other, the community (with the aim of ensuring the rehabilitation of the offender, preventing re-offending and cutting the costs of criminal proceedings) together with the offender (who in this way is not drawn into the criminal justice circuit and whose constitutional guarantees are upheld).

4.4 For offenders, reparation has a specific educational impact in that it prompts them to reflect upon their own guilt by bringing them face-to-face with victims. This may deter them from similar behaviour in the future. It therefore represents an ideal model for the juvenile justice system since it produces little stigmatisation, is highly educational and is less punitive.

4.5 In short, in the last twenty years, the procedures, type of correctional measures and sentences have undergone significant changes in the field of juvenile justice. Non-punitive measures are gaining ground, such as community service, compensation and reparation, mediation with the victim or the community, professional, practical training or special treatment for drug addiction or for other types of addiction, such as alcoholism. This type of measure requires supervision and constant monitoring of the progress and achievements of the minor. These measures are being used more and more frequently, and often take the form of open or semi-open detention, supervision and constant monitoring, probation, electronic tagging, etc., or a combination of several measures. In spite of this, deprivation of liberty, in a detention centre or jail, continues to be a very commonly used method.

4.6 Conversely, the public impact of new phenomena which have been emerging, particularly in major European cities (organised crime, gangs of youths, vandalism in public places, violence in sport, bullying in schools, violence against parents, extremist groups and xenophobic behaviour, linkage between new forms of crime and migration, drug addiction, etc.), has in recent years led some European countries to ***toughen up*** juvenile criminal law, increasing the maximum sentences applicable and bringing in various forms of custody in secure detention centres, and even holding parents responsible for certain offences on the part of their children.

4.6.1 In this context, it is worth noting the reforms to juvenile criminal law introduced in the Netherlands in 1995 and France in 1996, together with the 1994 UK Criminal Justice and Public Order Act, which increased from one to two years the maximum sentence applicable to minors aged between 15 and 18, and introduced six to 24 month custodial sentences for minors aged between 12 and 14. 'Parenting orders' were also introduced, requiring parents of minors who have committed crimes or played truant to attend weekly courses for up to three months. Parents who repeatedly fail to fulfil their educational duties can be fined up to GBP 1 000.

4.6.2 The problem with measures of this sort is that they remove the burden of responsibility from minors who, according to the modern responsibility-oriented approaches of criminal law, should be the ones called upon to compensate or repair the damage caused. Moreover, in some circumstances, parents (especially those with few economic resources and, consequently, less opportunity to provide their children with care and supervision) can find themselves being unfairly punished if they are unable to produce evidence clearing them of any responsibility. What parents actually need is help in bringing up their children properly, rather than having blame undeservedly heaped on their shoulders.

4.6.3 Some countries are seeing a return to concepts that were considered outdated in the 1980s, such as detention in secure centres, which are also used to provide welfare assistance to unprotected minors. In other words, a return to mixing minors coming under the welfare system with those coming under the juvenile justice system.

5. **Current treatment within the EU**

5.1 Although the Council of Europe has already specifically addressed the issue of Juvenile Justice on various occasions (particularly in the abovementioned Recommendation No. R (87) 20 of the Committee of Ministers of the Council of Europe on Social reactions to juvenile delinquency, and, more recently, in Recommendation Rec(2003) 20 of the Committee of Ministers on New ways of dealing with juvenile delinquency and the role of juvenile justice ([6])), the same cannot be said of the EU institutions, which have only touched on the matter when dealing with other issues such as crime prevention.

5.2 The basic texts of the European Union and of the European Community provide two approaches to this subject: Title VI of the Treaty on European Union (TEU), on *Provisions on police and judicial cooperation in criminal matters*; and Title XI of the Treaty establishing the European Community (TEC), on *Social policy, education, vocational training and youth*.

5.2.1 Police and judicial cooperation in criminal matters should be governed by Articles 29 *et seq* of the TEU, which set out to provide citizens with a high level of safety within an area of freedom, security and justice. These provisions lay down channels for intergovernmental cooperation in criminal matters at police and judicial level, including aspects such as preventing and combating crime, whether organised or not. In this regard, on 30 April 2004 the Commission presented its *Green Paper on the approximation, mutual recognition and enforcement of criminal sanctions in the European Union*. The purpose of the Commission's consultation paper is to analyse whether the existence of different systems across the EU raises problems for judicial cooperation between the Member States, and to identify barriers to the implementation of the mutual recognition principle. The document makes no reference to juvenile delinquency or juvenile justice systems, but there would be no obstacle to applying the objectives — which are listed in the introduction — such as custodial and alternative sentences, together with mediation, to these aspects.

5.2.2 At this stage, it is also worth mentioning the AGIS framework programme ([7]) adopted by the European Commission on 22 July 2002. The programme promotes police, customs and judicial cooperation and supports the work of professionals in order to help implement European policy in this field. A number of initiatives on mutual recognition of legislation and best practice in the area of juvenile delinquency and justice systems have been launched under the programme.

([6]) Other examples could include Resolution (66) 25 on the short-term treatment of young offenders of less than 21 years, Resolution (78) 62 on juvenile delinquency and social change, Recommendation (88) 6 on social reactions to juvenile delinquency among young people coming from migrant families and Recommendation (2000) 20 on role of early psychosocial intervention in the prevention of criminality.

([7]) This programme continues and extends the work of the earlier programmes operating under Title VI: *Grotius II – Criminal, Oisin II, Stop II, Hippokrates and Falcone*.

5.2.3 In connection with Title VI TEU, mention should also be made of the Council Decision of 28 May 2001 setting up a *European Crime Prevention Network* ([8]), which covers all types of crime but focuses particularly on juvenile ([9]), urban and drug-related crime.

5.2.4 With regard to social policy, education, vocational training and youth, Article 137 TEC highlights the activities of Community bodies in order to further the integration of persons excluded from the labour market and the combating of social exclusion. Echoing the points made above, socio-occupational integration is without question one of the two key elements in preventing and combating juvenile delinquency. A large number of strategies, agendas, projects and programmes have been adopted in this sphere by successive European Councils and by the Community institutions, some of which are referred to in point 1.2 above. Prominent among these, on account of its closer links with young offenders, is the *Action Programme to Combat Discrimination* ([10]), which comes under Objective 1 of the European Social Fund.

5.3 For its part, the European Parliament has — albeit in outline form — scheduled various measures in the field of protection of minors and has adopted a number of resolutions, including the *European Charter of the Rights of the Child*, adopted by the European Parliament in Resolution A3-0172/1992 of 8 July 1992. Points 8.22 and 8.23 of the Charter lay down a series of safeguards for minors caught up in criminal proceedings, together with the principles and criteria which should govern any sanctions which may be imposed and the resources which should be brought to bear on dealing with young offenders.

6. **The utility of a European frame of reference on juvenile justice**

6.1 As pointed out above, juvenile delinquency is a concern for many European citizens. Furthermore, there is a clear awareness that this is a common problem for European countries, and that it would be useful for it to be dealt with by the EU institutions. This was reflected in the Eurobarometer of 2001 (the first to cover internal security in Member States). According to the survey, 45 % of European citizens feel that policy to prevent juvenile delinquency should be a joint matter for national authorities and EU institutions.

6.2 As pointed out earlier, the UN and the Council of Europe have already established a number of international standards regarding juvenile delinquency and juvenile justice systems. However, they have little or no binding force (with the exception of the Convention on the Rights of the Child, mentioned earlier), and simply bring together a series of minimum rules for the entire international community. Using these rules as a starting point, the EU — given its level of development and greater internal homogeneity — should actively aspire to improve upon internationally-established principles and make them more effective within its own territory.

6.3 Moreover, each of the EU countries could, when drawing up their policies for dealing with the various aspects of juvenile delinquency — prevention, justice, protection and integration — benefit from the experiences and best practices of the other Member States. All the more so since there is a growing similarity between the various causes and outward signs of juvenile delinquency in these countries (drug addiction, racist behaviour, sports-related violence, use of new technologies for criminal purposes, urban vandalism, etc.).

6.4 Similarly, factors arising from on-going European integration, such as the removal of border controls and free movement of persons, give further backing to the idea of common rules on the juvenile justice system: young people can move freely between Community countries, not to mention border regions, which extend for thousands of kilometres between the 25 Member States. Greater homogeneity and/or coordination between relevant national laws and policies could prevent or reduce some risks or new situations generated by this greater mobility (such as, for example, the possibility of a young offender living in one country being convicted for an offence committed in another EU country).

6.5 Furthermore, since countries often use their juvenile justice systems as a test bench for future reforms to adult criminal law systems, the coordination and approximation of juvenile justice systems could, in turn, help to bring national criminal law systems closer. As mentioned earlier, this objective is already one of the EU's aims, and significant progress has already been made (Eurowarrant, mutual recognition and implementation of sentences, etc.). In addition, in the field of

([8]) OJ L 153 of 8.6.2001.

([9]) An example of the work being carried out by the European Crime Prevention Network is *A review of the knowledge on juvenile violence: trends, policies and responses in the EU Member States*, Fitzgerald, Stevens and Hale, 2004.

([10]) An example its application to the juvenile justice system: in Spain the NGO *Fundación Diagrama* (a body which manages custodial sentences imposed by courts on young offenders in many of the country's autonomous regions) co-manages an operational programme with the regional authorities targeting young people who are serving, or have served, custodial sentences or measures imposed by the juvenile justice system. The aim of the programme is to mark out a personalised and comprehensive roadmap to entry into society and employment for these young people, beginning even before they are released from the detention centre. The programme is achieving significant results.

juvenile delinquency legislation is relatively recent (the oldest dating from the early 20th century), meaning that launching a process of alignment would not arouse as much reluctance or cause as many difficulties as it would in the adult criminal justice systems, that have a long history in which deep-rooted historical, cultural and legal factors have all played a part.

6.6 Similarly, it is important to recognize the effect that a Community frame of reference could have in limiting or preventing regressive trends in the treatment of juvenile delinquency and the juvenile criminal justice system that, as mentioned above, are apparent in certain EU Member States.

6.7 Clearly, from both the preventive/social angle and the repressive/judicial angle, the common phenomena in this area in EU countries underscore the need for a joint framework to deal with this issue. Indeed, the Council of Europe has called for this in its Recommendation Rec(2003)20, signalling *'the need for separate and distinct European rules on community sanctions and measures and European prison rules for juveniles'*.

7. **Proposals on a European juvenile justice policy**

7.1 The above points suggest the following **general lines of approach**:

7.1.1 All the EU Member States are, to varying extents, witnessing roughly similar phenomena which also require comparable responses: breakdown in the traditional instruments of informal social control (family, school, work), the emergence of ghettoes in major urban centres where a significant proportion of the population is at risk of social exclusion, new forms of juvenile delinquency (violence at home and at school, youth gangs, urban vandalism), drug and alcohol abuse, etc.

7.1.2 The youth justice models of the EU Member States have gradually been converging since the 1970-1980s, following the appearance of the international legal instruments mentioned in point 3.2.1 above. The *responsibility* model, generally combined with *restorative* or *reparative justice*, is spreading. However, significant differences between Member States persist (prominent among them the age of juvenile criminal responsibility, as seen above).

7.1.3 A wide range of reasons, discussed in detail earlier in this document — similar socio-economic and political circumstances between the Member States, legal traditions which are sometimes very close and in others at least not irreconcilable, social policies impinging upon youth crime prevention which are already funded or supported by Community budgets — plead in favour of progressive uniformisation of models and systems for prevention, protection, action and treatment regarding juvenile delinquency and juvenile justice.

7.1.4 Lastly, several other factors support the idea of increased approximation, coordination and exchange:

7.1.4.1 Action on juvenile delinquency and juvenile justice is not restricted to the judicial sphere (where the differing legal models and traditions may constitute an obstacle), but seeks to be interdisciplinary and multi-institutional, bringing together other branches of knowledge — such as the social and behavioural sciences — and widely varying institutions, authorities and organisations (national, regional and local administrations, different kinds of social services, police and court structures, non-profit organisations, private companies working through corporate social responsibility projects, family associations, economic and social players, etc.), who often operate in an uncoordinated manner.

7.1.4.2 The information society, technological progress, the opening up of borders and other similar factors are certainly contributing significantly to the spread of the phenomena mentioned in point 7.1.1 above ([11]), although the simple 'copycat' effect of such behaviour should not be overlooked either (amplified by the broadcasting of events by the mass media): all these changes are occurring at breakneck pace, and European countries cannot afford to ignore them.

7.2 In the light of all the above, the EESC believes that the following steps should be taken to frame a Community policy on juvenile delinquency and the juvenile justice system:

7.2.1 Firstly, it is essential to have **up-to-date, comparable statistical data** on the state of juvenile delinquency in the EU-25, to provide a reliable picture of the problem, its real dimensions and how to tackle it, taking into account — amongst other variables — possible differences between young male and female offenders.

7.2.2 From the quality point of view, the Committee is convinced that there should be a series of **minimum standards or guidelines** between the Member States covering all aspects from the way the police and courts deal with young people in conflict with the criminal law right through to reeducation and resocialisation. These standards should take the principles laid down in the Convention on the Rights of the Child, especially Articles 37 and 40, and the international guidelines contained in the conventions cited in point 3.2.1 above, as a starting-point for further detailed developments and implementation.

([11]) It is worth pointing to the apparently important role played in the disturbances in French cities in November 2005, of chat services, e-mail, blogs, mobile phones, etc.

7.2.3 The first step in preparing these minimum standards would be to gain the most detailed knowledge possible of the different situations and experiences in each of the Member States. There could be different ways of doing this, but one might be to gather information through surveys sent to all the Member States, and supplemented later by meetings of groups of experts and professionals in the field to exchange experiences and best practices. These meetings could be put on a stable footing, setting up an **expert network**, with membership and functions tailored to the specific objective in view. It would also be helpful for the Commission to publish a **green paper** on the subject, in order to target reflection and debate more accurately, and to reach as many institutions, organisations and individuals as possible.

7.2.4 In conjunction with the above measures, or at least as the next step in furthering mutual knowledge and convergence between juvenile justice models in the Member States, a **European observatory** on juvenile delinquency should be created. This would facilitate not only the study of the issue, but would also help to disseminate the results and provide advice and support for the appropriate authorities and institutions in their decision-making. In other words, it must be ensured that the results of these research and study efforts do not remain purely academic, but help in the adoption of practical policies and strategies ([12]).

7.3 Without prejudice to the above, and given that the various issues which touch upon juvenile delinquency and the juvenile justice system are dealt with individually by various **European Union policies** (freedom, justice and security; youth; education and training; employment and social affairs), there is a need for **operational coordination** between all the services and agencies involved so that juvenile delinquency can be addressed on an interdisciplinary and multi-institutional basis best suited to it, as indicated several times in the present opinion.

7.4 In view of the specific features of juvenile delinquency, together with its inherently dynamic and changing character, it is essential that all those working with the young people involved — judges, prosecutors, lawyers, police officers, officials, mediators, social workers, probation workers, etc. — receive the most specialist, and constantly up-dated, training possible. The Community institutions have a key role to play in this respect, through the instruments outlined above (expert networks, observatory, etc.) and others such as exchange programmes for professionals between Member States, networking, new distance training methods such as e-learning, etc. Community programmes should be introduced to try to provide these specific training needs. Moreover, any advances made in the field of juvenile justice in the EU would boost the status of this area of knowledge and encourage the development of specialist research in European universities, which must be brought into the entire process.

7.5 Similarly, given that the issue has an obvious social and civic dimension, care should be taken not to overlook all directly relevant civil society organisations and professionals in the process ('third sector' bodies, associations, families, NGOs, etc.), since they can contribute to shaping and subsequently implementing whatever programmes and strategies are introduced within the EU.

7.6 With regard to the social integration and re-integration of minors and young offenders — the third foundation mentioned in point 1.1 — any future Community policies will also have to take account of the role of trade union and employers' organisations and their specific channels for dialogue when mapping out paths towards the socio-occupational integration and re-integration of socially-excluded minors. All the relevant players must therefore be committed, since socio-occupational integration is one of the vital means of re-integrating these minors into society.

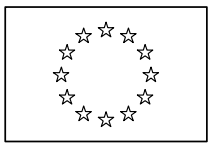
7.7 Lastly, the EESC is aware that if all these policies are to be carried forward, they must be matched by budget resources. The European Commission should therefore introduce budget lines to assist in protecting minors and preventing juvenile delinquency, and to deal with young offenders, through either existing projects or initiatives (such as those aimed at eliminating social exclusion and supporting young people's integration into society and employment) ([13]), or programmes specifically designed for the purpose.

Brussels, 15 March 2006.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

([12]) A European Parliament Proposal for a Resolution (B5-0155/2003) for the establishment of a European juvenile delinquency monitoring centre was presented by a large group of MEPs as far back as 21 February 2003,.

([13]) Examples of such projects and programmes currently under way are AGIS, Daphne II, Equal and the Action programme to combat discrimination.



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4.7.2006
COM(2006) 367 final

COMMUNICATION FROM THE COMMISSION

Towards an EU Strategy on the Rights of the Child

{SEC(2006) 888}
{SEC(2006) 889}

COMMUNICATION FROM THE COMMISSION

Towards an EU Strategy on the Rights of the Child

I. ISSUES AT STAKE

This Communication proposes to establish a comprehensive EU strategy to effectively promote and safeguard the rights of the child in the European Union's internal and external policies and to support Member States' efforts in this field. Children, understood here as persons below the age of 18, as in the UN Convention on the Rights of the Child[1] (UNCRC), make up one third of the world's population.

I.1. Children's rights – a priority for the EU

Children's rights form part of the human rights that the EU and the Member States are bound to respect under international and European treaties, in particular the UNCRC and its Optional Protocols[2], including also the Millennium Development Goals[3]; and the European Convention on Human Rights[4] (ECHR). The EU explicitly recognised children's rights in the European Charter of Fundamental Rights[5], specifically in Article 24.

The Commission identified children's rights as one of its main priorities in its Communication on Strategic Objectives 2005-2009: "*A particular priority must be effective protection of the rights of children, both against economic exploitation and all forms of abuse, with the Union acting as a beacon to the rest of the world*"[6]. In this context, the Group of Commissioners on Fundamental Rights, Non-discrimination and Equal Opportunities decided in April 2005 to launch a specific initiative to advance the promotion, protection and fulfilment of children's rights in the internal and external policies of the EU.

In March 2006, the European Council requested the Member States "*to take necessary measures to rapidly and significantly reduce child poverty, giving all children equal opportunities, regardless of their social background*".

This communication gives effect to these decisions.

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1 Convention on the Rights of the Child of 20 November 1989. Full text available at http://www.unicef.org/crc/crc.htm.

2 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; UN Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

3 UN General Assembly, United Nations Millennium Declaration, Fifty-fifth session, 18 September 2000

4 Full text available at http://www.echr.Council of Europe.int/ECHR/EN/Header/Basic+Texts.

5 Charter of Fundamental Rights of the European Union (OJ C 364 of 18.12.2000), available at http://europa.eu.int/comm/justice_home/unit/charte/index_en.html.

6 Strategic objectives 2005-2009. Europe 2010: A Partnership for European Renewal, Prosperity, Solidarity and Security - COM(2005) 12, 26.1.2005.

I.2. The situation of children's rights in the EU and globally

Children are vested with the full range of human rights. It is, however, vital that children's rights be recognised as a self-standing set of concerns and not simply subsumed into wider efforts to mainstream human rights in general. This is appropriate since certain rights have an exclusive or particular application to children, for example the right to education and the right to maintain relations with both parents. Also, the almost universal acceptance by States of obligations in the field of children's rights provides a particularly robust basis for engagement between the European Commission and non-EU countries: an advantage which does not apply to all human rights issues. Finally, the EU has clearly identified the promotion of children's rights as a separate issue meriting specific action.

The rights and the needs of the child should be seen together: respecting and promoting the rights of all children should go hand in hand with the necessary action to address their basic needs.

Its worth to highlight that the European integration has been proven to be a success story in addressing rights and needs of children, if compared to the dramatic situation in many other parts of the world. However the situation within the Union is still not satisfactory. The new challenges linked to globalisation and the demography risk undermining the European way of life if not decisively addressed. These could have significant repercussions on the situation of children in Europe. Therefore the idea of creating children friendly societies within the EU can not be separated from the need to further deepen and consolidate European integration.

I.3. Legal basis for an EU strategy

Under the Treaties and the case law of the Court of Justice[7], the EU does not have general competence in the area of fundamental rights, including children's rights. However, under Article 6.2 of the Treaty on the European Union (TEU), the EU must respect fundamental rights in whatever action it takes in accordance with its competences. These rights include in particular the ECHR, which contains provisions concerning children's rights. Moreover, the provisions of the UNCRC must be taken fully into account. The Charter of Fundamental Rights, independently of its legal status, may be seen as a particularly authentic expression of fundamental rights guaranteed as general principles of law.

The EU's obligation to respect fundamental rights, including children's rights, implies not only a general duty to abstain from acts violating these rights, but also to take them into account wherever relevant in the conduct of its own policies under the various legal bases of the Treaties (mainstreaming). Moreover, notwithstanding the above-mentioned lack of general competence[8], various particular competencies under the Treaties do allow to take specific positive action to safeguard and promote children's rights. Any such action needs to respect the principles of subsidiarity and proportionality and must not encroach on the competence of the Member States. A number of different instruments and methods can be envisaged, including legislative action, soft-law, financial assistance or political dialogue.

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7 See, in particular, Opinion 2/94, 1996 ECR I-759.

8 See Article 51.2 of the Charter of Fundamental Rights.

I.4. The situation of children today

As highlighted during the 2002 UN Special Session on Children, an enormous gap exists between the good intentions of international treaties and the real-life conditions of poverty, neglect and exploitation that millions of children worldwide are forced to endure. In spite of progress achieved in some areas, much remains to be done[9].

From birth to adulthood, children have very different needs at different developmental stages of their lives. In the first five years, the child is particularly in need of protection and health care. From the age of 5 to 12 years, children are still in need of protection but also develop other needs: the right to education is obviously essential for children to be able to develop in society. As teenagers, children face new needs and responsibilities. Adolescents need, for example, to express their views on decisions which affect their lives. Moreover, parental poverty and social exclusion seriously limit the opportunities open to children and their access to their rights, thus compromising the future well-being of society as a whole. In addition, the place where children are living also influences their situation.

I.4.1. Global situation

Of the 2.2 billion children in the world, 86% live in developing countries and over 95% of the children dying before the age of five, lacking access to primary education or suffering forced labour or sexual abuse are also located in these countries. Over half of all mothers in the world lack adequate rights including care during pregnancy and childbirth. This situation handicaps the future of many children from the moment of birth.

During the first five years of life, one third of all children lack adequate food and develop some degree of malnutrition. This affects not only their health and chances of survival, but also their ability to learn and develop. Besides receiving inadequate nutrition, many children live in conditions with limited access to safe water, poor sanitation and indoor pollution and lack of access to adequate disease prevention and health care. As a result, over ten million children under five die every year from diseases which are easy to prevent or treat, and one billion children suffer impaired physical, intellectual and/or psychological development which is often irreversible.

One sixth of all children (predominantly girls) are not enrolled in primary school and will lack opportunities to learn, develop and integrate in society. Worldwide, some 218 million children can be found at work[10]. Over 5.7 million children (some even not yet adolescents) work under especially horrific circumstances, including virtual slavery of bonded labour, and an estimated 1.2 million children are victims of trafficking in human beings[11]. At any given time, some 300 000[12] are fighting as child soldiers in more than 30 armed conflicts all over the world.

An estimated 130 million girls and women worldwide have undergone Female Genital Mutilation, with another two million girls being affected each year, often through initiation rites at the break of adolescence. One third of all girls are subject to coercive sexual relations, one fifth are subjected to forced marriages[13] and some 14 million girls between the ages of 15 and 19 give birth each year.

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9 EU statement for the 57th UNGASS meeting, 2003.

10 The end of child labour: Within reach, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, report to the 95th session of the International Labour Conference, Geneva, 2006.

11 source : UNICEF.

12 Ibidem.

13 Source : UNIFEM.

Over one million adolescents became infected last year with HIV, two thirds of them girls. More than one million children worldwide live in detention as a result of conflict with the law and a large proportion lack the special attention and protection they need. There are also children who deserve particular attention to their rights and needs: over 200 million children live with serious disabilities and 140 million children are orphans, a number that is growing due to HIV/AIDS.

I.4.2. In the EU

Today, the EU is experiencing significant economic, political, environmental and social changes that also affect children. Children in the EU face a higher risk of relative poverty than the population as a whole (20% for children aged 0-15 and 21% for those aged 16-24, compared to 16% for adults). Children living with poor parents or who cannot live with their parents, as well as children from some ethnic communities, such as the Roma, are particularly exposed to poverty, exclusion and discrimination. Moreover, children – and poor children in particular – suffer disproportionately from environmental degradation. The EU has started to address these challenges when putting its strategy for more sustainable growth and more and better jobs on the top of the European agenda. Its success is a precondition for inclusive European societies in which also the rights and the needs of children of the present and of future generations are firmly anchored.

Issues of identity have also come to the fore across Europe in recent years. Alongside long-standing manifestations of all forms of racism, hostility towards and fear of 'outsiders' has become an increasingly worrying phenomenon in EU societies. Children from minorities are easy targets for such racism. Conversely, some children from majority populations may be readily swayed by the simplistic solutions presented by extremist politicians and parties.

Violence against children has been of increasing concern within the EU in recent years. It takes a range of forms, from violence in the family and in schools, to issues with a transnational dimension, including child trafficking and exploitation, child sex tourism and child pornography on the internet. Another challenge is to ensure that the rights of children as immigrants, asylum seekers and refugees are fully respected in the EU and in Member States' legislation and policies.

Over decades, more than 50% of the medicines used to treat children have not been tested and authorised for use on children, making it difficult to know whether the medicine will be truly effective and what the side effects may be. This probleme has now been addressed by the paediatric regulation, which will be adopted shortly.

II. WHY AN EU STRATEGY ON CHILDREN'S RIGHTS IS NEEDED

II.1. The added value of EU action

As stated above, children's rights are still far from being generally respected, and basic needs are not being met for each and every child within the EU.

The European Union can bring essential and fundamental added value in the field of children's rights. First of all, it can build on its long tradition and legal and political commitments with regard to human rights in general and children's rights in particular. It has the necessary weight and presence to push children's rights to the forefront of international agendas and can use its global presence and influence to effectively promote universal human rights at national level worldwide, particularly with regard to children. It can also promote and support attention to children's needs,

drawing on the European model of social protection and on its policy commitments and programmes in different fields.

The Union can support the Member States in their efforts, both by assisting them, in certain areas, in taking into account the rights of the child in their actions, and by providing a framework for mutual learning within which the Member States can identify and adopt the many good practices to be found across the Union. Such an approach, based on broad and coordinated action, would add value to the efforts of the Member States and would strengthen recognition of and respect for the principles of the UNCRC both within the Union and beyond.

There is thus an urgent need for a comprehensive EU strategy to increase the scale and effectiveness of EU commitments to improve the situation of children globally and to demonstrate real political will at the highest possible level to ensure that the promotion and protection of children's rights get the place they merit on the EU's agenda.

II.2. The EU response to date: steps already taken

The EU has made significant progress in this area in recent years and has developed various concrete policies and programmes on children's rights under different existing legal bases. These span both internal and external policies and cover a broad range of issues, such as child trafficking and prostitution, violence against children, discrimination, child poverty, social exclusion, child labour (including trade agreements committing to the abolition of child labour), health and education.

A non-exhaustive summary of EU actions affecting children's rights can be found in the Annex.

In particular, within the EU, the Commission and the Member States have given a high priority to the issue of child poverty under the Open Method of Coordination on Social Protection and Social Inclusion (OMC), which forms a framework for mutual learning between the Member States based on a series of common objectives and indicators, and the adoption of national strategies to promote access to and the quality of social protection systems.

The enlargement process is another powerful tool providing opportunities to promote children's rights. One of the criteria for membership of the EU is that the candidate country have achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and the protection of minorities. In the framework of these so-called political criteria identified by the European Council in Copenhagen in 1993, the Commission has, throughout the accession process, promoted the reform of child protection and closely monitored progress on children's rights in all the acceding and candidate countries.

The European neighbourhood policy as well as the strategic Partnership towards Russia are important tools to promote children's rights in the EU`s neighbourhood and first actions have already been launched.

II.3. The need for effectiveness

To maximise the value of EU action on children's rights, it is necessary to address a number of challenges, to produce:

- more comprehensive analysis of the needs and priorities and of the impact of relevant EU actions undertaken so far;

- more efficient mainstreaming of children's rights in EU policies, strategies or programmes and enhanced coordination within the European Commission;
- better cooperation with key stakeholders, including children;
- stronger communication and increased awareness of children's rights and of EU actions in this field.

III. TOWARDS AN EU STRATEGY ON THE RIGHTS OF THE CHILD

To tackle the above challenges, this Communication marks the Commission's launch of a long-term strategy to ensure that EU action actively promotes and safeguards children's rights and to support the efforts of the Member States in this field. The strategy is structured around seven specific objectives, each supported by a series of actions.

III.1. Specific objectives of the EU strategy on children's rights

1. Capitalising on existing activities while addressing urgent needs

The Commission will maximise the use of its existing policies and instruments, in particular the follow-up to the Communication on fighting trafficking in human beings[14] and the relevant Action Plan[15], the Open Method of Coordination on Social Protection and Social Inclusion, the strategic partnership with the International Labour Organisation to fight child labour and the EU Guidelines on children in armed conflicts[16]. The Commission will continue to fund specific projects promoting children's rights.

In external affairs, including in the pre-accession process and in the accession negotiations, the Commission will keep promoting the ratification and implementation of the UNCRC and its Optional Protocols, the ILO conventions on the elimination of the worst forms of child labour and the minimum age for admission to work, and other relevant international human rights instruments. It will address children's rights in political dialogue with third countries, including civil society and social partners, and use its other policy instruments and cooperation programmes to promote and address children's rights worldwide.

In the short term, and especially due to the urgency of certain challenges, the Commission will, in particular, take the following additional measures:

- *To attribute one single six digit telephone number (116xyz) within the EU for child helplines and one for child hotlines dedicated to missing and sexually exploited children (end 2006)*
- *To support the banking sector and credit cards companies to combat the use of credit cards when purchasing sexual images of children on the Internet (2006)*
- *To launch an Action Plan on Children in Development Cooperation to address children's priority needs in developing countries (2007)*
- *To promote a clustering of actions on child poverty in the EU (2007)*

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14 COM(2005) 514.
15 OJ C 311, 9.12.2005.
16 Council of the European Union document No 15634/03.

2. Identifying priorities for future EU action

To identify the main priorities for future action, the Commission will analyse the scope and causes of the barriers to children's full enjoyment of their rights. On this basis, it will assess the effectiveness of its existing action (legislative and non-legislative, internal and external) affecting children. This analysis will draw on existing initiatives (UNICEF, Council of Europe, ChildONEurope, etc.).

The assessment should be updated every five years and gradually tackle some critical areas, rather than attempting to cover all areas of relevance from the start. The update will be supported by data on children's rights by Eurostat, the Member States, the Council of Europe, the ChildONEurope network, and the future EU Agency on Fundamental Rights.

On the basis of this analysis, the Commission will launch a wide public consultation, including children, that will enable the EU to address children's rights in a comprehensive manner and to identify the main priorities for future action.

- *To assess the impact of the existing EU actions affecting children's rights (2007-2008)*
- *To issue a consultation document to identify future actions (2008)*
- *To collect comparable data on children's rights (2007 onwards)*

3. Mainstreaming children's rights in EU actions

It is important to ensure that all internal and external EU policies respect children's rights in accordance with the principles of EU law, and that they are fully compatible with the principles and provisions of the UNCRC and other international instruments. This process, commonly referred to as "mainstreaming", has already been pursued in a number of Community policies, e.g. gender equality and fundamental rights. The process will take into account work carried out under the Council of Europe Programme "Building a Europe for and with Children (2006-2008)" to effectively promote respect for children's rights and protect children against all forms of violence.

- *To mainstream children's rights when drafting EC legislative and non-legislative actions that may affect them (2007 onwards)*

4. Establishing efficient coordination and consultation mechanisms

The Commission will strengthen cooperation among the main stakeholders, making optimal use of existing networks and international organisations or bodies involved in children's rights. To this end, the Commission will bring the stakeholders together in a *European Forum for the Rights of the Child*. The Forum will include all the relevant stakeholders[17], and will contribute to the design and monitoring of EU actions and act as an arena for exchange of good practice.

The Commission will consider how it can replicate this mechanism in third countries where the EC Delegations could initiate systematic dialogue with international and national partners active in the field of children's rights.

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[17] Including the Member States, UN agencies, the Council of Europe, civil society and children themselves.

To increase the involvement of all relevant stakeholders, the Commission will set up a web-based discussion and work platform[18]. This platform will be a tool to promote and encourage the effective exchange of information using the available expertise in a given area. The members of the platform will have access to a library of documents and be able to launch discussions or surveys among members.

As recognised in Article 12 of the UNCRC, children need to express their views in dialogues and decisions affecting their lives. The Commission will promote and strengthen networking and children's representation in the EU and globally, and it will gradually and formally include them in all consultations and actions related to their rights and needs. The Forum and the web-based platform will both contribute to involving children.

Lastly, the Commission will improve coordination between its various actions to increase consistency and effectiveness by setting up a formal inter-service group on the rights of the child composed of designated contacts, who will be responsible to follow up the strategy. A Commission coordinator for the Rights of the Child will be appointed.

- *To bring together stakeholders in a European Forum for the Rights of the Child (2006)*
- *To set up a web-based discussion and work platform (2006)*
- *To involve children in the decision-making process (2007 onwards)*
- *To set up a Commission Inter-service Group and to appoint a coordinator for the rights of the child (2006)*

5. Enhancing capacity and expertise on children's rights

All actors involved in implementing and mainstreaming children's rights in internal and external Community policies should acquire the necessary knowledge and skills. To this end, the Commission will continue to make training available. In addition, practical tools such as guidance notes and instructions should be improved, distributed and used as training material.

- *To provide the necessary skills and tools to actors involved in mainstreaming children's rights in Community policies (2007 onwards)*

6. Communicating more effectively on children's rights

Children are able to exercise their rights only if they are properly aware of them and in a position to use them.

Children's rights in general, and EU action in this field, remain largely unpublicised. To raise awareness of these questions, the Commission will design a communication strategy on children's rights. This will help both children and their parents to improve their knowledge of children's

[18] With the SINAPSE e-Network (Scientific Information for Policy Support in Europe, http://europa.eu.int/sinapse/sinapse).

rights, and contribute to the dissemination of relevant experience and good practice among other interested parties.

Key EU measures with a direct impact on children's rights will be publicised in a child-friendly manner. To this end, the Commission will develop a child-friendly website, dedicated to children's rights, preferably in close cooperation with the Council of Europe, and linked to similar initiatives by, for example, Member States, the United Nations and civil society.

- *To design a communication strategy on children's rights (2007 onwards)*
- *To provide information on children's rights in a child-friendly manner (2007 onwards)*

7. Promoting the rights of the child in external relations

The European Union will continue and further enhance its active role in promoting the rights of the child in international forums and third country relations. The role and impact of the EU actions has been strengthened by good coordination and unified and coherent messages in the UN human rights forums.

The Union will continue to pay particular attention to the rights of girls and children belonging to minorities. The EU will also continue its ongoing work on children and armed conflict. The EU will also discuss the global study on violence against children which is currently conducted by the UN Secretary General's independent expert Paulo Sergio Pinheiro.

- *Continue and further enhance EU's active role in international forums to promote the rights of the child*

III.2 Resources and reporting

The Commission is committed to allocating the necessary human and financial resources to implement this strategy. Efforts will be made to secure the financial resources necessary to fund the actions proposed in this communication and the future strategy. To ensure the efficiency of programmes that affect children's rights, the Inter-service Group will pay due attention to possible synergies.

To increase transparency and monitor developments, a progress report will be presented every year.

IV. CONCLUSION

The Commission:

- will develop a comprehensive strategy to ensure that the European Union contributes to promoting and safeguarding children's rights in all its internal and external actions and supports the efforts of the Member States in this field;
- calls on the Member States, on the European institutions and on other stakeholders to take an active part in the development of this strategy and so to contribute to its success.

I

(Resolutions, recommendations and opinions)

RESOLUTIONS

COUNCIL

RESOLUTION OF THE COUNCIL

of 30 November 2009

on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings

(Text with EEA relevance)

(2009/C 295/01)

THE COUNCIL OF THE EUROPEAN UNION,

Whereas:

(1) In the European Union, the Convention for the Protection of Human Rights and Fundamental Freedoms (the 'Convention') constitutes the common basis for the protection of the rights of suspected or accused persons in criminal proceedings, which for the purposes of this Resolution includes the pre-trial and trial stages.

(2) Furthermore, the Convention, as interpreted by the European Court of Human Rights, is an important foundation for Member States to have trust in each other's criminal justice systems and to strengthen such trust. At the same time, there is room for further action on the part of the European Union to ensure full implementation and respect of Convention standards, and, where appropriate, to ensure consistent application of the applicable standards and to raise existing standards.

(3) The European Union has successfully established an area of freedom of movement and residence, which citizens benefit from by increasingly travelling, studying and working in countries other than that of their residence. However, the removal of internal borders and the increasing exercise of the rights to freedom of movement and residence have, as an inevitable consequence, led to an increase in the number of people becoming involved in criminal proceedings in a Member State other than that of their residence. In those situations, the procedural rights of suspected or accused persons are particularly important in order to safeguard the right to a fair trial.

(4) Indeed, whilst various measures have been taken at European Union level to guarantee a high level of safety for citizens, there is an equal need to address specific problems that can arise when a person is suspected or accused in criminal proceedings.

(5) This calls for specific action on procedural rights, in order to ensure the fairness of the criminal proceedings. Such action, which can comprise legislation as well as other measures, will enhance citizens' confidence that the European Union and its Member States will protect and guarantee their rights.

(6) The 1999 Tampere European Council concluded that, in the context of implementing the principle of mutual recognition, work should also be launched on those aspects of procedural law on which common minimum standards are considered necessary in order to facilitate the application of the principle of mutual recognition, respecting the fundamental legal principles of Member States (Conclusion 37).

(7) Also, the 2004 Hague Programme states that further realisation of mutual recognition as the cornerstone of judicial cooperation implies the development of equivalent standards of procedural rights in criminal proceedings, based on studies of the existing level of safeguards in Member States and with due respect for their legal traditions (point III 3.3.1).

(8) Mutual recognition presupposes that the competent authorities of the Member States trust the criminal justice systems of the other Member States. For the purpose of enhancing mutual trust within the European Union, it is important that, complementary to the Convention, there exist European Union standards for the protection of procedural rights which are properly implemented and applied in the Member States.

(9) Recent studies show that there is wide support among experts for European Union action on procedural rights, through legislation and other measures, and that there is a need for enhanced mutual trust between the judicial authorities in the Member States ([1]). These sentiments are echoed by the European Parliament ([2]). In its Communication for the Stockholm programme ([3]), the European Commission observes that strengthening the rights of defence is vital in order to maintain mutual trust between the Member States and public confidence in the European Union.

(10) Discussions on procedural rights within the context of the European Union over the last few years have not led to any concrete results. However, a lot of progress has been made in the area of judicial and police cooperation on measures that facilitate prosecution. It is now time to take action to improve the balance between these measures and the protection of procedural rights of the individual. Efforts should be deployed to strengthen procedural guarantees and the respect of the rule of law in criminal proceedings, no matter where citizens decide to travel, study, work or live in the European Union.

(11) Bearing in mind the importance and complexity of these issues, it seems appropriate to address them in a step-by-step approach, whilst ensuring overall consistency. By addressing future actions, one area at a time, focused attention can be paid to each individual measure, so as to enable problems to be identified and addressed in a way that will give added value to each measure.

(12) In view of the non-exhaustive nature of the catalogue of measures laid down in the Annex to this Resolution, the Council should also consider the possibility of addressing the question of protection of procedural rights other than those listed in that catalogue.

(13) Any new EU legislative acts in this field should be consistent with the minimum standards set out by the Convention, as interpreted by the European Court of Human Rights,

HEREBY ADOPTS THE FOLLOWING RESOLUTION:

1. Action should be taken at the level of the European Union in order to strengthen the rights of suspected or accused persons in criminal proceedings. Such action can comprise legislation as well as other measures.

2. The Council endorses the 'Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings' (hereinafter referred to as 'the Roadmap'), set out in the Annex to this Resolution, as the basis for future action. The rights included in this Roadmap, which could be complemented by other rights, are considered to be fundamental procedural rights and action in respect of these rights should be given priority at this stage.

3. The Commission is invited to submit proposals regarding the measures set out in the Roadmap, and to consider presenting the Green Paper mentioned under point F.

4. The Council will examine all proposals presented in the context of the Roadmap and pledges to deal with them as matters of priority.

5. The Council will act in full cooperation with the European Parliament, in accordance with the applicable rules, and will duly collaborate with the Council of Europe.

([1]) See inter alia the 'Analysis of the future of mutual recognition in criminal matters in the European Union', report of 20 November 2008 by the *Université Libre de Bruxelles*.

([2]) See e.g. the 'European Parliament recommendation of 7 May 2009 to the Council on development of an EU criminal justice area', 2009/2012(INI), point 1 (a).

([3]) 'An area of freedom, security and justice serving the citizen', COM(2009) 262/4 (point 4.2.2).

ANNEX

ROADMAP FOR STRENGTHENING PROCEDURAL RIGHTS OF SUSPECTED OR ACCUSED PERSONS IN CRIMINAL PROCEEDINGS

The order of the rights indicated in this Roadmap is indicative. It is emphasised that the explanations provided below merely serve to give an indication of the proposed action, and do not aim to regulate the precise scope and content of the measures concerned in advance.

Measure A: Translation and Interpretation

Short explanation:

The suspected or accused person must be able to understand what is happening and to make him/herself understood. A suspected or accused person who does not speak or understand the language that is used in the proceedings will need an interpreter and translation of essential procedural documents. Particular attention should also be paid to the needs of suspected or accused persons with hearing impediments.

Measure B: Information on Rights and Information about the Charges

Short explanation:

A person that is suspected or accused of a crime should get information on his/her basic rights orally or, where appropriate, in writing, e.g. by way of a Letter of Rights. Furthermore, that person should also receive information promptly about the nature and cause of the accusation against him or her. A person who has been charged should be entitled, at the appropriate time, to the information necessary for the preparation of his or her defence, it being understood that this should not prejudice the due course of the criminal proceedings.

Measure C: Legal Advice and Legal Aid

Short explanation:

The right to legal advice (through a legal counsel) for the suspected or accused person in criminal proceedings at the earliest appropriate stage of such proceedings is fundamental in order to safeguard the fairness of the proceedings; the right to legal aid should ensure effective access to the aforementioned right to legal advice.

Measure D: Communication with Relatives, Employers and Consular Authorities

Short explanation:

A suspected or accused person who is deprived of his or her liberty shall be promptly informed of the right to have at least one person, such as a relative or employer, informed of the deprivation of liberty, it being understood that this should not prejudice the due course of the criminal proceedings. In addition, a suspected or accused person who is deprived of his or her liberty in a State other than his or her own shall be informed of the right to have the competent consular authorities informed of the deprivation of liberty.

Measure E: Special Safeguards for Suspected or Accused Persons who are Vulnerable

Short explanation:

In order to safeguard the fairness of the proceedings, it is important that special attention is shown to suspected or accused persons who cannot understand or follow the content or the meaning of the proceedings, owing, for example, to their age, mental or physical condition.

Measure F: A Green Paper on Pre-Trial Detention

Short explanation:

The time that a person can spend in detention before being tried in court and during the court proceedings varies considerably between the Member States. Excessively long periods of pre-trial detention are detrimental for the individual, can prejudice the judicial cooperation between the Member States and do not represent the values for which the European Union stands. Appropriate measures in this context should be examined in a Green Paper.

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COUNCIL

THE STOCKHOLM PROGRAMME — AN OPEN AND SECURE EUROPE SERVING AND PROTECTING CITIZENS

(2010/C 115/01)

TABLE OF CONTENTS

1. TOWARDS A CITIZENS' EUROPE IN THE AREA OF FREEDOM, SECURITY AND JUSTICE

The European Council reaffirms the priority it attaches to the development of an area of freedom, security and justice, responding to a central concern of the peoples of the States brought together in the Union.

Building on the achievements of the Tampere and Hague Programmes, significant progress has been achieved to date in this field. Internal border controls have been removed in the Schengen area and the external borders of the Union are now managed in a more coherent manner. Through the development of the Global Approach to Migration, the external dimension of the Union's migration policy focuses on dialogue and partnerships with third countries, based on mutual interests. Significant steps have been taken towards the creation of a European Asylum System. European agencies such as Europol, Eurojust, the European Union Agency for Fundamental Rights and Frontex have reached operational maturity in their respective fields of activity. Cooperation in civil matters is facilitating the everyday life of citizens and cooperation in law enforcement provides enhanced security.

In spite of these and other important achievements in the area of freedom, security and justice Europe still faces challenges. These challenges must be addressed in a comprehensive manner. Further efforts are thus needed in order to improve coherence between policy areas. In addition, cooperation with partner countries should be intensified.

It is therefore time for a new agenda to enable the Union and its Member-States to build on these achievements and to meet future challenges. To this end the European Council has adopted this new multiannual programme to be known as the Stockholm Programme, for the period 2010-2014.

The European Council welcomes the increased role that the European Parliament and National Parliaments will play following the entry into force of the Lisbon Treaty [1]. Citizens and representative associations will have greater opportunity to make known and publicly exchange their views in all areas of Union action in accordance with Article 11 TEU. This will reinforce the open and democratic character of the Union for the benefit of its people.

The Treaty facilitates the process of reaching the goals outlined in this programme, both for the Union institutions and for the Member States. The role of the Commission in preparing initiatives is confirmed, as is the right for a group of at least seven Member States to submit legislative proposals. The legislative process is improved by the use, in most sectors, of the codecision procedure, thereby granting full involvement of the European Parliament. National Parliaments will play an increasing role in the legislative process. By enhancing also the role of the Court of Justice, the Treaty will improve Europe's ability to fully implement policy in this area and ensure the consistency of interpretation.

All opportunities offered by the Lisbon Treaty to strengthen the European area of freedom, security and justice for the benefit of the citizens of the Union should be used by the Union institutions.

This programme defines strategic guidelines for legislative and operational planning within the area of freedom, security and justice in accordance with Article 68 TFEU.

1.1. Political priorities

The European Council considers that the priority for the coming years will be to focus on the interests and needs of citizens. The challenge will be to ensure respect for fundamental rights and freedoms and integrity of the person while guaranteeing security in Europe. It is of paramount importance that law enforcement measures, on the one hand, and measures to safeguard individual rights, the rule of law and international protection rules, on the other, go hand in hand in the same direction and are mutually reinforced.

All actions taken in the future should be centred on the citizen of the Union and other persons for whom the Union has a responsibility. The Union should, in the years to come, work on the following main priorities:

Promoting citizenship and fundamental rights: European citizenship must become a tangible reality. The area of freedom, security and justice must, above all, be a single area in which fundamental rights and freedoms are protected. The enlargement of the Schengen area must continue. Respect for the human person and human dignity and for the other rights set out in the Charter of Fundamental Rights of the European Union and the European Convention for the protection of Human Rights and fundamental freedoms are core values. For example, the exercise of these rights and freedoms, in particular citizens' privacy, must be preserved beyond national borders, especially by protecting personal data. Allowance must be made for the special needs of vulnerable people. Citizens of the Union and other persons must be able to exercise their specific rights to the fullest extent within, and even, where relevant, outside the Union.

A Europe of law and justice: The achievement of a European area of justice must be consolidated so as to move beyond the current fragmentation. Priority should be given to mechanisms that facilitate access to justice, so that people can enforce their rights throughout the Union. Training of and cooperation between public professionals should also be improved, and resources should be mobilised to eliminate barriers to the recognition of legal decisions in other Member States.

[1] As it is commonly known. The Union is actually founded on two Treaties: the Treaty on European Union (TEU) and the Treaty of the Functioning of the European Union (TFEU). For ease of reading, the 'Lisbon Treaty' or 'the Treaty' will sometimes be used in the Programme.

A Europe that protects: An internal security strategy should be developed in order to further improve security in the Union and thus protect the lives and safety of citizens of the Union and to tackle organised crime, terrorism and other threats. The strategy should be aimed at strengthening cooperation in law enforcement, border management, civil protection, disaster management as well as judicial cooperation in criminal matters in order to make Europe more secure. Moreover, the Union needs to base its work on solidarity between Member States and make full use of Article 222 TFEU.

Access to Europe in a globalised world: Access to Europe for businessmen, tourists, students, scientists, workers, persons in need of international protection and others having a legitimate interest to access the Union's territory has to be made more effective and efficient. At the same time, the Union and its Member States have to guarantee security for their citizens. Integrated border management and visa policies should be construed to serve these goals.

A Europe of responsibility, solidarity and partnership in migration and asylum matters: The development of a forward-looking and comprehensive Union migration policy, based on solidarity and responsibility, remains a key policy objective for the Union. Effective implementation of all relevant legal instruments needs to be undertaken and full use should be made of relevant Agencies and Offices operating in this field. Well-managed migration can be beneficial to all stakeholders. The European Pact on Immigration and Asylum provides a clear basis for further development in this field. Europe will need a flexible policy which is responsive to the priorities and needs of Member States and enables migrants to take full advantage of their potential. The objective of establishing a common asylum system in 2012 remains and people in need of international protection must be ensured access to legally safe and efficient asylum procedures. Moreover, in order to maintain credible and sustainable immigration and asylum systems in the Union, it is necessary to prevent, control and combat illegal immigration as the Union faces increasing pressure from illegal migration flows, and particularly the Member States at its external borders, including at its Southern borders in line with the conclusions of the European Council of October 2009.

The role of Europe in a globalised world — the external dimension: The importance of the external dimension of the Union's policy in the area of freedom, security and justice underlines the need for increased integration of these policies into the general policies of the Union. This external dimension is essential to address the key challenges we face and to provide greater opportunities for citizens of the Union to work and do business with countries across the world. This external dimension is crucial to the successful implementation of the objectives of this programme and should in particular be taken into account in, and be fully coherent with all other aspects of the Union's foreign policy.

1.2. **The tools**

If the next multiannual programme is to be implemented successfully, the following tools are important.

1.2.1. *Mutual trust*

Mutual trust between authorities and services in the different Member States and decision-makers is the basis for efficient cooperation in this area. Ensuring trust and finding new ways to increase reliance on, and mutual understanding between, the different legal systems in the Member States will thus be one of the main challenges for the future.

1.2.2. *Implementation*

Increased attention needs to be paid in the coming years to the full and effective implementation, enforcement and evaluation of existing instruments. Legal transposition should be ensured using, to their fullest extent, wherever necessary, existing institutional tools.

The time taken to respond to the needs of citizens and businesses must also be shorter in the future. The Union should focus on identifying the needs of citizens and practitioners and the appropriate responses. The development of action at Union level should involve Member States' expertise and consider a range of measures, including non-legislative solutions such as agreed handbooks, sharing of best practice (*inter alia*, making best use of the European Judicial Networks) and regional projects that address those needs, in particular where they can produce a fast response.

1.2.3. *Legislation*

In general, new legislative initiatives, by the Commission or by Member States where the Treaty so provides [1], should be tabled only after verification of the respect for the principles of proportionality and subsidiarity, a thorough preparation, including prior impact assessments, also involving identifying needs and financial consequences and using Member States' expertise. It is crucial to evaluate the implications of new legislative initiatives on the four freedoms under the Treaty and to ensure that such initiatives are fully compatible with internal market principles.

The European Council considers that the development of legislation in the area of freedom, security and justice is impressive, but it has shortcomings in terms of overlapping and a certain lack of coherence. At the same time, the quality of legislation including the language used in some of the legal acts could be improved.

[1] For ease of reading, the Programme only attributes the Commission the right of initiative. This is without prejudice to the possibility that Member States take initiatives in accordance with Article 76 TFEU.

A horizontal review of the adopted instruments should be considered, where appropriate, in order to improve consistency and consolidation of legislation. Legal coherence and ease of accessibility is particularly important. Better regulation and better law-making principles should be strengthened throughout the decision-making procedure. The interinstitutional agreement on better law-making between the European Parliament, the Council and the Commission [1] should be fully applied. All Union institutions at all stages of the interinstitutional procedure should make an effort to draft Union legislation in clear and comprehensible language.

1.2.4. *Increased coherence*

The European Council invites the Council and the Commission to enhance the internal coordination in order to achieve greater coherence between external and internal elements of the work in the area of freedom, security and justice. The same need for coherence and improved coordination applies to the Union agencies (Europol, Eurojust, Frontex, European Police College (CEPOL), the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), the future European Asylum Support Office (EASO) and the European Union Agency for Fundamental Rights). The Council should exercise more political oversight over the agencies, for example, by drawing conclusions on annual reports. Special rules in relation to some agencies apply as regards oversight by the European Parliament.

1.2.5. *Evaluation*

The Lisbon Treaty provides that measures may be taken so that the Member States, in cooperation with the Commission, shall undertake an objective and impartial evaluation of the implementation of the policies in the area of freedom, security and justice, in particular to promote the full application of the principle of mutual recognition. The European Parliament and the national parliaments are to be informed of the content and results of the evaluations. The European Council considers that such evaluation mechanisms should avoid duplication and, in the long term, encompass all policies in that area. There should also be an efficient system of follow-up to such evaluations.

There has to be an evaluation of the effectiveness of the legal instruments adopted at Union level. Evaluation is also necessary to determine any obstacles to the proper functioning of the European judicial area. It should focus on specific problems and therefore facilitate full application of the mutual recognition principle. Judicial cooperation in criminal matters should be pursued as the first policy for evaluation. However other policies will have to follow such as respect for asylum procedures in relevant legislation. Evaluation procedures should be adapted to the policy in question where necessary.

The European Council invites the Commission to:

— submit one or several proposals under Article 70 TFEU concerning the evaluation of the Union policies referred to in Title V of TFEU. That proposal (or proposals) should, where appropriate, include an evaluation mechanism based on the well-established system of peer-evaluation. Evaluation should be carried out periodically, should include an efficient follow-up system, and should facilitate better understanding of national systems in order to identify best practice and obstacles to cooperation. Professionals should be able to contribute to the evaluations. The Council should, in principle, have a leading role in the evaluation process, and in particular in its follow-up.

Duplication with other evaluation mechanisms should be avoided, but synergies and cooperation should be sought, in particular with the work of the Council of Europe. The Union should take an active part in and should contribute to the work of the monitoring bodies of the Council of Europe.

1.2.6. *Training*

In order to foster a genuine European judicial and law enforcement culture, it is essential to step up training on Union-related issues and make it systematically accessible for all professions involved in the implementation of the area of freedom, security and justice. This will include judges, prosecutors, judicial staff, police and customs officers and border guards.

The objective of systematic European Training Schemes offered to all persons involved should be pursued. The ambition for the Union and its Member States should be that a substantive number of professionals by 2015 will have participated in a European Training Scheme or in an exchange programme with another Member State, which might be part of training schemes that are already in place. For this purpose existing training institutions should in particular be used.

Member States have the primary responsibility in this respect, but the Union must give their efforts support and financial backing and also be able to have its own mechanisms to supplement national efforts. The European Council considers that EU and international cooperation aspects should be part of national curricula. For training of judges, prosecutors and judicial staff it is important to safeguard judicial independence while at the same time the emphasis should be placed on the European dimension for professionals that use European instruments frequently. CEPOL and Frontex should play a key role in training of law enforcement personnel and border guards with a view to ensuring a European dimension in training. Training of border guards and customs officers is of special importance with a view to fostering a common approach to an integrated border management. Solutions at European level could be sought, with a view to strengthening

[1] OJ C 321, 31.12.2003, p. 1.

European Training Schemes. E-learning programmes and common training materials must also be developed to train professionals in the European mechanisms.

The European Council invites the Commission to:

— propose an Action Plan for raising substantially the level of European training schemes and exchange programmes systematically in the Union. The Plan should propose how to ensure that one third of all police involved in European police cooperation and half of the judges, prosecutors and judicial staff involved in European judicial cooperation as well as half of other professionals involved in European cooperation could be offered European Training Schemes,

— examine what could be defined as a European Training Scheme, and to suggest in the Action Plan how to develop this idea with a view to giving it a European dimension,

— set up specific 'Erasmus'-style exchange programmes, which could involve non-Member States and in particular candidate countries and countries with which the Union has concluded Partnership and Cooperation Agreements,

— ensure that participation in joint courses, exercises and exchange programmes is decided on the basis of tasks and is not dependent on sector-specific criteria.

1.2.7. *Communication*

The achievements in the area of freedom, security and justice are generally of great importance to citizens, businesses and professionals. The European Council therefore calls on all Union institutions, in particular the Commission as well as on the Member States, to consider ways to better communicate to citizens and practitioners the concrete results of the policy in the area of freedom, security and justice. It asks the Commission to devise a strategy on how best to explain to citizens how they can benefit from the new tools and legal frameworks, for instance through the use of e-Justice and the e-Justice Portal.

1.2.8. *Dialogue with civil society*

The European Council encourages the Union institutions, within the framework of their competences, to hold an open, transparent and regular dialogue with representative associations and civil society. The Commission should put in place specific mechanisms, such as the European Justice Forum, to step up dialogue in areas where such mechanisms are appropriate.

1.2.9. *Financing*

The European Council emphasises that the Stockholm Programme should be financed within the headings and ceilings of the current financial framework. Many of the measures and actions in this programme can be implemented through a more effective use of existing instruments and funds.

The European Council notes that the current financial perspectives expire at the end of 2013. It underlines its intention to reflect the goals of the Stockholm Programme. This programme does not however prejudge the negotiations on the next financial perspective.

The European Council also considers that procedures for application to the financing programmes should, while taking account of the experience of Member States, be transparent, flexible, coherent and streamlined and made more easily accessible to administrations, established partners and practitioners through the active dissemination of clear guidelines, a mechanism for identifying partners and accurate programming. The European Council requests the Commission to examine appropriate means of achieving that goal.

Within the next financial perspectives, it should be examined how best to design the financial instruments in order to ensure a suitable support for operational projects developed outside the Union which enhance the Union's security, in particular in the field of fighting against organised crime and terrorism. Careful consideration should be given to ways and means to speed up the Union's reaction to urgent events in this area in terms of financial assistance and how to provide technical assistance for the global implementation of international conventions, such as those relating to terrorism.

1.2.10. *Action Plan*

In light of the Stockholm Programme, the European Council invites the Commission to present promptly an Action Plan in the first 6 months of 2010 to be adopted by the Council. This Action Plan will translate the aims and priorities of the Stockholm Programme into concrete actions with a clear timetable for adoption and implementation. It should include a proposal for a timetable for the transformation of instruments with a new legal basis.

1.2.11. *Review of the Stockholm Programme*

The European Council invites the Commission to submit a mid-term review before June 2012 of the implementation of the Stockholm Programme. Trio Presidency programmes and Commission legislative programmes should be published as soon as possible so as to enable national parliaments to have early sight of proposals.

2. PROMOTING CITIZENS' RIGHTS: A EUROPE OF RIGHTS

2.1. A Europe built on fundamental rights

The Union is based on common values and respect for fundamental rights. After the entry into force of the Lisbon Treaty, the rapid accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms is of key importance. This will reinforce the obligation of the Union, including its institutions, to ensure that in all its areas of activity, fundamental rights and freedoms, are actively promoted. The case-law of the Court of Justice of the European Union and the European Court of Human Rights will be able to continue to develop in step, reinforcing the creation of a uniform European fundamental and human rights system based on the European Convention and those set out in the Charter of Fundamental Rights of the European Union.

The European Council invites:

— the Commission to submit a proposal on the accession of the Union to the European Convention for Protection of Human Rights and Fundamental Freedoms as a matter of urgency,

— the Union institutions and the Member States to ensure that legal initiatives are and remain consistent with fundamental rights and freedoms throughout the legislative process by way of strengthening the application of the methodology for a systematic and rigorous monitoring of compliance with the European Convention and the rights and freedoms set out in the Charter of Fundamental Rights.

The European Council invites the Union institutions to:

— make full use of the expertise of the European Union Agency for Fundamental Rights and to consult, where appropriate, with the Agency, in line with its mandate, on the development of policies and legislation with implications for fundamental rights, and to use it for the communication to citizens of human rights issues affecting them in their everyday life,

— pursue the Union's efforts to bring about the abolition of the death penalty, torture and other inhuman and degrading treatment,

— continue to support and promote Union and Member States' activity against impunity and fight against crimes of genocide, crimes against humanity and war crimes; in that context, promote cooperation between the Member States, third countries and the international tribunals in this field, and in particular the International Criminal Court (ICC), and develop exchange of judicial information and best practices in relation to the prosecution of such crimes through the European Network of Contact Points in respect of persons responsible for crimes of genocide, crimes against humanity and war crimes.

The Union is an area of shared values, values which are incompatible with crimes of genocide, crimes against humanity and war crimes, including crimes committed by totalitarian regimes. Each Member State has its own approach to this issue but, in the interests of reconciliation, the memory of those crimes must be a collective memory, shared and promoted, where possible, by us all. The Union must play the role of facilitator.

The European Council invites the Commission:

— to examine and to report to the Council in 2010 whether there is a need for additional proposals covering publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes directed against a group of persons defined by reference to criteria other than race, colour, religion, descent or national or ethnic origin, such as social status or political convictions.

2.2. Full exercise of the right to free movement

The right to free movement of citizens and their family members within the Union is one of the fundamental principles on which the Union is based and of European citizenship. Citizens of the Union have the right to move and reside freely within the territory of the Member States, the right to vote and stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, protection of diplomatic and consular authorities of other Member States etc. When exercising their rights, citizens are ensured equal treatment to nationals under the conditions set by Union law. The effective implementation of relevant Union legislation is therefore a priority.

As noted by the European Parliament, Schengen cooperation, which has removed internal border controls within much of the Union, is a major achievement in the area of freedom, security and justice. The European Council recalls its attachment to the further enlargement of the Schengen area. Provided that all requirements to apply the Schengen *acquis* have been fulfilled, the European Council calls on the Council, the European Parliament and the Commission to take all necessary measures to allow for the abolition of controls at internal borders with the remaining Member States that have declared their readiness to join the Schengen area without delay.

Citizens of the Union must be assisted in administrative and legal procedures they are faced with when exercising the right to free movement. Within the framework of the Treaty, obstacles restricting that right in everyday life should be removed.

The European Council invites the Commission to:

— monitor the implementation and application of these rules in order to guarantee the right to free movement.

Obtaining a right of residence under Union law for the citizens of the Union and their family members is an advantage inherent in the exercise of the right to free movement. The purpose of that right is however not to circumvent immigration rules. Freedom of movement not only entails rights but also imposes obligations on those that benefit from it; abuses and fraud should be avoided. Member States should further safeguard and protect the right to free movement by working together, and with the Commission, to combat actions of a criminal nature with forceful and proportionate measures, with due regard to the applicable law.

The European Council therefore further invites the Commission to:

— monitor the implementation and application of these rules to avoid abuse and fraud,

— examine how best to exchange information, *inter alia*, on residence permits and documentation and how to assist Member States' authorities to tackle abuse of this fundamental right effectively.

With this aim in mind, Member States should also closely monitor the full and correct implementation of the existing *acquis* and tackle possible abuse and fraud of the right to free movement of persons and exchange information and statistics on such abuse and fraud. If systematic trends in abuse and fraud of the right to free movement are identified, Member States should report such trends to the Commission, which will suggest to the Council how these trends might be addressed through the most appropriate means.

2.3. **Living together in an area that respects diversity and protects the most vulnerable**

Since diversity enriches the Union, the Union and its Member States must provide a safe environment where differences are respected and the most vulnerable protected. Measures to tackle discrimination, racism, anti-semitism, xenophobia and homophobia must be vigorously pursued.

2.3.1. *Racism and xenophobia*

The European Council invites the Commission to:

— report during the period of the Stockholm Programme on the transposition of Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law by 28 November 2013, and, if appropriate, to make proposals for amending it,

— make full use of the existing instruments, in particular the financing programmes to combat racism and xenophobia.

The Member States should implement that Framework Decision as soon as possible and at the latest by 28 November 2010.

2.3.2. *Rights of the child*

The rights of the child, namely the principle of the best interest of the child being the child's right to life, survival and development, non-discrimination and respect for the children's right to express their opinion and be genuinely heard in all matters concerning them according to their age and level of development as proclaimed in the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child, concern all Union policies. They must be systematically and strategically taken into account with a view to ensuring an integrated approach. The Commission Communication of 2006 entitled 'Towards an EU Strategy on the rights of the child' reflect important considerations in this regard. An ambitious Union strategy on the rights of the child should be developed.

The European Council calls upon the Commission to:

— identify measures, to which the Union can bring added value, in order to protect and promote the rights of the child. Children in particularly vulnerable situations should receive special attention, notably children that are victims of sexual exploitation and abuse as well as children that are victims of trafficking and unaccompanied minors in the context of Union migration policy.

As regards parental child abduction, apart from effectively implementing existing legal instruments in this area, the possibility to use family mediation at international level should be explored, while taking account of good practices in the Member States. The Union should continue to develop criminal child abduction alert mechanisms, by promoting cooperation between national authorities and interoperability of systems.

2.3.3. *Vulnerable groups*

All forms of discrimination remain unacceptable. The Union and the Member States must make a concerted effort to fully integrate vulnerable groups, in particular the Roma community, into society by promoting their inclusion in the education system and labour market and by taking action to prevent violence against them. For this purpose, Member States should ensure that the existing legislation is properly applied to tackle potential discrimination. The Union will offer practical support and promote best practice to help Member States achieve this. Civil society will have a special role to play.

Vulnerable groups in particularly exposed situations, such as women who are the victims of violence or of genital mutilation or persons who are harmed in a Member State of which they are not nationals or residents, are in need of greater protection, including legal protection. Appropriate financial support will be provided, through the available financing programmes.

The need for additional proposals as regards vulnerable adults should be assessed in the light of the experience acquired from the application of the 2000 Hague Convention on the International Protection of Adults by the Member States which are parties or which will become parties in the future. The Member States are encouraged to join the Convention as soon as possible.

2.3.4. *Victims of crime, including terrorism*

Those who are most vulnerable or who find themselves in particularly exposed situations, such as persons subjected to repeated violence in close relationships, victims of gender based violence, or persons who fall victim to other types of crimes in a Member State of which they are not nationals or residents, are in need of special support and legal protection. Victims of terrorism also need special attention, support and social recognition. An integrated and coordinated approach to victims is needed, in line with the Council conclusions on a strategy to ensure fulfilment of the rights of, and improve support for, persons who fall victims of crime.

The European Council calls on the Commission and the Member States to:

— examine how to improve legislation and practical support measures for the protection of victims and to improve the implementation of existing instruments,

— offer better support to victims in other ways, possibly through existing European networks that provide practical help, and put forward proposals to that end,

— examine the opportunity of making one comprehensive legal instrument on the protection of victims, by joining together Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims and Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, on the basis of an evaluation of these two instruments.

Increased use of the financing programmes should be made in accordance with their respective legal frameworks.

2.4. **Rights of the individual in criminal proceedings**

The protection of the rights of suspected and accused persons in criminal proceedings is a fundamental value of the Union, which is essential in order to maintain mutual trust between the Member States and public confidence in the Union. The European Council therefore welcomes the adoption by the Council of the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, which will strengthen the rights of the individual in criminal proceedings when fully implemented. That Roadmap will henceforth form part of the Stockholm Programme.

The European Council invites the Commission to:

— put forward the foreseen proposals in the Roadmap for its swift implementation, on the conditions laid down therein,

— examine further elements of minimum procedural rights for suspected and accused persons, and to assess whether other issues, for instance the presumption of innocence, needs to be addressed, to promote better cooperation in this area.

2.5. **Protecting citizen's rights in the information society**

When it comes to assessing the individual's privacy in the area of freedom, security and justice, the right to freedom is overarching. The right to privacy and the right to the protection of personal data are set out in the Charter of Fundamental Rights. The Union must therefore respond to the challenge posed by the increasing exchange of personal data and the need to ensure the protection of privacy. The Union must secure a comprehensive strategy to protect data within the Union and in its relations with other countries. In that context, it should promote the application of the principles set out in relevant Union instruments on data protection and the 1981 Council of Europe Convention for the Protection of Individuals with regards to Automatic Processing of Personal Data as well as promoting accession to that Convention. It must also foresee and regulate the circumstances in which interference by public authorities with the exercise of these rights is justified and also apply data protection principles in the private sphere.

The Union must address the necessity for increased exchange of personal data whilst ensuring the utmost respect for the protection of privacy. The European Council is convinced that the technological developments not only present new challenges to the protection of personal data, but also offer new possibilities to better protect personal data.

Basic principles such as purpose limitation, proportionality, legitimacy of processing, limits on storage time, security and confidentiality as well as respect for the rights of the individual, control by national independent supervisory authorities, and access to effective judicial redress need to be ensured and a comprehensive protection scheme must be established. These issues are also dealt with in the context of the Information Management Strategy for EU internal security referred to in Chapter 4.

The European Council invites the Commission to:

— evaluate the functioning of the various instruments on data protection and present, where necessary, further legislative and non-legislative initiatives to maintain the effective application of the above principles,

— propose a Recommendation for the negotiation of a data protection and, where necessary, data sharing agreements for law enforcement purposes with the United States of America, building on the work carried out by the EU-US High Level Contact Group on Information Sharing and Privacy and Personal Data Protection,

— consider core elements for data protection agreements with third countries for law enforcement purposes, which may include, where necessary, privately held data, based on a high level of data protection,

— improve compliance with the principles of data protection through the development of appropriate new technologies, improving cooperation between the public and private sectors, particularly in the field of research,

— examine the introduction of a European certification scheme for 'privacy-aware' technologies, products and services,

— conduct information campaigns, in particular to raise awareness among the public.

On a broader front, the Union must be a driving force behind the development and promotion of international standards for personal data protection, based on relevant Union instruments on data protection and the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, and in the conclusion of appropriate bilateral or multilateral instruments.

2.6. **Participation in the democratic life of the Union**

The European Council recalls that transparency of decision-making, access to documents and good administration contribute to citizens' participation in the democratic life of the Union. Furthermore, the Union citizens' initiative introduced by Article 11 TEU will create a new mechanism for civic participation. That mechanism should be realised rapidly.

The European Council invites the Commission to:

— examine how best to ensure transparency of decision-making, access to documents and good administration of justice in the light of the new opportunities provided by the Lisbon Treaty and to make appropriate proposals to that end.

With a view to the European elections in 2014, careful consideration should be given to how to encourage citizens to vote. Voter turnout has diminished by 20 % since 1979 while at the same time the powers of the European Parliament as co-legislator have increased considerably. Measures such as making it easier to register on the electoral roll should be explored.

In addition, the European Council invites the Commission, before December 2012, to:

— report to the European Council on national practices and traditions on elections to the European Parliament, and propose, on the basis of the report, how to achieve a common election day for elections to the European Parliament. In the light of that report, the European Council will consider how to take this issue forward.

2.7. **Entitlement to protection in non-Member States**

A citizen of the Union travelling to or living in a third country where his or her Member State is not represented is entitled to protection by the diplomatic and consular authorities of any Member State under the same conditions as the nationals of that Member State. This right, enshrined in the Treaties, is not well publicised, and more effort is needed to ensure its full application. Targeted communication campaigns could be conducted in connection with this right.

The European Council invites the Commission to:

— consider appropriate measures establishing coordination and cooperation necessary to facilitate consular protection in accordance with Article 23 TFEU.

3. **MAKING PEOPLE'S LIVES EASIER: A EUROPE OF LAW AND JUSTICE**

The European Council declared at its meeting in Tampere in 1999 that enhanced mutual recognition of judicial decisions and judgments and the necessary approximation of legislation would facilitate cooperation between authorities and the judicial protection of individual rights and that the principle of mutual recognition should be the cornerstone of judicial cooperation in both civil and criminal matters. This principle is now expressed in the Treaty.

In the Hague Programme, adopted in 2004, the European Council noted that in order for the principle of mutual recognition to become effective, mutual trust needed to be strengthened by progressively developing a European judicial culture based on the diversity of legal systems and unity through European law. The judicial systems of the Member States should be able to work together coherently and effectively in accordance with their national legal traditions.

The Union should continue to enhance mutual trust in the legal systems of the Member States by establishing minimum rights as necessary for the development of the principle of mutual recognition and by establishing minimum rules concerning the definition of criminal offences and sanctions as defined by the Treaty. The European judicial area must also allow citizens to assert their rights anywhere in the Union by significantly raising overall awareness of rights and by facilitating their access to justice.

In this respect, the European Council emphasises the horizontal importance of e-Justice, which is not confined to specific areas of law. It should be integrated into all areas of civil, criminal and administrative law in order to ensure better access to justice and strengthened cooperation between administrative and judicial authorities.

3.1. **Furthering the implementation of mutual recognition**

The European Council notes with satisfaction that considerable progress has been achieved in implementing the two programmes on mutual recognition adopted by the Council in 2000 and emphasises that the Member States should take all necessary measures to transpose at national level the rules agreed at European level. In this context the European Council emphasises the need to evaluate the implementation of these measures and to continue the work on mutual recognition.

3.1.1. *Criminal law*

In the face of cross-border crime, more efforts should be made to make judicial cooperation more efficient. The instruments adopted need to be more 'user-friendly' and focus on problems that are constantly occurring in cross-border cooperation, such as issues regarding time limits and language conditions or the principle of proportionality. In order to improve cooperation based on mutual recognition, some matters of principle should also be resolved. For example, there may be a need for a horizontal approach regarding certain recurring problems during negotiations on instruments. The approximation, where necessary, of substantive and procedural law should facilitate mutual recognition.

Mutual recognition could extend to all types of judgments and decisions of a judicial nature, which may, depending on the legal system, be either criminal or administrative.

Victims of crime or witnesses who are at risk can be offered special protection measures which should be effective within the Union.

The European Council considers that the setting up of a comprehensive system for obtaining evidence in cases with a cross-border dimension, based on the principle of mutual recognition, should be further pursued. The existing instruments in this area constitute a fragmentary regime. A new approach is needed, based on the principle of mutual recognition but also taking into account the flexibility of the traditional system of mutual legal assistance. This new model could have a broader scope and should cover as many types of evidence as possible, taking account of the measures concerned.

The European Council invites the Commission to:

— propose a comprehensive system, after an impact assessment, to replace all the existing instruments in this area, including Council Framework Decision 2008/978/JHA of 18 December 2008 on the European Evidence Warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters, covering as far as possible all types of evidence and containing deadlines for enforcement and limiting as far as possible the grounds for refusal,

— explore whether there are other means to facilitate admissibility of evidence in this area,

— explore whether certain investigative measures could be executed by law enforcement or judicial authorities of the requesting/issuing Member State in liaison and in agreement with the authorities of the executing state in accordance with Article 89 TFEU, and, where appropriate, make necessary proposals,

— explore if and how authorities of one Member State could obtain information rapidly from private or public entities of another Member State without use of coercive measures or by using judicial authorities of the other Member State,

— explore the results of the evaluation of the European Arrest Warrant, and, where appropriate, make proposals to increase efficiency and legal protection for individuals in the process of surrender, by adopting a step-by-step approach to other instruments on mutual recognition,

— prepare a comprehensive study on existing legal and administrative obstacles to cross-border enforcement of penalties and administrative decisions for road traffic offences, and to present, where necessary, further legislative and non-legislative initiatives to improve road safety in the Union.

The Union should aim for the systematic exchange of information and, as a long term goal, mutual recognition of judgments imposing certain types of disqualification.

The European Council invites the Commission to:

— study the use of disqualification in the Member States and propose to the Council a programme of measures, including exchange of information on certain types of disqualifications and, by adopting a long term step-by-step approach, which accords priority to cases where disqualification is most likely to affect personal safety or business life.

In the field of judicial cooperation, the European Council emphasises the need for Member States and Eurojust to implement thoroughly Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust, which, together with the Lisbon Treaty, offers an opportunity for the further development of Eurojust in the coming years, including in relation to initiation of investigations and resolving conflicts of competence. On the basis of an assessment of the implementation of this instrument, new possibilities could be considered in accordance with the relevant provisions of the Treaty, including giving further powers to the Eurojust national members, reinforcement of the powers of the College of Eurojust or the setting-up of a European Public Prosecutor.

3.1.2. *Civil law*

As regards civil matters, the European Council considers that the process of abolishing all intermediate measures (the exequatur), should be continued during the period covered by the Stockholm Programme. At the same time the abolition of the exequatur will also be accompanied by a series of safeguards, which may be measures in respect of procedural law as well as of conflict-of-law rules.

Mutual recognition should, moreover, be extended to fields that are not yet covered but are essential to everyday life, for example succession and wills, matrimonial property rights and the property consequences of the separation of couples, while taking into consideration Member States' legal systems, including public policy, and national traditions in this area.

The European Council considers that the process of harmonising conflict-of-law rules at Union level should also continue in areas where it is necessary, like separation and divorces. It could also include the area of company law, insurance contracts and security interests.

The European Council also highlights the importance of starting work on consolidation of the instruments adopted so far in the area of judicial cooperation in civil matters. First and foremost the consistency of Union legislation should be enhanced by streamlining the existing instruments. The aim should be to ensure the coherence and user-friendliness of the instruments, thus ensuring a more efficient and uniform application thereof.

The European Council invites the Commission to:

— assess which safeguards are needed to accompany the abolition of exequatur and how these could be streamlined,

— assess whether there are grounds for consolidation and simplification in order to improve the consistency of existing Union legislation,

— follow up on the recent study on the possible problems encountered with regard to civil status documents and access to registers of such documents.

In light of the findings, the Commission could submit appropriate proposals taking into account the different legal systems and legal traditions in the Member States. In the short term a system allowing citizens to obtain their own civil status documents easily could be envisaged. In the long term, it might be considered whether mutual recognition of the effects of civil status documents could be appropriate, at least in certain areas. Work developed by the International Commission on Civil Status should be taken into account in this particular field.

3.2. **Strengthening mutual trust**

One of the consequences of mutual recognition is that rulings made at national level have an impact in other Member States, in particular in their judicial systems. Measures aimed at strengthening mutual trust are therefore necessary in order to take full advantage of these developments.

The Union should support Member States' efforts to improve the efficiency of their judicial systems by encouraging exchanges of best practice and the development of innovative projects relating to the modernisation of justice.

3.2.1. *Training*

Training of judges (including administrative courts), prosecutors and other judicial staff is essential to strengthen mutual trust (see also Chapter 1.2.6). The Union should continue to support and strengthen measures to increase training in line with Articles 81 and 82 TFEU.

3.2.2. *Developing networks*

The European Council considers that contacts between senior officials of the Member States in areas covered by Justice and Home Affairs are valuable and should be promoted by the Union in so far as possible. Such areas could be, depending on national structures, senior police chiefs or prosecutors, heads of training institutes, heads of prison administrations, general directors of customs administration. Where appropriate, these networks should also be informed of the work of the Standing Committee on Internal Security (COSI), or be able to take part in the development of the Organised Crime Threat Assessment and other strategic tools of the Union. Such networks should primarily meet using existing structures such as Europol, Eurojust and Frontex or at the invitation of the Presidency as host country. Other Networks of professionals existing in this area should also continue to receive Union support. Among those are the European Network of Councils for the Judiciary and the Network of the Presidents of the Supreme Judicial Courts of the European Union.

3.2.3. *Evaluation*

As in other areas, the development of mutual recognition in the judicial sphere must go hand in hand with improvements in evaluation, both ex-ante and ex-post (See also Chapter 1.2.5).

3.2.4. *Improving the tools*

The European Council calls for the enhancement of the operational capabilities of and tools for judges, prosecutors and all other actors involved in the field of justice. To that end, the European Council calls for the more active involvement of Eurojust and the European Judicial Networks in civil and criminal law to participate in improving cooperation and the effective application of Union law by all practitioners. Work should continue on improving the electronic tools that have so far been developed and the necessary resources should be provided for pursuing this work.

3.2.5. *Implementation*

A priority of the Union should be the implementation of decisions which have already been taken. This should be done in several ways: by accompanying the implementation of Union legislation more closely, through the better use of the financing instruments, by increasing the training of judges and other professionals and by enhancing evaluation mechanisms and practical measures.

Without prejudice to the role of the Commission and the Court of Justice of the European Union, implementation is primarily a matter for the Member States, but as mutual recognition instruments are common tools, the Union should better accompany implementation of them by enabling the sharing of experiences and best practices.

The European Council invites the Commission to:

— ensure the sharing of information by way of developing handbooks or national facts sheets together with experts in civil and criminal law and Member States, on the use of mutual recognition instruments, in the same manner as what has been done for the European Arrest Warrant. The aim should be to have a handbook or national fact sheet for each of the instruments that have been adopted so far at the end of the 5-year period.

The European Council also considers that all modern means of electronic communication should be used to the fullest extent, and that the judicial authorities as soon as possible should be given means for secure electronic communications to enable safe correspondence. The Union should also put an emphasis on videoconferencing and on assisting the development of translation tools in order to make them as accurate as possible. These developments should be accompanied by and form part of the implementation of the e-Justice action plan. In addition, measures should be taken to enhance cooperation, while taking full account of data protection rules, between competent authorities so as to detect addresses where persons live as their habitual residence, in connection with service of documents.

3.2.6. *Detention*

The European Council considers that efforts should be undertaken to strengthen mutual trust and render more efficient the principle of mutual recognition in the area of detention. Efforts to promote the exchange of best practices should be pursued and implementation of the European Prison Rules, approved by the Council of Europe, should be supported. Issues such as alternatives to imprisonment, pilot projects on detention and best practices in prison management could also be addressed. The Commission is invited to reflect on this issue further within the possibilities offered by the Lisbon Treaty.

3.3. **Developing a core of common minimum rules**

To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters, the Union may adopt common minimum rules. The European Council considers that a certain level of approximation of laws is necessary to foster a common understanding of issues among judges and prosecutors, and hence to enable the principle of mutual recognition to be applied properly, taking into account the differences between legal systems and legal traditions of Member States.

3.3.1. *Criminal law*

Criminal behaviour in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis should become the object of common definitions of criminal offences and common minimum levels of maximum sanctions. These are the serious criminal offences referred to in Article 83(1) TFEU. Priority should be given to terrorism, trafficking in human beings, illicit drug trafficking, sexual exploitation of women and children and child pornography and computer crime.

The European Council invites the Commission to:

— examine whether the level of approximation is sufficient in relation to the adopted framework decisions and report on the need to establish common definitions and sanctions and to consider submitting new legislative proposals where further approximation is needed.

The relationship between approximation of criminal offences or their definition and the double criminality rule in the framework of mutual recognition should be further explored. The Commission is invited to make a report to the Council on this issue. One of the issues may be the necessity and feasibility of approximation or definition of criminal offence for which double criminality does not apply.

Criminal law provisions should be introduced when they are considered essential in order for the interests to be protected and, as a rule, be used only as a last resort.

Minimum rules with regard to the definition of criminal offences and sanctions may also be established when the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy which has been subject to harmonisation measures.

The European Council stresses the importance of the coherence of criminal law provisions in the various Union instruments and invites the Council to:

— implement the work on model standard provisions in criminal law and the Council and the Commission to continue to reflect, together with the European Parliament, on how to improve the coherence of criminal law provisions in various Union instruments,

and the Commission to:

— examine the possibilities of using the existing programmes to finance pilot schemes in the Member States testing alternatives to imprisonment.

3.3.2. *Civil law*

The abolition of exequatur will be accompanied by a series of safeguards, especially regarding judgments taken by default, which may be measures in respect of procedural law as well as of conflict-of-law rules (for example the right to be heard, the servicing of documents, time required for providing opinions, etc). The main policy objective in the area of civil procedural law is that borders between Member States should not constitute an obstacle either to the settlement of civil matters or to initiating court proceedings, or to the enforcement of decisions in civil matters. With the Conclusions of the Tampere European Council and the Hague programme: strengthening freedom, security and justice in the European Union, major steps have been taken to reach this goal. However, the European Council notes that the effectiveness of Union instruments in this field still needs to be improved.

The European Council invites the Commission:

— as a first step, to submit a report on the functioning of the present Union regime on civil procedural law across borders, and on the basis of that report put forward a proposal aimed at improving the consistency of existing Union legislation,

— to assess, also in the course of upcoming reviews of existing regulations, the need to establish common minimum standards or standard rules of civil procedure for the cross-border execution of judgments and decisions on matters such as the serving of documents, the taking of evidence, review procedures and enforcement, the establishment of minimum standards in relation to the recognition of decisions on parental responsibility and, where appropriate, to submit proposals on these issues,

— to continue the work on common conflict-of-law rules, where necessary.

3.4. **The benefits for citizens of a European judicial area**

3.4.1. *Providing easier access to justice*

Access to justice in the European judicial area must be made easier, particularly in cross-border proceedings. At the same time, efforts must continue to improve alternative methods of settling disputes, particularly in consumer law. Action is needed to help people overcome the language barriers that obstruct their access to justice.

The European Council considers that e-Justice presents an excellent opportunity to provide easier access to justice. The multiannual European e-Justice action plan, adopted at the end of November 2008 by the Council, sets the framework for developing European e-Justice activities until the end of 2013. The European e-Justice portal will be a way of keeping people better informed of their rights and giving them access to a range of information and services on the various judicial systems. Better use should be made of videoconferencing, for example to spare victims the effort of needless travel and the stress of participating in court proceedings. In accordance with data protection rules, some national registers will be gradually interconnected (for example registers on insolvency, interpreters, translators and wills). Some existing databases may also be partially integrated into the portal (for example the European Business Register and the European Land Information Service). In the medium term, some European and national cross-border procedures could be dealt with on-line (for example the European order for payment, the European small claims procedure and mediation). Furthermore, the use of electronic signatures should be promoted within the framework of the e-Justice project.

The European Council invites the Council, the Commission and the Member States to:

— create effective conditions to enable the parties to communicate with courts by electronic means in the context of legal proceedings. For that purpose, dynamic forms should be made available through the e-Justice portal as regards certain European procedures, such as the European order for payment procedure and the European small claims procedure. During this phase, electronic communication between judicial authorities should be improved decisively in the area of the application of e-Justice.

The European Council further encourages the Union institutions and the Member States to:

— devote efforts to the full implementation of the e-Justice action plan. In that context, the Commission is invited to put forward proposals within the framework of the financial perspectives for an adequate funding of e-Justice projects and in particular horizontal large-scale IT projects.

Certain formalities for the legalisation of documents also represent an obstacle or an excessive burden. Given the possibilities offered by the use of new technologies, including digital signatures, the Union should consider abolishing all formalities for the legalisation of documents between Member States. Where appropriate, thought should be given to the possibility of creating, in the long term, authentic European documents.

The European Council invites the Commission to:

— examine the possibility of dispensing with the formalities for the legalisation of documents between Member States, and submit a proposal to that effect.

3.4.2. *Supporting economic activity*

The European judicial area should serve to support economic activity in the single market.

The European Council invites the Commission to:

— assess the need for, and the feasibility of, providing for certain provisional, including protective, measures at Union level, to prevent for example the disappearance of assets before the enforcement of a claim,

— put forward appropriate proposals for improving the efficiency of enforcement of judgments in the Union regarding bank accounts and debtors' assets, based on the 2006 and 2008 Green Papers.

When devising measures of this kind, account should be taken on the impact they will have on the right to privacy and the right to the protection of citizens' personal data.

The European Council reaffirms that the common frame of reference for European contract law should be a non-binding set of fundamental principles, definitions and model rules to be used by the law-makers at Union level to ensure greater coherence and quality in the law-making process. The Commission is invited to submit a proposal on a common frame of reference.

The current financial crisis has emphasised the need to regulate financial markets and to prevent abuse. There is also a need to study further measures regarding business law, and to create a clear regulatory environment allowing small and medium enterprises in particular to take full advantage of the internal market so that they can grow and operate across borders as they do in their domestic market. There is a need to explore whether common rules determining the law applicable to matters of company law, rules on insolvency for banks and transfer of claims could be devised. The issue of contractual law also needs to be examined further.

The European Council invites the Commission to:

— consider whether there is a need to take measures in these areas, and, where appropriate, to put forward proposals in this respect.

3.5. **Increasing the Union's international presence in the legal field**

3.5.1. *Civil law*

The European Council considers that clearly defining Union external interests and priorities in the area of judicial cooperation in civil matters is very important with a view to interacting with third countries in a secure legal environment.

The 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters is open to the accession by other States and the Union should assess, in cooperation with the other Contracting Parties, which third countries could be encouraged to accede to it.

The Union should use its membership of The Hague Conference on Private International Law to actively promote the widest possible accession to the most relevant Conventions and to offer as much assistance as possible to other States with a view to the proper implementation of these instruments. The European Council invites the Council, the Commission and the Member States to encourage all partner countries to accede to those Conventions which are of particular interest to the Union.

In cases where no legal framework is in place for relations between the Union and partner countries, and where the development of new multilateral cooperation is not possible from the Union's standpoint, the option of bilateral agreements should be explored, on a case-by-case basis.

The European Council invites the Council and the Commission to:

— define a strategy in the area of civil matters for the coming years which is coherent with overall Union external action.

3.5.2. *Criminal law*

As regards the criminal law field, it will be necessary to identify priorities for the negotiations of mutual assistance and extradition agreements. The Union should actively promote the widest possible accession of the partner countries to the most relevant and functioning Conventions and to offer as much assistance as possible to other States with a view to the proper implementation of the instruments. The Union institutions should ensure, to the furthest extent possible, coherence between the Union and the international legal order. Where possible, synergy with the Council of Europe work should be considered.

The European Council calls upon the Commission, the Council and the European Parliament where appropriate to:

— develop a policy aimed at the establishment of agreements on international judicial cooperation with third countries of interest or within international organisations. In particular, the following criteria should be taken into account when deciding on the priority countries: strategic relationship, whether bilateral agreements already exist, whether the country in question adheres to Human Rights' principles, whether it cooperates with the Union in general and its Member States, and priorities of law enforcement and judicial cooperation,

— sponsor exchanges of best practice and the pooling of experience with non-Member States and, in particular with regard to enlargement countries, make full use of the instruments the Union has at its disposal to promote judicial reform and strengthen the rule of law, such as twinning schemes and peer reviews, also in cooperation with the Council of Europe,

— offer steady support to the justice systems in partner countries in order to promote the rule of law throughout the world,

— continue to promote the Rome Statute of the ICC principle of complementarity and compliance with Rome Statute obligations.

The European Council further invites the Commission to:

— submit to the Council in 2010 a list of countries that have requested to conclude agreements on mutual legal assistance and extradition with the Union as well as an assessment, based on the above mentioned principles of the appropriateness and urgency of concluding such agreements with these or other countries.

4. **A EUROPE THAT PROTECTS**

4.1. **Internal Security Strategy**

The European Council is convinced that the enhancement of actions at European level, combined with better coordination with actions at regional and national level, are essential to protection from trans-national threats. Terrorism and organised crime, drug trafficking, corruption, trafficking in human beings, smuggling of persons and trafficking in arms, inter alia, continue to challenge the internal security of the Union. Cross-border wide-spread crime has become an urgent challenge which requires a clear and comprehensive response. Action of the Union will enhance the work carried out by Member States' competent authorities and will improve the outcome of their work.

The European Council calls upon the Council and the Commission to:

— define a comprehensive Union internal security strategy based, in particular, on the following principles:

  — clarity on the division of tasks between the Union and the Member States, reflecting a shared vision of today's challenges,

  — respect for fundamental rights, international protection and the rule of law,

— solidarity between Member States,

— reflection of a proactive and intelligence-led approach,

— the need for a horizontal and cross-cutting approach in order to be able to deal with complex crises or natural or man-made disasters,

— stringent cooperation between the Union agencies, including further improving their information exchange,

— a focus on implementation and streamlining as well as on improvement of preventive action,

— the use of regional initiatives and regional cooperation,

— the aim of making citizens aware of the importance of the Union's work to protect them.

Developing, monitoring and implementing the internal security strategy should become one of the priority tasks of COSI set up under Article 71 TFEU. In order to ensure the effective enforcement of the internal security strategy, it shall also cover security aspects of an integrated border management and, where appropriate, judicial cooperation in criminal matters relevant to operational cooperation in the field of internal security.

The internal security strategy should also take into account the external security strategy developed by the Union as well as by other Union policies, in particular those concerning the internal market. Account should also be taken of the impact it may have on relations with the Union's neighbourhood and particularly with the candidate and potential candidate countries, since internal security is interlinked with the external dimension of the threats. In a global world, crime knows no borders. As the policies followed in the area of freedom, security and justice gradually reach maturity, they should support each other and grow in consistency. In the years to come they should fit smoothly together with the other policies of the Union.

The European Council asks the Commission:

— to consider the feasibility of setting up of an Internal Security Fund to promote the implementation of the Internal Security Strategy so that it becomes an operational reality.

4.2. **Upgrading the tools for the job**

Security in the Union requires an integrated approach where security professionals share a common culture, pool information as effectively as possible and have the right technological infrastructure to support them.

4.2.1. *Forging a common culture*

The European Council stresses the need to enhance mutual trust between all the professionals concerned at national and Union level. A genuine European law enforcement culture should be developed through exchange of experiences and good practice as well as the organisation of joint training courses and exercises in line with Chapter 1.2.6.

The European Council encourages Member States to devise mechanisms that gives incentives to professionals for taking up duties related to cross-border cooperation and thereby favour the creation of a Union-wide response at all levels.

4.2.2. *Managing the flow of information*

The European Council notes with satisfaction that developments over the past years in the Union have led to a wide choice and created an extensive toolbox for collecting, processing and sharing information between national authorities and other European players in the area of freedom, security and justice. The principle of availability will continue to give important impetus to this work.

The European Council acknowledges the need for coherence and consolidation in developing information management and exchange and invites the Council and the Commission to:

— implement the Information Management Strategy for EU internal security ([1]), which includes a strong data protection regime. Development must be coherent with the priorities set for the area of freedom, security and justice and the internal security strategy, supporting the business vision for law enforcement, judicial cooperation, border management and public protection.

In this context, the European Council invites the Commission to:

— assess the need for developing a European Information Exchange Model based on the evaluation of the current instruments, including Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA (Prüm framework) and Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (the so-called 'Swedish Framework Decision'). These assessments will determine whether these instruments function as originally intended and meet the goals of the Information Management Strategy.

([1]) See Council document 16637/09 JAI 873.

The Information Management Strategy for EU internal security is based on:

— business-driven development (a development of information exchange and its tools that is driven by law enforcement needs,

— a strong data protection regime consistent with the strategy for protection of personal data referred to in Chapter 2,

— a well targeted data collection, both to protect fundamental rights of citizens and to avoid an information overflow for the competent authorities,

— guiding principles for a policy on the exchange of information with third countries for law enforcement purposes,

— interoperability of IT systems ensuring full conformity with data protection and data security principles when developing such systems,

— a rationalisation of the different tools, including the adoption of a business plan for large IT systems,

— overall coordination, convergence and coherence.

The necessary Union and national structures need to be in place to ensure the implementation and management of the different information management tools. The European Council also calls for the establishment of an administration, as proposed by the Commission, having the competence and capacity to develop technically and manage large-scale IT systems in the area of freedom, security and justice, as referred to in the joint statements of the European Parliament, the Council and the Commission in December 2006 and October 2007. Possible additional tasks should be considered by the Council in the light of the Information Management Strategy.

Reflecting the discussions in the Council and the European Parliament, with a view to setting up an Union Passenger Names Record (PNR) system, the European Council calls upon the Commission:

— to propose an Union measure, that ensures a high level of data protection, on PNR for the purpose of preventing, detecting, investigating and prosecuting terrorist offences and serious crime, based on an impact assessment.

4.2.3. *Mobilising the necessary technological tools*

The European Council, while ensuring consistency with the strategy for protection of personal data referred to in Chapter 2, stresses the need for new technologies to keep pace with and promote the current trends towards mobility, while ensuring that people are safe, secure and free.

The European Council invites the Council, the Commission, the European Parliament, where appropriate, and the Member States to:

— draw up and implement policies to ensure a high level of network and information security throughout the Union and improve measures aimed at protection, security preparedness and resilience of critical infrastructure, including Information and Communication Technology (ICT) and services infrastructure,

— promote legislation that ensures a very high level of network security and allows faster reactions in the event of cyber attacks.

The European Council also invites the Council and the Commission to:

— ensure that the priorities of the internal security strategy are tailored to the real needs of users and focus on improving interoperability. Research and development in the field of security should be supported by public-private partnerships.

The European Council invites:

— the Member States to implement the European Criminal Records Information System (ECRIS) as soon as possible,

— the Commission to assess whether the networking of criminal records makes it possible to prevent criminal offences from being committed (for example through checks on access to certain jobs, particularly those relating to children), and whether it is possible to extend the exchange of information on supervision measures,

— the Commission to propose, in addition to ECRIS, a register of third-country nationals who have been convicted by the courts of the Member States.

The European Council recalls the need for ensuring consistency with the strategy for the protection of personal data and the business plan for setting up large scale IT systems as referred to in Chapter 2, and calls on the Commission to:

— make a feasibility study on the need for, and the added value of, setting up a European Police Records Index system (EPRIS) and to make a report to the Council in the course of 2012 on the issue,

— to reflect on how to further develop the use of existing databases for law enforcement purposes, while fully respecting data protection rules, so as to make full use of new technologies with a view to protecting the citizens,

— examine how best to promote that Member States' competent authorities can exchange information on travelling violent offenders including those attending sporting events or large public gatherings.

4.3. **Effective policies**

4.3.1. *More effective European law enforcement cooperation*

The prime objective of Union law enforcement cooperation is to combat forms of crime that have typically a cross-border dimension. Focus should not only be placed on combating terrorism and organised crime but also cross-border widespread crime that have a significant impact on the daily life of the citizens of the Union. Europol should become a hub for information exchange between the law enforcement authorities of the Member States, a service provider and a platform for law enforcement services.

The European Council encourages Member States' competent authorities to use the investigative tool of Joint Investigative Teams (JITs) as much as possible in appropriate cases. Europol and Eurojust should be systematically involved in major cross-border operations and informed when JITs are set up. The model agreement for setting up JITs should be updated. Europol and Eurojust should step up their cooperation further. Eurojust should ensure that its work is followed up at judicial level. Europol and Eurojust should expand their work with third countries especially by forging closer links with the regions and countries neighbouring the Union. Europol should work more closely with Common Security and Defence Policy (CSDP) police missions and help promote standards and good practice for European law enforcement cooperation in countries outside the Union. Cooperation with Interpol should be stepped up with a view to creating synergies and avoiding duplication.

The European Council invites the Commission, and, where appropriate, the Council and the High Representative of the Union for foreign affairs and security policy, to:

— examine how it could be ensured that Europol receives information from Member States law enforcement authorities so that the Member States can make full use of Europol capacities,

— examine how operational police cooperation could be stepped up, for example as regards incompatibility of communication systems and other equipment, use of undercover agents, and, where necessary, draw operational conclusions to that end,

— issue as soon as possible a reflection document on how best to ensure that the activities of Europol may be scrutinised and evaluated by the European Parliament, together with national parliaments in line with Articles 85 and 88 TFEU,

— consider developing a Police Cooperation Code which would consolidate existing instruments and, where necessary, amend and simplify them,

— make a proposal to the Council and the European Parliament to adopt a decision on the modalities of cooperation, including on exchange of information between Union agencies, in particular Europol, Eurojust and Frontex, which ensures data protection and security,

— propose measures on how the Union agencies in this area could conclude operational arrangements between themselves and how they should develop their participation in regional initiatives conducted by Member States and in regional bodies that further law enforcement cooperation,

— agree on common quality standards within the forensic field, *inter alia*, to develop best practice for crime scene investigations,

— examine whether there are obstacles to cooperation between CSDP police missions and Europol and make appropriate proposals to eliminate such obstacles.

Pilot projects in cross-border regional cooperation dealing with joint operational activities and/or cross-border risk assessments, such as Joint Police and Customs Centres, should be promoted by the Union, *inter alia*, through financing programmes.

The development of ad hoc law enforcement cooperation at sporting events or large public gatherings (for example. the 2012 Olympic Games, Euro 2012) should be implemented.

4.3.2. *More effective crime prevention*

The best way to reduce the level of crime is to take effective measures to prevent them from ever occurring, including promoting social inclusion, by using a multidisciplinary approach which also includes taking administrative measures and promoting cooperation between administrative authorities, citizens of the Union that have similar experiences and are affected in similar ways by crime and related insecurity in their everyday lives.

The awareness of the links between local crime and organised crime and its complex cross-border dimensions is increasing. Member States have developed different methods to prevent crime and should be encouraged to share experiences and best practice and, in doing so, to add to the general knowledge and its respective effectiveness and efficiency, thereby avoiding the duplication of work.

In addition, the cross-border dimension underlines the importance of enhancing and developing knowledge at European level on how crime and criminality in the Member States is interconnected, to support Member States when taking individual or joint action, and to call for action by Union institutions when deemed necessary. With the Lisbon Treaty, cooperation within the area of crime prevention will be further recognised with a new legal basis.

The European Council invites Member States and the Commission to actively promote and support crime prevention measures focusing on prevention of mass criminality and cross-border crime affecting the daily life of our citizens in accordance with Article 84 TFEU.

The European Council invites the Commission to submit a proposal building on the evaluation of the work carried out within the European Crime Prevention Network (EUCPN) with a view to setting up an Observatory for the Prevention of Crime (OPC), the tasks of which will be to collect, analyse and disseminate knowledge on crime, including organised crime (including statistics) and crime prevention, to support and promote Member States and Union institutions when they take preventive measures and to exchange best practice. The OPC should build on the work carried out within the framework of the EUCPN and the evaluation of it. It should include or replace the EUCPN, with a secretariat located within an existing Union agency and functioning as a separate unit. The European Council invites the Commission to:

— submit a proposal on setting up the OPC by 2013 at the latest.

4.3.3. *Statistics*

Adequate, reliable and comparable statistics (both over time and between Member States and regions) are a necessary prerequisite, *inter alia*, for evidence-based decisions on the need for action, on the implementation of decisions and on the effectiveness of action.

The European Council invites the Commission to:

— continue developing statistical tools to measure crime and criminal activities and reflect on how to further develop, after 2010, the actions outlined and partly implemented in the Union Action plan for 2006-2010 on developing a comprehensive and coherent Union strategy to measure crime and criminal justice, in view of the increased need for such statistics in a number of areas within the area of freedom, security and justice.

4.4. **Protection against serious and organised crime**

4.4.1. *Combating serious and organised crime*

As organised crime continues to become more globalised, it is increasingly important that law enforcement has the ability to work effectively across borders and jurisdictions. The Union can bring real added value to the fight against certain types of threat that require a high level of coordinated action. The fight against these criminal phenomena will involve systematic exchange of information, widespread use of the Union agencies and investigative tools and, where necessary, the development of common investigative and prevention techniques and increased cooperation with third countries.

The European Council therefore calls upon the Council and the Commission:

— to adopt an organised crime strategy, within the framework of the Internal Security Strategy,

— set its priorities in crime policy by identifying the types of crime against which it will deploy the tools it has developed, while continuing to use the Organised Crime Threat Assessment Report (OCTA) and its regional versions.

Criminal phenomena to be tackled as a priority at European level should be selected. The European Council considers that the following types of crime deserve special priority in the years to come.

4.4.2. *Trafficking in human beings*

Trafficking in human beings and smuggling of persons are very serious crimes involving violations of human rights and human dignity that the Union cannot condone. The European Council finds it necessary to strengthen and enhance the prevention and combating of trafficking and smuggling. This calls for a coordinated and coherent policy response which goes beyond the area of freedom, security and justice and, while taking account of new forms of exploitation, includes external relations, development cooperation, social affairs and employment, education and health, gender equality and non-discrimination. It should also benefit from a broad dialogue between all stakeholders, including civil society, and be guided by an improved understanding and research of trafficking in human beings and smuggling of persons at Union and at international level.

In this context, cooperation and coordination with third countries is of crucial importance. The Action-Oriented Paper on the fight against trafficking in human beings, adopted by the Council on 30 November 2009 should be used to its fullest extent.

It is necessary that the Union develops a consolidated Union policy against trafficking in human beings aiming at further strengthening the commitment of, and efforts made, by the Union and the Member States to prevent and combat such trafficking. This includes building up and strengthening partnerships with third countries, improving coordination and cooperation within the Union and with the mechanisms of the Union external dimension as an integral part of such a policy. Progress should also be monitored and COSI regularly informed of coordination and cooperation against trafficking. The fight against human trafficking must mobilise all means of action, bringing together prevention, law enforcement, and victim protection, and be tailored to combating trafficking into, within and out of the Union.

The European Council therefore invites the Council to consider establishing an EU Anti-Trafficking Coordinator (EU ATC) and, if it decides so, to determine the modalities therefore in such a way that all competences of the Union can be used in the most optimal way in order to reach a well coordinated and consolidated Union policy against trafficking in human beings.

The European Council calls for:

— the adoption of new legislation on combating trafficking and protecting victims,

— the Commission to examine whether ad hoc cooperation agreements with specific third countries to be identified by the Council could be a way to enhance fight against trafficking and to make proposals to that end. In particular, such agreements could involve full use of all leverage available to the Union, including use of financing programmes, cooperation for the exchange of information, judicial cooperation and migration tools,

— Europol, with the support of the Member States, to step up support for information gathering and strategic analysis, to be carried out in cooperation with the countries of origin and of transit,

— Eurojust to step up its efforts to coordinate investigations conducted by Member States' authorities into trafficking in human beings,

— the Commission:

  — to propose further measures to protect and assist victims through an array of measures including the development of compensation schemes, safe return and assistance with reintegration into society in their country of origin if they return voluntarily and those relating to their stay; the Union should establish partnerships with the main countries of origin,

  — to propose cooperative measures to mobilise consular services in the countries of origin with a view to preventing the fraudulent issuing of visas. Information campaigns aimed at potential victims, especially women and children, could be conducted in the countries of origin in cooperation with the authorities there,

  — to propose measures to make border checks more efficient in order to prevent human trafficking, in particular the trafficking of children.

4.4.3. *Sexual exploitation of children and child pornography*

Protecting children against the danger of sexual abuse is an important element in the strategy of children's rights.

The European Council invites:

— the Council and the European Parliament to adopt new legislation on combating sexual abuse, sexual exploitation of children and child pornography,

— the Commission to accompany this legislation, once adopted, by measures supported under the Safer Internet Programme 2009-2013,

— The Commission to examine how Member States' competent authorities could exchange information on best practices,

— the Commission to explore how the Union could promote partnerships with the private sector on this subject and expand such public-private partnerships to the financial sector in order to disrupt the money transfers related to websites with child abuse content,

— the Commission to build on the child alert mechanism and explore the creation of an Union-wide child abduction Network in order to promote cooperation between the competent authorities of the Member States, with a view to ensuring interoperability,

— the Commission, in order to prevent child abuse, to explore ways to enhance cooperation between Member States' competent authorities in response to the movement of child sex offenders known to be an ongoing threat.

4.4.4. *Cyber crime*

The Internet has considerably facilitated communication and promoted global development and interaction. At the same time, new, modern challenges have emerged in the form of cyber crime as criminal groups have taken effectively advantage of technologies. This in turn makes investigations more complicated for law enforcement authorities. The Union should therefore promote policies and legislation that ensure a very high level of network security and allow faster reactions in the event of cyber disruptions or cyber attacks.

As soon as possible, Member States should ratify the 2001 Council of Europe Convention on Cybercrime. This Convention should become the legal framework of reference for fighting cyber crime at global level. Europol could play a role as a European resource centre by creating a European platform for identifying offences which should also assist Member States national alert platforms to exchange best practices.

The European Council also calls upon the Member States to:

— give their full support to the national alert platforms in charge of the fight against cyber crime and emphasises the need for cooperation with countries outside the Union.

The European Council invites:

— the Commission to take measures for enhancing/improving public-private partnerships,

— Europol to step up strategic analysis on cyber crime.

The Union should also clarify the rules on jurisdiction and the legal framework applicable to cyberspace within the Union, including how to obtain evidence in order to promote cross-border investigations.

The European Council:

— calls upon the Member States to improve judicial cooperation in cyber crime cases,

— requests the Commission to make proposals for clarifying, where needed, the legal framework on investigations in the cyber space within the Union.

Cooperation should also become more efficient in relation to the sale of fake pharmaceuticals on the Internet.

4.4.5. *Economic crime and corruption*

The Union must reduce the number of opportunities available to organised crime as a result of a globalised economy, in particular during a crisis that is exacerbating the vulnerability of the financial system, and allocate appropriate resources to meet these challenges effectively.

The European Council calls upon the Member States and, where appropriate, the Commission to:

— enhance the capacity for financial investigations and combine all available instruments in fiscal, civil and criminal law. Forensic financial analysis must be developed by pooling resources, in particular for training. The confiscation of assets of criminals should be made more efficient and cooperation between Asset Recovery Offices made stronger,

— to identify assets of criminals more effectively and seize them and, whenever possible, consider re-using them wherever they are found in the Union,

— further develop information exchange between the Financial Intelligence Units (FIUs), in the fight against money laundering. Within the framework of the European Information Management System, their analyses could feed a database on suspicious transactions, for example, within Europol,

— mobilise and coordinate sources of information to identify suspicious cash transactions and to confiscate the proceeds from crime in line with the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, for instance through legislation determining whether proceeds are legitimate or not,

— improve the prosecution of tax evasion and corruption in the private sector and the early detection of fraudulent market abuse (such as insider dealing and market manipulation), as well as the misappropriation of funds,

— facilitate the exchange of best practice in prevention and law enforcement, in particular within the framework of the Asset Recovery Office Network and the Anti-Corruption Network.

The European Council invites the Commission to:

— develop indicators, on the basis of existing systems and common criteria, to measure efforts in the fight against corruption, in particular in the areas of the *acquis* (public procurement, financial control, etc) and to develop a comprehensive anti-corruption policy, in close cooperation with the Council of Europe Group of States against Corruption (GRECO). The Commission should submit a report in 2010 to the Council on the modalities for the Union to accede to GRECO,

— with a view to preventing financial crime, consider measures to facilitate identification of beneficial owners behind assets and increase transparency of legal persons and legal arrangements,

— increase coordination between Member States in the framework of the United Nations Convention against Corruption (UNCAC), GRECO and the Organisation for Economic Cooperation and Development (OECD) work in the field of combating corruption,

— to reflect on how to improve prevention of financial crime.

Counterfeiting poses a serious danger for consumers and economies. The Union must make further studies of this phenomenon and ensure that greater account is taken of law enforcement aspects in the work of the future European Observatory on Counterfeiting and Piracy. The European Council calls upon the Council and the European Parliament to consider as soon as possible legislation on criminal measures aimed at ensuring the enforcement of intellectual property rights.

4.4.6. *Drugs*

The Union Drugs Strategy (2005-2012) advocates for a global, balanced approach, based on the simultaneous reduction of supply and demand. This strategy will expire during the Stockholm Programme. It must be renewed on the basis of a detailed evaluation of the EU Drugs Action Plan for 2009-2012, carried out by the Commission with the support of the European Monitoring Centre for Drugs and Drug Addiction and Europol.

This renewed Strategy should be founded on three principles:

— improving coordination and cooperation by using all available means under the Lisbon Treaty, and in particular in the Western Balkans, Latin America, Eastern Partnership countries, West Africa, Russia, Central Asia including Afghanistan and the United States,

— the mobilisation of civil society, in particular, by reinforcing initiatives such as the European Action on Drugs,

— contributing to research and comparability of information in order to obtain access to reliable data.

The European Council invites the Council and the Commission to ensure that the new Drugs Strategy supports the Union's Internal Security Strategy and dovetails with other related policy tools such as OCTA, the future Organised Crime Strategy and the Council conclusions on the fight against serious and organised crime.

4.5. **Terrorism**

The European Council considers that the threat from terrorists remains significant and is constantly evolving in response to both the international community's attempts at combating it and new opportunities that present themselves. We must not lower our guard against these heinous criminals.

Respect for the Rule of Law, fundamental rights and freedoms is one of the bases for the Union's overall counter-terrorism work. Measures in the fight against terrorism must be undertaken within the framework of full respect for fundamental rights and freedoms so that they do not give rise to challenge. Moreover, all the parties concerned should avoid stigmatising any particular group of people, and should develop intercultural dialogue in order to promote mutual awareness and understanding.

The Union must ensure that all tools are deployed in the fight against terrorism while fully respecting fundamental rights and freedoms. The European Council reaffirms its counter-terrorism strategy consisting of four strands of work — prevent, pursue, protect and respond — and calls for a reinforcement of the prevention strand.

The European Council reaffirms the importance of the role of the EU Counter Terrorism Coordinator in ensuring implementation and evaluation of the Counter Terrorist strategy, coordinating Counter Terrorist work within the Union, and fostering better communication between the Union and third countries.

The European Council calls upon:

— Member States to develop prevention mechanisms, in particular to allow the early detection of signs of radicalisation or threats, including threats from violent, militant extremism,

— the Commission, the Council and Member States to improve initiatives to counter radicalisation in all vulnerable populations on the basis of an evaluation of the effectiveness of national policies. Member States should identify best practices and specific operational tools to be shared with other Member States. New areas of work could include integration and the fight against discrimination,

— Member States, government institutions and the Commission, together with the civil society, to enhance their efforts and cooperate even more closely, especially at local level, in order to understand all the factors underlying the phenomenon and to promote strategies that encourage people to give up terrorism. To that end, a network of local professionals should be set up and networks for exchanging practices on prevention should be developed.

The European Council stresses the importance of better understanding the methods used for dissemination of terrorist propaganda, including on Internet. This will require better technical resources and know-how. Work on aviation and maritime security need to be developed, along with threat analysis, in close cooperation with transport operators in order to mitigate the impact on the travelling public. Greater attention should be paid to potential targets such as urban mass transit and high speed rail networks, as well as energy and water infrastructures.

The European Council considers that the instruments for combating the financing of terrorism must be adapted to the new potential vulnerabilities of the financial system, as well as cash smuggling and abuse of money services, and to new payment methods used by terrorists.

The European Council calls upon the Commission to:

— promote increased transparency and responsibility for charitable organisations with a view to ensuring compatibility with Special Recommendation (SR) VIII of the Financial Action Task Force (FATF),

— take into account new payment methods in the elaboration/update of Counter Terrorist Financing measures,

— examine the possibilities to track terrorist financing within the Union,

— present measures to improve feedback to financial institutions regarding the outcome of their cooperation in the fight against financing of terrorism.

The Union must ensure that its policies are in full compliance with international law, in particular, human rights law. It will play an active role in the fight against terrorism in different multilateral forums, and in particular in the United Nations (UN), where it will continue to work with partners towards a Comprehensive Convention on International Terrorism and towards enhancing the design, implementation and effectiveness of sanctions by the UN Security Council with a view to safeguarding fundamental rights and freedoms and ensuring fair and clear procedures. Cooperation with third countries in general and within international organisations need to be strengthened.

In order to be able to analyse the threats at European level, a methodology based on common parameters should be established. Full use should be made of Europol, SitCen and Eurojust in the fight against terrorism.

The EU Action Plan on Enhancing the security of Explosives should be implemented and better information on the safety of explosives provided. A legislative framework to address the dangers associated with precursors should be developed.

4.6. **Comprehensive and effective Union Disaster Management: reinforcing the Union's capacities to prevent, prepare for and respond to all kinds of disasters**

Natural and man-made disasters such as forest fires, earthquakes, floods and storms, as well as terrorist attacks, increasingly affect the safety and security of citizens and call for the further development of Union action in disaster management.

Union disaster management should be based on an integrated approach, covering the whole disaster cycle encompassing prevention, preparedness, response and recovery for actions both inside and outside the Union.

Union disaster management is built on two main principles: the responsibility of Member States for providing their citizens with the necessary protection in view of the existing risks and threats, and solidarity amongst the Member States to assist each other both before, during and after disasters, if catastrophes overwhelm national capacities or affect more than one Member State. The European Council considers that future Union action should be guided by the objectives of reducing vulnerability to disasters by developing a strategic approach to disaster prevention and by further improving preparedness and response while recognising national responsibility. Guidelines for hazard and risk-mapping methods, assessments and analyses should be developed as well as an overview of the natural and man-made risks that the Union may face in the future. Continued efforts are necessary to strengthen the Union Civil Protection Mechanism and to improve the civil protection instruments, including the availability, interoperability and use of and support for the coordination of assistance also outside the Union's territory on occasions of serious emergencies involving citizens of the Union abroad. The Monitoring and Information Centre (MIC) should be reinforced in order to improve the coordination of Member States' assistance, provide mapping and analytical support to the Member States for the further identification and registration of national and multinational civil protection modules and develop training and exercises in order to contribute to an efficient Union disaster response.

Reducing vulnerability to attacks is one of the major objectives pursued with the Union action concerning the protection of Union Critical Infrastructure. Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European Critical Infrastructures and the assessment of the need to improve their protection, when implemented, should be analysed and reviewed in due course in order to consider the possible inclusion of additional policy sectors.

The chemical, biological, radiological and nuclear (CBRN) risk, and in particular the threat of terrorist groups using CBRN materials, has led to action at national and Union level. The overall goal of the policy on CBRN security is to present a prioritised, relevant and effective European strategy to enhance the protection of citizens of the Union from incidents involving CBRN materials. In order to achieve this goal, the implementation of the EU CBRN Action Plan based on an all-hazards approach, including actions to prevent, detect, prepare and respond to larger incidents with high risk CBRN materials, is vital.

Increasingly research will be of importance to support all areas of disaster management. Possibilities for research within the Seventh Framework Programme for research and technological development for the period 2007 to 2013 and within the following framework programmes need to be analysed and appropriate proposals should be made to support that goal.

Close cooperation with international organisations, in particular UN, which has an overall coordinating role in international humanitarian response should continue to be a priority for interventions in third countries, both on the ground and in terms of preparedness (training, joint exercises). In accordance with the 2007 European Consensus on Humanitarian Aid a strong Union coordination and role will enhance the overall international humanitarian response, including concerted efforts to improve the humanitarian system, and would also reinforce the Union ambition of working closely with other humanitarian actors. The safety and security of the Union requires continuous dialogue and cooperation with third countries, and in particular neighbouring countries and countries with a Member State perspective. The Union's increasing initiatives for strengthening regional cooperation, for example for the Mediterranean, the Baltic Sea area and the Black Sea Region, as well as the Eastern partnership, are designed to contribute to this.

5. ACCESS TO EUROPE IN A GLOBALISED WORLD

5.1. Integrated management of the external borders

The Union must continue to facilitate legal access to the territory of its Member States while in parallel taking measures to counteract illegal immigration and cross-border crime and maintaining a high level of security. The strengthening of border controls should not prevent access to protection systems by those persons entitled to benefit from them, and especially people and groups that are in vulnerable situations. In this regard, priority will be given to those in need of international protection and to the reception of unaccompanied minors. It is essential that the activities of Frontex and of the EASO are coordinated when it comes to the reception of migrants at the Union's external borders. The European Council calls for the further development of integrated border management, including the reinforcement of the role of Frontex in order to increase its capacity to respond more effectively to changing migration flows.

The European Council therefore:

— requests the Commission to put forward proposals no later than early 2010 to clarify the mandate and enhance the role of Frontex, taking account of the results of the evaluation of the Agency and the role and responsibilities of the Member States in the area of border control. Elements of these proposals could contain preparation of clear common operational procedures containing clear rules of engagement for joint operations at sea, with due regard to ensuring protection for those in need who travel in mixed flows, in accordance with international law as well as increased operational cooperation between Frontex and countries of origin and of transit and examination of the possibility of regular chartering financed by Frontex. In order to promote the proper enforcement of the applicable statutory framework for Frontex operations, the Commission should consider including a mechanism for reporting and recording incidents that can be satisfactorily followed up by the relevant authorities,

— invites Frontex itself to consider, within its mandate, establishing regional and/or specialised offices to take account of the diversity of situations, particularly the land border to the East and the sea border to the South. Creating such offices should in no account undermine the unity of the Frontex agency. Before creating such offices, Frontex should report to the Council on its intentions,

— invites the Commission to initiate a debate on the long-term development of Frontex. This debate should include, as was envisaged in the Hague programme, the feasibility of the creation of a European system of border guards,

— invites the EASO to develop methods to better identify those in need of international protection in mixed flows, and to cooperate with Frontex wherever possible,

— considers that the evaluation of the Schengen area will continue to be of key importance and that it therefore should be improved by strengthening the role of Frontex in this field,

— invites the Council and the Commission to support enhanced capacity building in third countries so that they can control efficiently their external borders.

The European Council looks forward to the continued phased development of the European Border Surveillance System (Eurosur) in the Southern and Eastern borders, with a view to putting in place a system using modern technologies and supporting Member States, promoting interoperability and uniform border surveillance standards and to ensuring that the necessary cooperation is established between the Member States and with Frontex to share necessary surveillance data without delay. This development should take into account the work in other relevant areas of the Integrated Maritime Policy for the European Union as well as being able in the medium term to allow for cooperation with third countries. The European Council invites the Commission to make the necessary proposals to achieve these objectives.

The European Council takes note of the ongoing studies of Member States and Frontex in the field of automated border control and encourages them to continue their work in order to establish best practice with a view to improving border controls at the external borders.

The European Council also invites Member States and the Commission to explore how the different types of checks carried out at the external border can be better coordinated, integrated and rationalised with a view to the twin objective of facilitating access and improving security. Moreover, the potential of enhanced information exchange and closer cooperation between border guard authorities and other law enforcement authorities working inside the territory should be explored, in order to increase efficiency for all the parties involved and fight cross-border crime more effectively.

The European Council considers that technology can play a key role in improving and reinforcing the system of external border controls. The entry into operation of the Second generation Schengen Information System II (SIS II) and the roll-out of the Visa Information system (VIS) therefore remains a key objective and the European Council calls on the Commission and Member States to ensure that they now become fully operational in keeping with the timetables to be established for that purpose. Before creating new systems, an evaluation of these and other existing systems should be made and the difficulties encountered when they were set up should be taken into account. The setting up of an administration for large-scale IT systems could play a central role in the possible development of IT systems in the future.

The European Council is of the opinion that an electronic system for recording entry to and exit from Member States could complement the existing systems, in order to allow Member States to share data effectively while guaranteeing data protection rules. The introduction of the system at land borders deserves special attention and the implications to infrastructure and border lines should be analysed before implementation.

The possibilities of new and interoperable technologies hold great potential for rendering border management more efficient as well as more secure but should not lead to discrimination or unequal treatment of passengers. This includes, *inter alia*, the use of gates for automated border control.

The European Council invites the Commission to:

— present proposals for an entry/exit system alongside a fast track registered traveller programme with a view to such a system becoming operational as soon as possible,

— to prepare a study on the possibility and usefulness of developing a European system of travel authorisation and, where appropriate, to make the necessary proposals,

— to continue to examine the issue of automated border controls and other issues connected to rendering border management more efficient.

5.2. **Visa policy**

The European Council believes that the entry into force of the Visa Code and the gradual roll-out of the VIS will create important new opportunities for further developing the common visa policy. That policy must also be part of a broader vision that takes account of relevant internal and external policy concerns. The European Council therefore encourages the Commission and Member States to take advantage of these developments in order to intensify regional consular cooperation by means of regional consular cooperation programmes which could include, in particular, the establishment of common visa application centres, where necessary, on a voluntary basis.

The European Council also invites:

— the Commission and Council to continue to explore the possibilities created by the conclusion of visa facilitation agreements with third countries in appropriate cases,

— the Commission to keep the list of third countries whose nationals are or are not subject to a visa requirement under regular review in accordance with appropriate criteria relating for example to illegal immigration, public policy and security, which take account of the Union's internal and foreign policy objectives,

— the Commission to strengthen its efforts to ensure the principle of visa reciprocity and prevent the (re)introduction of visa requirements by third countries towards any Member State and to identify measures which could be used prior to imposing the visa reciprocity mechanism towards those third countries.

The European Council, with a view to creating the possibility of moving to a new stage in the development of the common visa policy, while taking account of Member States competences in this area, invites the Commission to present a study on the possibility of establishing a common European issuing mechanism for short term visas. The study could also examine to what degree an assessment of individual risk could supplement the presumption of risk associated with the applicant's nationality.

6. **A EUROPE OF RESPONSIBILITY, SOLIDARITY AND PARTNERSHIP IN MIGRATION AND ASYLUM MATTERS**

The European Council recognises both the opportunities and challenges posed by increased mobility of persons, and underlines that well-managed migration can be beneficial to all stakeholders. The European Council equally recognises that, in the context of the important demographic challenges that will face the Union in the future with an increased demand for labour, flexible migration policies will make an important contribution to the Union's economic development and performance in the longer term. The European Council is of the opinion that the long-term consequences of migration, for example on the labour markets and the social situation of migrants, have to be taken into account and that the interconnection between migration and integration remains crucial, inter alia, with regard to the fundamental values of the Union. Furthermore, the European Council recalls that the establishment of a Common European Asylum System (CEAS) by 2012 remains a key policy objective for the Union.

The European Council calls for the development of a comprehensive and sustainable Union migration and asylum policy framework, which in a spirit of solidarity can adequately and proactively manage fluctuations in migration flows and address situations such as the present one at the Southern external borders. Serious efforts are needed to build and strengthen dialogue and partnership between the Union and third countries, regions and organisations in order to achieve an enhanced and evidence-based response to these situations, taking into account that illegal immigrants enter the Union also via other borders or through misuse of visa. An important objective is to avoid the recurrence of tragedies at sea. When tragic situations unfortunately happen, ways should be explored to better record and, where possible, identify migrants trying to reach the Union.

The European Council recognises the need to find practical solutions which increase coherence between migration policies and other policy areas such as foreign and development policy and trade, employment, health and education policy at the European level. In particular, the European Council invites the Commission to explore procedures that to a greater extent link the development of migration policy to the development of the post-Lisbon Strategy. The European Council recognises the need to make financial resources within the Union increasingly flexible and coherent, both in terms of scope and of applicability, to support policy development in the field of asylum and migration.

The European Council reaffirms the principles set out in the Global Approach to Migration as well as the European Pact on Immigration and Asylum. The European Council also recalls its conclusions of the June and October 2009 on this subject. It underlines the need to implement all measures in a comprehensive manner and evaluate them as decided. It recalls the five basic commitments set out in the Pact:

— to organise legal migration to take account of the priorities, needs and reception capacities determined by each Member State, and to encourage integration,

— to control illegal immigration by ensuring that illegal immigrants return to their countries of origin or to a country of transit,

— to make border controls more effective,

— to construct a Europe of asylum,

— to create a comprehensive partnership with the countries of origin and of transit in order to encourage the synergy between migration and development.

6.1. **A dynamic and comprehensive migration policy**

6.1.1. *Consolidating, developing and implementing the Global Approach to Migration*

The European Council has consistently underlined the need for Union migration policy to be an integral part of Union foreign policy and recognises that the Global Approach to Migration has proven its relevance as the strategic framework for this purpose. Based on the original principles of solidarity, balance and true partnership with countries of origin and of transit outside the Union and in line with what already has been accomplished, the European Council calls for the further development and consolidation of this integrated approach. The implementation of the Global Approach to Migration needs to be accelerated by the strategic use of all its existing instruments and improved by increased coordination. A balance between the three areas (promoting mobility and legal migration, optimising the link between migration and development, and preventing and combating illegal immigration) should be maintained. The principal focus should remain on cooperation with the most relevant countries in Africa and Eastern and South-Eastern Europe. Dialogue and cooperation should be further developed also with other countries and regions such as those in Asia and Latin America on the basis of the identification of common interests and challenges.

To this end, the European Council emphasises the following priorities:

— strategic, evidence-based and systematic use of all available instruments of the Global Approach to Migration — migration profiles, migration missions, cooperation platforms on migration and development and Mobility partnerships — for long-term cooperation on all dimensions of this policy in close partnership with selected third countries along priority migratory routes,

— continued and expanded use of the Mobility partnership instrument as the main strategic, comprehensive and long-term cooperation framework for migration management with third countries, adding value to existing bilateral frameworks. Success in implementing these partnerships requires improved coordination and substantial capacity-building efforts in countries of origin, of transit and of destination. The European Council calls for further development of the Mobility partnership instrument, while respecting their voluntary nature. Partnerships should be flexible and responsive to the needs of both the Union and the partner countries, and should include cooperation on all areas of the Global Approach to Migration,

— more efficient use of the Union's existing cooperation instruments to increase the capacity of partner countries, with a view to ensuring well-functioning infrastructures and sufficient administrative capacity to handle all aspects of migration, including improving their capacity to offer adequate protection and increasing the benefits and opportunities created by mobility.

The successful implementation of the Global Approach to Migration should be underpinned by regular evaluations, increased commitment and capacity as well as improved flexibility of the financial instruments of both the Union and the Member States available in this field.

6.1.2. *Migration and development*

The European Council underlines the need to take further steps to maximise the positive and minimise the negative effects of migration on development in line with the Global Approach on Migration. Effective policies can provide the framework needed to enable countries of destination and of origin and migrants themselves to work in partnership to enhance the effects of international migration on development.

Efforts to promote concerted mobility and migration with countries of origin should be closely linked with efforts to promote the development of opportunities for decent and productive work and improved livelihood options in third countries in order to minimise the brain drain.

To that end, the European Council invites the Commission to submit proposals before 2012 on:

— how to further ensure efficient, secure and low-cost remittance transfers, and enhance the development impact of remittance transfers, as well as to evaluate the feasibility of creating a common Union portal on remittances to inform migrants about transfer costs and encourage competition among remittance service providers,

— how diaspora groups may be further involved in the Union development initiatives, and how Member States may support diaspora groups in their efforts to enhance development in their countries of origin,

— ways to further explore the concept of circular migration and study ways to facilitate orderly circulation of migrants, either taking place within, or outside, the framework of specific projects or programmes including a wide-ranging study on how relevant policy areas may contribute to and affect the preconditions for increased temporary and circular mobility.

The European Council recognises the need for increased policy coherence at European level in order to promote the positive development effects of migration within the scope of the Union's activities in the external dimension and to align international migration more closely to the achievement of the Millennium Development Goals. The European Council calls on the Council to ensure that it acts in a coordinated and coherent manner in this field.

The connection between climate change, migration and development needs to be further explored, and the European Council therefore invites the Commission to present an analysis of the effects of climate change on international migration, including its potential effects on immigration to the Union.

6.1.3. *A concerted policy in keeping with national labour-market requirements*

The European Council recognises that labour immigration can contribute to increased competitiveness and economic vitality. In this sense, the European Council is of the opinion that the Union should encourage the creation of flexible admission systems that are responsive to the priorities, needs, numbers and volumes determined by each Member State and enable migrants to take full advantage of their skills and competence. In order to facilitate better labour matching, coherent immigration policies as well as better integration assessments of the skills in demand on the European labour markets are carried out. These systems must have due regard for Member States' competences, especially for managing their labour markets, and the principle of Union preference.

The European Council invites:

— the Commission and Council to continue to implement the Policy Plan on Legal Migration,

— the Commission to consider how existing information sources and networks can be used more effectively to ensure the availability of the comparable data on migration issues with a view to better informing policy choices, which also takes account of recent developments,

— the Commission and the Council to evaluate existing policies that should, *inter alia*, improve skills recognition and labour matching between the Union and third countries and the capacity to analyze labour market needs, the transparency of European on-line employment and recruitment information, training, information dissemination, and skills matching in the country of origin,

— the Commission to assess the impact and effectiveness of measures adopted in this area with a view to determining whether there is a need for consolidating existing legislation, including regarding categories of workers currently not covered by Union legislation.

6.1.4. *Proactive policies for migrants and their rights*

The Union must ensure fair treatment of third country nationals who reside legally on the territory of its Member States. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of citizens of the Union. This should remain an objective of a common immigration policy and should be implemented as soon as possible, and no later than 2014.

The European Council therefore invites the Commission to submit proposals for:

— consolidation of all legislation in the area of immigration, starting with legal migration, which would be based on an evaluation of the existing *acquis* and include amendments needed to simplify and/or, where necessary, extend the existing provisions and improve their implementation and coherence,

— evaluation and, where necessary, review of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, taking into account the importance of integration measures.

6.1.5. *Integration*

The successful integration of legally residing third-country nationals remains the key to maximising the benefits of immigration. European cooperation can contribute to more effective integration policies in the Member States by providing incentives and support for the action of Member States. The objective of granting comparable rights, responsibilities, and opportunities for all is at the core of European cooperation in integration, taking into account the necessity of balancing migrants' rights and duties.

Integration is a dynamic, two-way process of mutual interaction, requiring not only efforts by national, regional and local authorities but also a greater commitment by the host community and immigrants.

Member States' integration policies should be supported through the further development of structures and tools for knowledge exchange and coordination with other relevant policy areas, such as employment, education and social inclusion. Access to employment is central to successful integration.

The European Council also invites the Commission to support Member States' efforts:

— through the development of a coordination mechanism involving the Commission and the Member States using a common reference framework, which should improve structures and tools for European knowledge exchange,

— to incorporate integration issues in a comprehensive way in all relevant policy areas,

— towards the identification of joint practices and European modules to support the integration process, including essential elements such as introductory courses and language classes, a strong commitment by the host community and the active participation of immigrants in all aspects of collective life,

— towards the development of core indicators in a limited number of relevant policy areas (for example employment, education and social inclusion) for monitoring the results of integration policies, in order to increase the comparability of national experiences and reinforce the European learning process,

— for improved consultation with and involvement of civil society, taking into account integration needs in various policy areas and making use of the European Integration Forum and the European website on Integration,

— to enhance democratic values and social cohesion in relation to immigration and integration of immigrants and to promote intercultural dialogue and contacts at all levels.

6.1.6. *Effective policies to combat illegal immigration*

The European Council is convinced that effective action against illegal immigration remains essential when developing a common immigration policy. The fight against trafficking in human beings and smuggling of persons, integrated border management and cooperation with countries of origin and of transit, supported by police and judicial cooperation, in particular, must remain a key priority for this purpose. Our aim must be to prevent the human tragedies which result from the activities of traffickers.

An effective and sustainable return policy is an essential element of a well-managed migration system within the Union. The Union and the Member States should intensify the efforts to return illegally residing third-country nationals. Necessary financial means should be allocated for this purpose. Such a policy must be implemented with full respect for the principle of '*non-refoulement*' and for the fundamental rights and freedoms and the dignity of the individual returnees. Voluntary return should be preferred, while acknowledging the inevitable need for efficient means to enforce returns where necessary.

In order to create a comprehensive approach on return and readmission, it is necessary to step up cooperation with countries of origin and of transit within the framework of the Global Approach to Migration and in line with the European Pact on Immigration and Asylum, while recognising that all States are required to readmit their own nationals who are illegally staying on the territory of another State.

It is important to ensure that the implementation of the newly adopted instruments in the area of return and sanctions against employers, as well as the readmission agreements in force, is closely monitored in order to ensure their effective application.

The European Council believes that the focus should be placed on:

— encouraging of voluntary return, including through the development of incentive systems, training, reintegration and subsidies, and by using the possibilities offered by existing financial instruments,

— Member States:

  — to put into full effect the Union provisions pursuant to which a return decision issued by one Member State is applicable throughout the Union and the effective application of the principle of mutual recognition of return decisions by recording entry bans in SIS and facilitating exchange of information,

  — to improve the exchange of information on developments at national level in the area of regularisation, with a view to ensuring consistency with the principles of the European Pact on Immigration and Asylum,

— assistance by the Commission, Frontex and Member States on a voluntary basis, to Member States which face specific and disproportionate pressures, in order to ensure the effectiveness of their return policies towards certain third countries,

— more effective action against illegal immigration and trafficking in human beings and smuggling of persons by developing information on migration routes as well as aggregate and comprehensive information which improves our understanding of and response to migratory flows, promoting cooperation on surveillance and border controls, facilitating readmission by promoting support measures for return and reintegration, capacity building in third countries,

— the conclusion of effective and operational readmission agreements, on a case-by-case basis at Union or bilateral level,

— ensuring that the objective of the Union's efforts on readmission should add value and increase the efficiency of return policies, including existing bilateral agreements and practices,

— the presentation by the Commission of an evaluation, also of ongoing negotiations, during 2010 of the EC/EU readmission agreements and propose a mechanism to monitor their implementation. The Council should define a renewed, coherent strategy on readmission on that basis, taking into account the overall relations with the country concerned, including a common approach towards third countries that do not cooperate in readmitting their own nationals,

— increased practical cooperation between Member States, for instance by regular chartering of joint return flights, financed by Frontex and the verification of the nationality of third-country nationals eligible for return, and the procurement from third countries of travel documents,

— increased targeted training and equipment support,

— a coordinated approach by Member States by developing the network of liaison officers in countries of origin and of transit.

6.1.7. *Unaccompanied minors*

Unaccompanied minors arriving in the Member States from third countries represent a particularly vulnerable group which requires special attention and dedicated responses, especially in the case of minors at risk. This is a challenge for Member States and raises issues of common concern. Areas identified as requiring particular attention are the exchange of information and best practice, minor's smuggling, cooperation with countries of origin, the question of age assessment, identification and family tracing, and the need to pay particular attention to unaccompanied minors in the context of the fight against trafficking in human beings. A comprehensive response at Union level should combine prevention, protection and assisted return measures while taking into account the best interests of the child.

The European Council therefore welcomes the Commission's initiative to:

— develop an action plan, to be adopted by the Council, on unaccompanied minors which underpins and supplements the relevant legislative and financial instruments and combines measures directed at prevention, protection and assisted return. The action plan should underline the need for cooperation with countries of origin, including cooperation to facilitate the return of minors, as well as to prevent further departures. The action plan should also examine practical measures to facilitate the return of the high number of unaccompanied minors that do not require international protection, while recognising that the

best interests for many may be the reunion with their families and development in their own social and cultural environment.

6.2. **Asylum: a common area of protection and solidarity**

The European Council remains committed to the objective of establishing a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection. While CEAS should be based on high protection standards, due regard should also be given to fair and effective procedures capable of preventing abuse. It is crucial that individuals, regardless of the Member State in which their application for asylum is lodged, are offered an equivalent level of treatment as regards reception conditions, and the same level as regards procedural arrangements and status determination. The objective should be that similar cases should be treated alike and result in the same outcome.

6.2.1. *A common area of protection*

There are still significant differences between national provisions and their application. In order to achieve a higher degree of harmonisation, the establishment of CEAS, should remain a key policy objective for the Union. Common rules, as well as a better and more coherent application of them, should prevent or reduce secondary movements within the Union, and increase mutual trust between Member States.

The development of a Common Policy on Asylum should be based on a full and inclusive application of the 1951 Geneva Convention relating to the Status of Refugees and other relevant international treaties. Such a policy is necessary in order to maintain the long-term sustainability of the asylum system and to promote solidarity within the Union. Subject to a report from the Commission on the legal and practical consequences, the Union should seek accession to the Geneva Convention and its 1967 Protocol.

The EASO will be an important tool in the development and implementation of the CEAS and should contribute to strengthening all forms of practical cooperation between the Member States. Therefore the Member States should play an active role in the work of the EASO. It should further develop a common educational platform for national asylum officials, building in particular on the European Asylum Curriculum (EAC). Enhancing the convergence and ongoing quality with a view to reducing disparities of asylum decisions will be another important task.

The Dublin System remains a cornerstone in building the CEAS, as it clearly allocates responsibility for the examination of asylum application.

The European Council accordingly invites:

— the Council and the European Parliament to intensify the efforts to establish a common asylum procedure and a uniform status in accordance with Article 78 TFEU for those who are granted asylum or subsidiary protection by 2012 at the latest,

— the Commission to consider, once the second phase of the CEAS has been fully implemented and on the basis of an evaluation of the effect of that legislation and of the EASO, the possibilities for creating a framework for the transfer of protection of beneficiaries of international protection when exercising their acquired residence rights under Union law,

— the Commission to undertake a feasibility study on the Eurodac system as a supporting tool for the entire CEAS, while fully respecting data protection rules,

— the Commission to consider, if necessary, in order to achieve the CEAS, proposing new legislative instruments on the basis of an evaluation,

— invites the Commission to finalise its study on the feasibility and legal and practical implications to establish joint processing of asylum applications.

6.2.2. *Sharing of responsibilities and solidarity between the Member States*

Effective solidarity with the Member States facing particular pressures should be promoted.

This should be achieved through a broad and balanced approach. Mechanisms for the voluntary and coordinated sharing of responsibility between the Member States should therefore be further analyzed and developed. In particular as one of the keys to a credible and sustainable CEAS is for Member States to build sufficient capacity in the national asylum systems, the European Council urges the Member States to support each other in building sufficient capacity in their national asylum systems. The EASO should have a central role in coordinating these capacity-building measures.

The European Council therefore invites the Commission to examine the possibilities for:

— developing the above mentioned mechanism for sharing responsibility between the Member States while assuring that asylum systems are not abused, and the principles of the CEAS are not undermined,

— creating instruments and coordinating mechanisms which will enable Member States to support each other in building capacity, building on Member States own efforts to increase their capacity with regard to their national asylum systems,

— using, in a more effective way, existing Union financial systems aiming at reinforcing internal solidarity,

— the EASO to evaluate and develop procedures that will facilitate the secondment of officials in order to help those Member States facing particular pressures of asylum seekers.

6.2.3. *The external dimension of asylum*

The Union should act in partnership and cooperate with third countries hosting large refugee populations. A common Union approach can be more strategic and thereby contribute more efficiently to solving protracted refugee situations. Any development in this area needs to be pursued in close cooperation with the United Nations High Commissioner for Refugees (UNHCR) and, if appropriate, other relevant actors. The EASO should be fully involved in the external dimension of the CEAS. In its dealings with third countries, the Union has the responsibility to actively convey the importance of acceding to, and implementing of, the 1951 Geneva Convention and its Protocol.

Promoting solidarity within the Union is crucial but not sufficient to achieve a credible and sustainable common policy on asylum. It is therefore important to further develop instruments to express solidarity with third countries in order to promote and help building capacity to handle migratory flows and protracted refugee situations in these countries.

The European Council invites:

— the Council and the Commission to enhance capacity building in third countries, in particular, their capacity to provide effective protection, and to further develop and expand the idea of Regional Protection Programmes, on the basis of the forthcoming evaluations. Such efforts should be incorporated into the Global Approach to Migration, and should be reflected in national poverty reduction strategies and not only be targeting refugees and internally displaced persons but also local populations,

— the Council, the European Parliament and the Commission to encourage the voluntary participation of Member States in the joint Union resettlement scheme and increase the total number of resettled refugees, taking into consideration the specific situation in each Member State,

— the Commission to report annually to the Council and the European Parliament on the resettlement efforts made within the Union, to carry out a mid-term evaluation during 2012 of the progress made, and to evaluate the joint Union resettlement programme in 2014 with a view to identifying necessary improvements,

— the Council and the Commission to find ways to strengthen Union support for the UNHCR,

— the Commission to explore, in that context and where appropriate, new approaches concerning access to asylum procedures targeting main countries of transit, such as protection programmes for particular groups or certain procedures for examination of applications for asylum, in which Member States could participate on a voluntary basis.

7. EUROPE IN A GLOBALISED WORLD — THE EXTERNAL DIMENSION OF FREEDOM, SECURITY AND JUSTICE

The European Council emphasises the importance of the external dimension of the Union's policy in the area of freedom, security and justice and underlines the need for the increased integration of these policies into the general policies of the Union. The external dimension is crucial to the successful implementation of the objectives of this programme and should in particular be fully coherent with all other aspects of Union foreign policy.

The Union must continue to ensure effective implementation, and to conduct evaluations also in this area. All action should be based on transparency and accountability, in particular, with regard to the financial instruments.

As reiterated by the 2008 European Security Strategy report, internal and external security are inseparable. Addressing threats, even far away from our continent, is essential to protecting Europe and its citizens.

The European Council invites the Council and the Commission to ensure that coherence and complementary are guaranteed between the political and the operational level of activities in the area of freedom, security and justice. Priorities in external relations should inform and guide the prioritisation of the work of relevant Union agencies (Europol, Eurojust, Frontex, CEPOL, EMCDDA and EASO).

Member States' Liaison officers should be encouraged to further strengthen their cooperation, sharing of information and best practices.

The European Council underscores the need for complementarity between the Union and Member States' action. To that end, increased commitment from the Union and the Member States is required.

7.1. **A reinforced external dimension**

The European Council has decided that the following principles will continue to guide the Union action in the external dimension of the area of freedom, security and justice in the future:

— the Union has a single external relations policy,

— the Union and the Member States must work in partnership with third countries,

— the Union and the Member States will actively develop and promote European and international standards,

— the Union and the Member States will cooperate closely with their neighbours,

— the Member States will increase further the exchange of information between themselves and within the Union on multilateral and bilateral activities,

— the Union and the Member States must act with solidarity, coherence and complementarity,

— the Union will make full use of all ranges of instruments available to it,

— the Member States should coordinate with the Union so as to optimise the effective use of resources,

— the Union will engage in information, monitoring and evaluation, inter alia, with the involvement of the European Parliament,

— the Union will work with a proactive approach in its external relations.

The European Council considers that the policies in the area of freedom, security and justice should be well integrated into the general policies of the Union. The adoption of the Lisbon Treaty offers new possibilities for the Union to act more efficiently in the external relations. The High Representative of the Union for foreign affairs and security policy, who is also a Vice President of the Commission, the European External Action Service and the Commission will ensure better coherence between traditional external policy instruments and internal policy instruments with significant external dimensions, such as freedom, security and justice. Consideration should be given to the added value that could be achieved by including specific competence in the area of freedom, security and justice in Union delegations in strategic partner countries. Furthermore, the legal personality of the Union should enable the Union to act with increased strength in international organisations.

The Council recognises that CSDP and many external actions in the area of freedom, security and justice have shared or complementary objectives. CSDP missions also make an important contribution to the Union's internal security in their efforts to support the fight against serious transnational crime in their host countries and to build respect for the rule of law. The European Council encourages greater cooperation and coherence between the policies in the area of freedom, security and justice and CSDP to further these shared objectives.

The new basis under the Treaty for concluding international agreements will ensure that the Union can negotiate more effectively with key partners. The European Council intends to capitalise on all these new instruments to the fullest extent.

The European Council underscores the need for complementary between the Union and Member States' action. This will require a further commitment from the Union and the Member States. The European Council therefore asks the Commission to report on ways to ensure complementary by December 2011 at the latest.

7.2. **Human rights**

The Lisbon Treaty offers the Union new instruments as regards the protection of fundamental rights and freedoms both internally and externally. The values of the Union should be promoted and strict compliance with and development of international law should be respected. The European Council calls for the establishment of a Human Rights Action Plan to promote its values in the external dimension of the policies in the area of freedom, security and justice. This Plan should be examined by the European Council and should take into account that internal and external aspects of Human Rights are interlinked, for instance as regards the principle of *non-refoulement* or the use of death penalty by partners that the Union cooperates with. The Plan should contain specific measures in the short, medium and long term, and designate who is responsible for carrying out the actions.

7.3. **Continued thematic priorities with new tools**

The European Council considers that the key thematic priorities identified in the previous strategy remain valid, i.e. the fight against terrorism, organised crime, corruption, drugs, the exchange of personal data in a secure environment and managing migration flows. The fight against trafficking in human beings and smuggling of persons needs to be stepped up.

Building on the Strategy for the external dimension of JHA: Global freedom, security and justice adopted in 2005 and other relevant *acquis* in this field, such as the Global Approach to Migration, Union external cooperation should focus on areas where Union activity provides added value, in particular:

— ***Migration and asylum***, with a view to increasing Union dialogue and cooperation with countries of origin and of transit in order to improve their capacity to carry out border control, to fight against illegal immigration, to better manage migration flows and to ensure protection as well as to benefit from the positive effects of migration on development; return and readmission is a priority in the Union's external relations,

— ***Security***, by engaging with third countries to combat serious and organised crime, terrorism, drugs, trafficking in human beings and smuggling of persons, inter alia, by focusing the Union's counter-terrorism activities primarily on prevention and by protecting critical infrastructures, internal and external security are inseparable. Addressing threats, even far away from our continent, is essential to protecting Europe and its citizens,

— ***Information exchange*** that flows securely, efficiently and with adequate data protection standards between the Union and third countries,

— ***Justice***, to promote the rule of law and human rights, good governance, fight against corruption, the civil law dimension, promote security and stability and create a safe and solid environment for business, trade and investment,

— ***Civil protection and disaster management***, in particular to develop capacities of prevention and answers to major technological and natural catastrophes as well as to meet threats from terrorists.

The European Council invites the Commission to:

— examine whether ad hoc cooperation agreements with specific third countries to be identified by the Council could be a way of enhancing the fight against trafficking in human beings and smuggling of persons and making proposals to that end. In particular, such agreements could involve full use of all leverage available to the Union, including the use of existing financing programmes, cooperation in the exchange of information, judicial cooperation and migration tools.

The threat of terrorism and organised crime remains high. It is therefore necessary to work with key strategic partners to exchange information while continuing to work on longer-term objectives such as measures to prevent radicalisation and recruitment, as well as the protection of critical infrastructures. Operational agreements by Eurojust, Europol, as well as working arrangements with Frontex, should be strengthened.

7.4. **Agreements with third countries**

The Lisbon Treaty provides for new and more efficient procedures for the conclusion of agreements with third countries. The European Council recommends that such agreements, in particular, as regards judicial cooperation as well as in the field of civil law, should be considered to be used more frequently, while taking account of multilateral mechanisms. It notes however that Member States will maintain the option of entering into bilateral agreements which comply with Union law, and that a legal framework has been created for certain bilateral agreements in civil law as well.

Protection of personal data is a core activity of the Union. There is a need for a coherent legislative framework for the Union for personal data transfers to third countries for law enforcement. A framework model agreement consisting of commonly applicable core elements of data protection could be created.

7.5. **Geographical priorities and international organisations**

Union action in external relations should focus on key partners, in particular:

— Candidate countries and countries with a European Union membership perspective for which the main objective would be to assist them in transposing the acquis,

— European neighbourhood countries, and other key partners with whom the Union should cooperate on all issues in the area of freedom, security and justice,

— EEA/Schengen states have a close relationship with the Union. This motivates closer cooperation, based on mutual trust and solidarity to enhance the positive effects of the internal market as well as to promote Union internal security,

— the United States of America, the Russian Federation and other strategic partners with which the Union should cooperate on all issues in the area of freedom, security and justice,

— Other countries or regions of priority, in terms of their contribution to EU strategic or geographical priorities,

— International organisations such as the UN and the Council of Europe with whom the Union needs to continue to work and within which the Union should coordinate its position.

In the ***Western Balkans***, Stabilisation and Association Agreements are progressively entering into force and notable progress has been made in the area of visa policy, with visa facilitation and readmission agreements in place and a comprehensive visa liberalisation dialogue already achieved for some countries and still under way for others. Further efforts, including use of financial instruments, are needed to combat organised crime and corruption, to guarantee fundamental rights and freedoms and to build administrative capacities in border management, law enforcement and the judiciary in order to make the European perspective a reality.

The Union and ***Turkey*** have agreed to intensify their cooperation to meet the common challenge of managing migration flows and to tackle illegal immigration in particular. This cooperation should focus on joint responsibility, solidarity, cooperation with all Member States and common understanding, taking into account that Turkey neighbours the Union's external borders, its negotiation process and the Union's existing financial assistance in relevant areas, including border control. Concluding the negotiations on the readmission agreement with Turkey is a priority. Until then, already existing bilateral agreements should be adequately implemented.

The European Council emphasises that the ***European Neighbourhood Policy*** (ENP) offers future opportunities for the Union to act in a coordinated and efficient manner and contribute to strengthen capacity and institution-building for an independent and impartial judiciary, law enforcement authorities and anti-corruption efforts, as well as increasing and facilitating the mobility of citizens of the partner countries. As regards the Eastern Partnership countries, the Union is holding out the prospect of concluding Association Agreements (with substantial parts concerning the area of freedom, security and justice) with those countries and supporting, the mobility of citizens and, as a long-term perspective, visa liberalisation in a secure environment.

The European Council calls for the development before the end of 2010 of a plan on how to take cooperation with the Eastern Partnership countries forward, comprising freedom, security and justice aspects of the Eastern Partnership as well as chapters on freedom, security and justice of the ENP Action Plans (or their successor documents) of the countries concerned. This plan should also list the gradual steps towards full visa liberalisation as a long-term goal for individual partner countries on a case-by-case basis, as well as describe the conditions for well-managed and secure mobility, mentioned in the Joint Declaration of the Prague Eastern Partnership Summit. The European Council will review the plan by the end of 2012, and in particular to assess its impact on the ground.

The Union should increase its efforts to support stability and security of ***the Black Sea Region*** as a whole and enhance further ***the Black Sea Synergy*** regional cooperation initiative. Activities should in particular focus on border management, migration management, customs cooperation and the rule of law as well as fight against cross-border crime.

As regards the ***Union for the Mediterranean***, it will be necessary to enhance the work started in the context of the Barcelona process and the Euro-Mediterranean Partnership, in particular regarding migration (maritime), border surveillance, preventing and fighting drug trafficking, civil protection, law enforcement and judicial cooperation. The European Council invites the Commission in cooperation with the High Representative of the Union for foreign affairs and security policy to submit such a plan in 2010 and asks Coreper to prepare as soon as possible the decisions to be taken by the Council. The European Council will review the Plan by the end of 2012, and in particular to assess its impact on the ground.

As regards the situation in the Mediterranean area, the European Council considers that a stronger partnership with third countries of transit and of origin is necessary, based on reciprocal requirements and operational support, including border control, fight against organised crime, return and readmission. Rapid action to face the challenges in this region is a priority.

Cooperation has been intensified with the ***USA*** in the past 10 years including on all matters relating to the area of freedom, security and justice. Regular Ministerial Troika and Senior officials' meetings are held under each Presidency. In line with what has been laid down in the 'Washington Statement' adopted at the Ministerial Troika meeting in October 2009, the dialogue should continue and be deepened.

Ongoing cooperation in the fight against terrorism and transnational crime, border security, visa policy, migration and judicial cooperation should be pursued. An agreement on the protection of personal data exchanged for law enforcement purposes needs to be negotiated and concluded rapidly. The Union and the USA will work together to complete visa-free travel between the USA and the Union as soon as possible and increase security for travellers. Joint procedures should be set up for the implementation of the agreements on judicial cooperation, and regular consultations need to take place.

The Common Space for an area of freedom, security and justice and the new agreement currently under negotiation will provide the framework for intense and improved future cooperation with the ***Russian Federation***. Building also on the outcomes of the bi-annual Permanent Partnership Councils on freedom, security and justice, the Union and Russia should continue to cooperate within the framework of the visa dialogue and on legal migration, while tackling illegal immigration, enhance common fight against organised crime and particularly operational cooperation, and improve and intensify judicial cooperation. An agreement, which should satisfy high standards of data protection, should be made with Eurojust as soon as possible. A framework agreement on information exchange should be concluded in that context. The visa dialogue must continue. The visa facilitation and readmission agreement should be implemented fully.

The European Council notes that the 2007 ***EU-Africa*** Joint Strategy and Action Plan define the scope of cooperation in the areas of counter-terrorism, transnational crime and drug trafficking. Both within the EU-Africa Partnership on Mobility, Migration and Employment (MME) and the Global Approach to Migration, and the follow up process of the Rabat, Paris and Tripoli conferences, the dialogue on migration should be deepened and intensified with African Partners, focussing on countries along the irregular migration routes to Europe with a view to assisting those countries in their efforts to draw up migration policies and responding to illegal immigration at sea and on the borders. Efforts should be made to enhance cooperation, including the swift conclusion of readmission agreements, with Algeria, Morocco and Egypt, and, in line with the European Council conclusions of October 2009, with Libya.

West Africa has recently developed into a major hub for drug trafficking from South America to Europe and will require enhanced attention and assistance to stem drug trafficking as well as other transnational crime and terrorism (within the Sahel).

The dialogues with ***China*** and ***India*** on counter-terrorism aspects should be broadened and cover other priority areas such as intellectual property rights, migration, including fight against illegal immigration and judicial cooperation. When agreements on judicial cooperation are entered into, the Union will continue to require that the death penalty is an issue where no compromises can be made. The dialogue with India on migration should be intensified and cover all migration-related aspects. With regard to China, the dialogue on Human Rights must be continued. The dialogue with ***Brazil*** will have to become deeper and wider in the years to come. The Strategic Partnership and the Joint Action Plan should be implemented more efficiently and more specific measures should be considered.

With other countries and regions the Union will cooperate regionally or bilaterally as appropriate. The dialogue with Latin-American and Caribbean countries, on migration, drugs trafficking, money laundering and other fields of mutual interest should be pursued within the regional framework ***(EU-LAC)*** and within the framework of the FATF. Work will have to continue with the ***Central Asian countries*** along the trafficking routes to Europe.

Efforts should also be made to enhance cooperation with ***Afghanistan*** on drugs, including the implementation of the Action Oriented Paper on drug trafficking, and with Afghanistan and ***Pakistan*** on terrorism and migration issues.

As regards ***Afghanistan and Iraq***, focus should be kept on effectively addressing the refugee situation through a comprehensive approach. Efforts should be made to address illegal immigration flows and to conclude readmission agreements with them as well as with ***Bangladesh***.

7.6. **International organisations and promotion of European and international standards**

The European Council reiterates its commitment to effective multilateralism that supplements the bilateral and regional partnership with third countries and regions.

The UN remains the most important international organisation for the Union. The Lisbon Treaty creates the basis for more coherent and efficient Union participation in the work of the UN and other international organisations.

The Union should continue to promote European and international standards and the ratification of international conventions, in particular those developed under the auspices of the UN and the Council of Europe.

The work of the Council of Europe is of particular importance. It is the hub of the European values of democracy, human rights and the rule of law. The Union must continue to work together with the Council of Europe based on the Memorandum of Understanding between the Council of Europe and the European Union signed in 2007 and support its important conventions such as the Convention on Action against Trafficking in Human Beings and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

For law enforcement cooperation, Interpol is an important partner for the Union. Civil law cooperation is in particular made in the framework of the Hague Conference on Private International Law. The Union should continue to support the Conference and encourage its partners to ratify the conventions where the Union is or will become a Party or where all Member States are Parties.

LIST OF ABBREVIATIONS

CBRN	Chemical, Biological, Radiological and Nuclear
CEAS	Common European Asylum System
CEPOL	European Police College
COSI	Standing Committee on Internal Security
CSDP	Common Security and Defence Policy
EAC	European Asylum Curriculum
EASO	European Asylum Support Office
ECRIS	European Criminal Records Information System
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
ENP	European Neighbourhood Policy
EPRIS	European Police Records Index System
EU	European Union
EU ATC	EU Anti-Trafficking Coordinator
EUCPN	European Crime Prevention Network
Eurosur	European Border Surveillance System
FATF	Financial Action Task Force
FIUs	Financial Intelligence Units
GRECO	Council of Europe Group of States against Corruption
ICC	International Criminal Court
ICT	Information and Communication Technology
JITs	Joint Investigative Teams
MIC	Monitoring and Information Centre
OCTA	Organised Crime Threat Assessment
OECD	Organisation for Economic Cooperation and Development
OPC	Observatory for the Prevention of Crime
PNR	Passenger Name Record
SIS II	Second generation Schengen Information System
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UNCAC	United Nations Convention against Corruption
UNHCR	United Nations High Commissioner for Refugees
VIS	Visa Information System

EUROPEAN COMMISSION

Brussels, 15.2.2011
COM(2011) 60 final

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

An EU Agenda for the Rights of the Child

TABLE OF CONTENTS

INTRODUCTION

The promotion and protection of the rights of the child is one of the objectives of the EU on which the Treaty of Lisbon has put further emphasis. Notably, Article 3(3) of the Treaty on European Union today explicitly requires the EU to promote the protection of the rights of the child. The rights of the child are furthermore enshrined in the Charter of Fundamental Rights of the European Union[1]. Article 24 of the Charter recognises that children are independent and autonomous holders of rights. It also makes the child's best interests a primary consideration for public authorities and private institutions.

Promoting the rights of the child is also a result of international commitments. All EU Member States ratified the United Nations Convention on the Rights of the Child (UNCRC).[2] The standards and principles of the UNCRC must continue to guide EU policies and actions that have an impact on the rights of the child. In 2006, the Commission established a basis for promoting and protecting the rights of the child in its internal and external policies with its Communication "Towards an EU Strategy on the Rights of the Child"[3]. The Commission thereby set up structures[4] to strengthen the capacity of EU institutions to address child rights issues, laying the foundations for evidence-based policies and stepping up interaction with stakeholders.

In view of the strong and reinforced commitment to the rights of the child in the Treaty of Lisbon and in the Charter of Fundamental Rights, the Commission believes it is now the time to move up a gear on the rights of the child and to transform policy objectives into action. The Europe 2020 Strategy[5] sets out a vision for the 21st century of a Europe where the children of today will have a better education, access to the services and to the resources they need to grow up and, one day, lead Europe into the 22nd century. This is why the Commission, with this Communication, advocates "An EU Agenda for the Rights of the Child". The purpose is to reaffirm the strong commitment of all EU institutions and of all Member States to promoting, protecting and fulfilling the rights of the child in all relevant EU policies and to turn it into concrete results. In the future, EU policies that directly or indirectly affect children should be designed, implemented, and monitored taking into account the principle of the best interests of the child enshrined in the EU Charter of Fundamental Rights and in the UNCRC.

This EU Agenda for the Rights of the Child is based on contributions from a wide public consultation[6] and on the needs and concerns that children from all EU Member States

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1 Charter of Fundamental Rights of the European Union, OJ C 83, 30.3.2010, p. 389–403.

2 Available at: http://www2.ohchr.org/english/law/crc.htm. The Optional Protocol of the UNCRC on the Involvement of Children in Armed Conflict has been ratified by all EU Member States but Estonia. The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography has been ratified by all EU Member States except the Czech Republic, Finland, Ireland, Luxembourg and Malta.

3 Communication from the Commission: Towards an EU Strategy on the Rights of the Child, COM(2006) 367 final, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0367:FIN:EN:PDF

4 European Forum on the Rights of the Child and its Steering Group; Commission Interservice Group; Commission Coordinator for the Rights of the Child.

5 Communication from the Commission on Europe 2020 - A Strategy for smart, sustainable and inclusive growth, COM (2010) 2020 final, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF.

6 In addition to the public consultation, available at: http://ec.europa.eu/justice/news/consulting_public/news_consulting_0009_en.htm this Communication is also based on the results of a targeted consultation with experts from specific policy areas.

expressed during a separate, targeted consultation[7]. It also takes into account the preliminary results of an evaluation of the impact of EU instruments affecting the rights of the child. The European Parliament[8], the Committee of the Regions[9], the Economic and Social Committee and the Council of Europe[10] as well as key stakeholders such as UNICEF, the Ombudspersons for children in the Member States, and civil society have contributed to the preparation of this Communication including through the work of the European Forum on the Rights of the Child[11].

The EU Agenda for the Rights of the Child presents general principles that should ensure that EU action is exemplary in ensuring the respect of the provisions of the Charter and of the UNCRC with regard to the rights of children. In addition, it focuses on a number of concrete actions in areas where the EU can bring real added value, such as child-friendly justice, protecting children in vulnerable situations and fighting violence against children both inside the European Union and externally.

1. GENERAL PRINCIPLES

The EU's commitment to the rights of the child requires a coherent approach across all relevant EU actions. This objective can be reached by using the Treaties, the Charter of Fundamental Rights of the European Union and the UN Convention on the Rights of the Child (UNCRC) as a common basis for all EU action which is relevant to children. The "child rights perspective" must be taken into account in all EU measures affecting children.

1.1. Making the rights of the child an integral part of the EU's fundamental rights policy

The Commission's Strategy for the effective implementation of the Charter of Fundamental Rights, adopted on 19 October 2010[12], requires the Commission to ensure from an early stage, by means of a "**fundamental rights check**", that its legislative proposals are always in full compliance with the fundamental rights guaranteed by the Charter. In line with this Strategy, the Commission is working with the European Parliament and the Council to ensure that also amendments introduced during the legislative process are fully respecting the Charter. The Commission is also working with Member States that they comply with the Charter when implementing EU legislation into national law, as required by Article 51(1) of the Charter.

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7 Eurobarometer Qualitative study on the Rights of the Child, October 2010, available at: http://ec.europa.eu/public_opinion/archives/quali/ql_right_child_sum_en.pdf

8 European Parliament resolution of 16 January 2008 (2007/2093 INI): Towards an EU Strategy on the rights of the child, available at: http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2008-0012.

9 Opinion of the Committee of the Regions on "Local and regional cooperation to protect the rights of the child in the European Union", OJ C 267, 1.10.2010, p. 46–51; Opinion of the Committee of the Regions towards an EU Strategy on the Rights of the Child, OJ C 146, 30.6.2007, p. 58–62.

10 Council of Europe reaction to Consultation document: European Commission's Consultation on the Rights of the Child, available at: http://www.coe.int/T/TransversalProjects/Children/News/EU%20Consultation%20paper%20final_en.pdf

11 The European Forum on the Rights of the Child – created by the Commission under German Presidency in 2007 – brings together representatives of Member States, the European Parliament, the Committee of the Regions, the European Economic and Social Committee, the Council of Europe, UNICEF, national observatories on childhood, Ombudspersons for children, civil society and other stakeholders.

12 Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union COM(2010) 573 final, 19 October 2010, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0573:FIN:EN:PDF

The rights of the child, guaranteed by Article 24 of the Charter, are one of the fundamental rights mentioned explicitly in the Commission's Strategy. It is thus included in the regular "fundamental rights check" which the Commission applies to relevant draft EU legislation.

As announced in the Communication on the Strategy for the effective implementation of the Charter, the Commission has developed mechanisms **to monitor the conformity of draft legislative actions with the Charter**. In order to reinforce its assessment of the impact of its proposals on fundamental rights, including on the rights of the child, the Commission has prepared operational guidance that will enable its departments to examine the impact of an initiative on fundamental rights, including the rights of the child, and to select the option that best takes into consideration the best interests of the child. This operational guidance covers the questions set out in the "fundamental rights check-list" announced in the Strategy for the effective implementation of the Charter. The Commission will also provide practical internal training on the rights of the child and other fundamental rights to reinforce and further promote a culture of respect for fundamental rights. The Commission will also continue to follow attentively the work of the UN Committee on the Rights of the Child and its interpretation of the provisions of the UNCRC. Where relevant, the explanatory memorandums of the relevant legislative proposals will explain how child rights considerations were taken into account in the drafting of proposals.

1.2. Building the basis for evidence-based policy making

Experience with implementing the 2006 Communication has revealed a significant **lack of reliable, comparable and official data**. This is a serious obstacle for the development and implementation of genuine evidence-based policies. Improving the existing monitoring systems, establishing child rights-related policy targets, and monitoring their impact are one of the key challenges. Gaps in knowledge about the situation and needs of the most vulnerable groups of children should be addressed as a matter of priority. In this context, there is also a need for more information on methods to prevent crimes against children.

The Commission will cooperate with the relevant organisations and institutions to **produce basic data** and information to guide decision making. The process will take stock of existing work in this area, including the outcome of the study on indicators carried out by the EU Fundamental Rights Agency[13]. These indicators were developed on the request of the Commission to measure how the rights of the child are implemented, protected, respected and promoted across the EU. They are intended to guide the Agency's data collection and research, allowing it to develop evidence-based opinions and support the EU institutions and Member States when they take measures or formulate actions.

1.3. Cooperation with stakeholders

The Commission will continue to work together and maintain a dialogue with all stakeholders through the **European Forum for the Rights of the Child**, which meets regularly.

There are a variety of institutional and policy structures designed to protect and promote the rights of the child in Member States. While all EU Member States have recognised the need to develop policies in relation to the rights of the child, the institutional mechanisms for making and delivering policy in this area vary among them. In full respect of the principle of subsidiarity the Commission will continue to support Member States' efforts by promoting

[13] Developing indicators for the protection, respect and promotion of the rights of the child in the European Union, available at: http://fra.europa.eu/fraWebsite/attachments/RightsofChild_summary-report_en.pdf.

exchange of best practice, cooperation and communication with and among national authorities responsible for protecting and promoting the rights of the child.

2. TOWARDS CONCRETE EU ACTION FOR CHILDREN

2.1. Child-friendly justice

Making the justice system more child-friendly in Europe is a key action item under the EU Agenda for the Rights of the Child. It is an area of high practical relevance where the EU has, under the Treaties, competences to turn the rights of the child into reality by means of EU legislation. The Commission's Action Plan implementing the Stockholm Programme[14] has therefore highlighted this aspect for the period 2010-2015.

Children may become involved with the justice systems in a number of ways, for example when their parents divorce or disagree over custody, when they commit offences, when they witness crimes or are their victims, or when they seek asylum. When children are involved with justice systems that are not child-friendly, they can be subject to manifold restrictions or violations of their rights.

Children can face obstacles with regard to legal representation or being heard by judges. Likewise, the information which is necessary for children and their representatives to exercise their rights or defend their interests in judicial proceedings can be inadequate. Children can be treated as adults without always being afforded specific safeguards in accordance with their needs and vulnerability, and may have difficulties coping with this situation. Effective **access to justice** and participation in administrative and court proceedings are basic requirements to ensure a high level of protection of children's legal interests.

Family law disputes may have adverse effects on the well-being of children. Children who are separated from one or both parents must be allowed to maintain personal relations and direct contacts with both of them on a regular basis, except where it is contrary to their best interests.[15] Civil proceedings, especially transnational litigation, deriving from dissolution of marriage or legal separation may result in a restriction of this right. Particularly during proceedings to determine parental responsibility, children can become hostage to long cross-border legal disputes between the former partners. EU legislation[16] already facilitates the recognition and enforcement of decisions on parental responsibility. The adequate **provision of information** to children and parents about their rights under EU law and national law is a prerequisite to enable them to defend their rights in family law litigation. Information should be easily accessible and provide clear guidance on the relevant procedures. The Commission, in cooperation with Member States, will develop and keep updated factsheets on EU and national legislation on maintenance obligations, mediation and recognition and enforcement of decisions on parental responsibility. As regards **parental child abduction**, the Commission will pay particular attention to the information provided by the European Parliament Mediator for International Parental Child Abductions.

The **registration and recognition of documents related to civil status** are important for the determination of a child's rights. When children and their parents move within the EU and

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14 Communication from the Commission on Delivering an area of freedom, security and justice for Europe's citizens: Action Plan Implementing the Stockholm Programme, COM (2010) 171 final, available at: http://ec.europa.eu/justice/news/intro/doc/com_2010_171_en.pdf.

15 Article 24(3) Charter of Fundamental Rights of the European Union.

16 Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ L 338, 23.12.2003, p. 1–29.

need to use such documents in another Member State they often encounter costly and lengthy requirements for their recognition (involving translations and proof of authenticity), which may make access to justice difficult. This is why the Commission has launched a public consultation on ways to facilitate the mutual recognition across the EU of the effects of civil status documents with a view to proposing EU measures in 2013[17].

The right to a fair trial for children who are subject to **criminal proceedings** implies the protection of privacy, the right to be informed about the charges and the proceedings in a way which is adapted to the child's age and maturity, legal assistance and legal representation. This is especially important when the language of the proceedings is not the mother tongue of the child. In 2010, the EU adopted **rules on interpretation and translation** that ensure that all persons, including children, receive information about their rights in the proceedings in a manner that they can understand[18]. The Commission will pursue its agenda aiming at strengthening the **procedural rights** of suspected or accused persons in criminal proceedings, including children. In 2011 the Commission will put forward a proposal containing rules to ensure access to a lawyer, and a proposal concerning the right for detainees to communicate with family members, trusted persons, employers and consular authorities. Special attention is due with regard to suspected or accused persons who cannot understand or follow the content or the meaning of the proceedings, owing, for example, to their age, mental or physical condition. In 2012 the Commission will table a legislative proposal on **special safeguards for suspected or accused persons who are vulnerable**. This measure will be of key importance to ensure child-friendly justice.

Children sentenced to custody and placed in criminal detention structures are particularly at risk of violence and maltreatment[19]. At international level there are several guiding principles on how to deal with children who are deprived of their liberty[20]. Detention of children should be a measure of last resort and for the shortest appropriate period of time[21].

Children often participate as **vulnerable witnesses or victims in criminal judicial proceedings**. They may be exploited in criminal activities, such as trafficking of illicit drugs. Legal and practical arrangements should be put in place to avoid unnecessary multiple interrogations, and to reduce the negative experience of being involved in criminal proceedings. Child victims should be given the opportunity to play an active part in criminal proceedings so as to have their testimony taken into account. The use of Information and Communication Technology (ICT) tools, and especially video-conferencing, can allow child victims to take an active part in the proceedings while not being put in direct contact with the accused persons. Child victims should receive adequate support leading to their recovery and compensation for the harm inflicted on them.

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17 Commission's Green Paper on Less Bureaucracy for Citizens: Promoting free movement of public documents and recognition of the effects of civil status records, COM (2010) 747 final, available at: http://ec.europa.eu/justice/policies/civil/docs/com_2010_747_en.pdf

18 Directive 2010/64/EU of the European Parliament and the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280, 26.10.2010, p. 1–7.

19 Pinheiro, P. 'World Report on Violence Against Children', United Nations, Geneva, 2006, p. 195–199. Available at: http://www.unviolencestudy.org/.

20 See for example United Nations Rules for the Protection of Juveniles Deprived of their Liberty, General Assembly Resolution 45/113 of 14 December 1990, available at: http://www2.ohchr.org:80/english/law/res45_113.htm; Council of Europe Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, 11 January 2006, available at: https://wcd.coe.int/ViewDoc.jsp?id=955747.

21 Art. 37 of the United Nations Convention on the Rights of the Child.

Actions:

In the context of its civil and criminal justice policies, and in line with its Strategy on the effective implementation of the Charter of Fundamental Rights, the Commission will contribute to making the justice systems in the EU more child-friendly, notably by:

1. adopting, in 2011, a proposal for a Directive on victims' rights raising the level of protection of vulnerable victims, including children;
2. tabling, in 2012, a proposal for a Directive on special safeguards for suspected or accused persons who are vulnerable, including children;
3. revising, by 2013, the EU legislation facilitating the recognition and enforcement of decisions on parental responsibility with a view to ensuring, in the interest of the child, that decisions can be recognised and enforced as quickly as possible, including, where appropriate, the establishment of common minimum standards;
4. promoting the use of the Council of Europe Guidelines of 17 November 2010 on child-friendly justice[22] and taking them into account in future legal instruments in the field of civil and criminal justice;
5. supporting and encouraging the development of training activities for judges and other professionals at European level regarding the optimal participation of children in judicial systems.

2.2. Targeting EU action to protect children when they are vulnerable

Some categories of children are particularly vulnerable and face greater risks to their lives and well-being due to social, political and economic factors. For example, children growing up in poverty and social exclusion[23], often accompanied with drug abuse, are less likely to do well in school and enjoy good physical and mental health[24]. They are also more likely to find themselves in conflict with the justice system. The needs of **children at risk of poverty** and social exclusion will be addressed in a Commission Recommendation on child poverty, which will outline common principles and propose effective monitoring tools to prevent and combat child poverty within the framework of the Platform against Poverty and Social Exclusion.

Disabled children are also more vulnerable to the violation of their rights and they require and deserve special protection[25].

The well-being of children can only be achieved in a society which is free of violence, abuse and exploitation of children. In March 2010, the Commission adopted two proposals for Directives aiming at reinforcing the framework for protection of some of most vulnerable children, those who are **victims of sexual exploitation and trafficking**. In the area of

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22 Guidelines of the Council of Europe on Child Friendly Justice - Adopted by the Committee of Ministers on 17 November 2010, available at: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1705197&Site=CM

23 See the report by the Commission's DG Employment, Social Affairs and Equal Opportunities on Child poverty and well-being in the EU: Current status and way forward, 28 February 2008, available at: http://ec.europa.eu/social/main.jsp?catId=751&langId=en&pubId=74&type=2&furtherPubs=yes

24 Commission Communication on Solidarity in Health: Reducing health inequalities in the EU, COM (2009) 567 final, available at: http://ec.europa.eu/health/ph_determinants/socio_economics/documents/com2009_en.pdf.

25 Commission Communication on a European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, COM (2010) 636 final, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:EN:PDF

trafficking it is important that specific needs of children are fully taken into account in further development of trafficking policy notably within the integrated strategy on countering trafficking in human beings which will be adopted in 2012.

As regards detention for administrative purposes of **children seeking asylum**, the Commission has worked to take forward its 2008 and 2009 proposals amending EU asylum law. These proposals prohibit the detention of children unless it is in their best interest and only after all possible alternatives have been exhaustively assessed. A number of necessary safeguards and procedural guarantees are also introduced concerning access to a judicial review and legal representation. Finally, the proposals provide for a clear prohibition of the detention of unaccompanied asylum seeking children.

The Commission's 2010 Action Plan on Unaccompanied Minors[26] puts forward a common EU approach towards **unaccompanied or separated children** coming from outside the EU. The Action Plan identifies child-specific reception measures and procedural guarantees that should apply from the moment the child is found until a durable solution is found. It also stresses the importance of appropriate representation of the child, proposes actions to address the shortcomings in the care provided to unaccompanied asylum-seeking children in the EU[27] and to avoid the disappearance of unaccompanied children who are in the care of public authorities.

Experienced and well **trained professionals** can prevent problems and help children deal with the trauma they experience. Professionals working with and for children should receive adequate training on the rights and needs of children of different age groups, as well as on the type of proceedings that are adapted to them. They should also be trained in communicating with children of all ages and stages of development, as well as with children in situations of particular vulnerability.

In 2009, more than 6 million young people left **education and training**, completing lower secondary education or less; 17.4% of them completed only primary education. This is the reason why one of the headline targets agreed by the European Council in the framework of the Europe 2020 Strategy is to reduce the share of early school leavers to less than 10%. Giving all children access to **early childhood education** and care is the foundation for successful lifelong learning, social integration, personal development and later employability. The Commission has already identified specific policy actions and recommendations to tackle early school leaving[28]. It will also promote initiatives in collaboration with Member States to encourage quality early childhood education and care, fight against segregation in educational systems, and disseminate good practices.

The situation of **Roma children** in the EU is particularly worrying, due to a range of factors that may make them especially vulnerable and exposed[29] to poor health, poor housing, poor

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[26] Communication from the Commission to the European Parliament and the Council on an Action Plan on Unaccompanied Minors (2010–2014), COM(2010) 213 final, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF.

[27] Report by the EU Agency for Fundamental Rights, Separated, asylum-seeking children in EU Member States, April 2010.

[28] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Tackling early school leaving: A key contribution to the Europe 2020 Agenda, COM(2011)18 final, available at http://ec.europa.eu/education/school-education/doc/earlycom_en.pdf

[29] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Non-discrimination and equal opportunities: A renewed commitment, COM (2008) 420 final, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0420:FIN:EN:PDF.

nutrition, exclusion, discrimination and violence[30]. Social exclusion of Roma children is often linked to lack of birth registration, low participation in early childhood and higher education, high school drop-out rates, trafficking and labour exploitation. Segregation is a crucial barrier preventing access to quality education for Roma children.

Children may go missing regardless of their age, gender or social status. There is little knowledge about the reasons why children **run away** from home or from institutions in which they live, but we do know that the risks are enormous: risks to their safety, mental and physical health, well-being and life. Missing children can suffer violence and abuse; they can be trafficked or exposed to begging and prostitution.

The Commission has identified a number of tools that can be of help in case a child is missing. For several years now, some Member States[31] have been introducing public alert systems in cases of child abduction or disappearances of children in circumstances which could pose a serious risk to the safety and well-being of the children concerned. The Commission will continue to promote cross-border cooperation between Member States in cases of criminal abductions of children through **child alert mechanisms**. In order to enhance cooperation in this field, the Member States agreed, in June 2009, on better use of the Schengen Information System, and the related SIRENE Bureaux based in each Member State, in the search for the missing children. The Commission will contribute to this process by adopting, by May 2011, a new version of the SIRENE Manual, within a Commission Decision. This will contain the set of rules and procedures for such cases.

The **116 000 hotline for missing children** offers help, support and a potential lifeline for missing children and their parents. Because of the poor rate of implementation of the hotline at EU level, in 2010 the Commission adopted a Communication[32] with the objective to encourage the Member States to implement the missing children hotline as a matter of priority and to ensure that the same high quality of service is offered throughout the Union. The Commission will continue to closely monitor the implementation of the hotline for missing children in all Member States. If no further progress is made within a reasonable timeframe, the Commission will consider presenting a legislative proposal to make sure that the 116 000 hotline is fully operational in all Member States.

Children can also be especially vulnerable in relation to modern technology. Online technologies bring unique opportunities to children and young people by providing access to knowledge and allowing them to benefit from digital learning and participate in the public debate. Children are particularly vulnerable when they are confronted with harmful content and conduct, such as **cyber-bullying** and **grooming**, in audiovisual media and on the Internet. Children across Europe testify that physical and emotional **bullying in schools** is part of their everyday lives[33]. Cyber-bullying has been identified as a modern manifestation of bullying that calls for urgent responses and the involvement of all relevant actors, such as social networking sites, internet providers and the police. The Commission aims at achieving a high

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30 Breaking the barriers: Romani women and access to public health care. Report by the former EU European Monitoring Centre on Racism and Xenophobia (now EU Fundamental Rights Agency), 2003.

31 To date, a child alert system is in place in eight Member States: the Netherlands, Portugal, France, Luxembourg, Belgium, Greece, Germany and the United Kingdom.

32 Commission Communication "Dial 116000: the European hotline for missing children" COM(2010) 674, available at: http://ec.europa.eu/justice/policies/children/docs/com_2010_674_en.pdf.

33 Eurobarometer Qualitative study on the Rights of the Child, October 2010, available at: http://ec.europa.eu/public_opinion/archives/quali/ql_right_child_sum_en.pdf

level of protection of **children in the digital space**, including of their personal data[34], while fully upholding their right to access internet for the benefit of their social and cultural development. Through the Safer Internet programme[35], the Commission coordinates and supports efforts to empower and protect children online. Various sectors of the Information and Communication Technologies industry have been engaged in self-regulatory initiatives in particular to increase the protection of **children using mobile phone**[36] and **social networking services**[37]and through the Pan European Game Information rating system of **video and online games**[38]. The Commission will now expand its call for action to manufacturers of mobile devices and game consoles, internet service providers, mobile applications and content providers, consumer organisations, researchers and child welfare organisations.

The Commission is closely monitoring the transposition of the **Audiovisual Media Services Directive**[39] by the Member States into their national law, for which the deadline was 19 December 2009. The Directive extends the standards for protection of children from traditional TV programmes to the fast growing on-demand audiovisual media services, particularly on the Internet.

Actions:

The Commission will contribute to empowering and protecting children when they are vulnerable, notably by:

6. supporting the exchange of best practices and the improvement of training for guardians, public authorities and other actors who are in close contact with unaccompanied children (2011-2014);

7. paying particular attention to children in the context of the EU Framework for National Roma Integration Strategies, which will be adopted in spring 2011 and will notably promote the more efficient use of structural funds for the integration of Roma;

8. strongly encouraging and providing support to all Member States to ensure the swift introduction and full functioning of the 116 000 hotline for missing children and the child alert mechanisms (2011-2012).

9. supporting Member States and other stakeholders in strengthening prevention, empowerment and participation of children to make the most of online technologies and counter cyber-bullying behaviour, exposure to harmful content, and other online risks namely through the Safer Internet programme and cooperation with the industry through self-regulatory initiatives (2009-2014).

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34 See the Commission Communication on a comprehensive approach on personal data protection in the European Union, COM(2010)609 final, point 2.1.2., available at: http://ec.europa.eu/justice/news/consulting_public/0006/com_2010_609_en.pdf

35 Decision No 1351/2008/EC of the European Parliament and of the Council of 16 December 2008 establishing a multiannual Community programme on protecting children using the Internet and other communication technologies, OJ L 348, 24.12.2008, p. 118–127.

36 http://ec.europa.eu/information_society/activities/sip/docs/mobile_2005/europeanframework.pdf.

37 http://ec.europa.eu/information_society/activities/social_networking/docs/sn_principles.pdf.

38 http://www.pegi.info/

39 Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), OJ L 95, 15.4.2010, p. 1–24.

2.3. Children in the EU's external action

The EU is determined to give priority to the **promotion and protection of the rights of the child also in its external action**[40], including in judicial cooperation in civil matters in areas of EU competence. In this respect, it is crucial for the EU to have a strong single voice in external matters when the rights of the child are concerned in relations with third countries to ensure swift and effective action where necessary. The EU's external policy on the rights of the child will be conducted in line with the 2008 Communication "A Special Place for Children in EU External Action" and the accompanying Action Plan.

The EU is strongly committed to eliminating all forms of violence against children. Approximately 200 million children worldwide witness domestic violence annually, over 200 million children worldwide are subject to sexual violence, over 50 000 children die as a result of homicide every year, and up to 2 million children are treated in hospitals for violence-related injuries. The EU will continue the implementation of the EU Guidelines on the Rights of the Child, which currently focus on combating all forms of **violence against children**. By the end of 2011, the EU will evaluate the implementation of the Guidelines since 2007. The "Investing in People" thematic programme envisages funding for projects aimed at combating violence against children in the years 2011-2013.

More than 200 million children worldwide are still in **child labour** and a staggering 115 million at least, are subject to its worst forms. The EU will continue its efforts to combat child labour, in line with the 2010 Commission Staff Working Document and Council conclusions on Child Labour. The EU will prepare by the end of 2011 a report on the worst forms of child labour and trade, taking into account international experience and the views of competent international organisations. In 2011, the EU will select projects targeting child labour in third countries under the "Investing in People" thematic programme.

Children in armed conflicts[41] are particularly vulnerable, even more so when they have lost or have been separated from their parents or care-givers. Children are exposed to risks of recruitment by armed groups, sexual abuse and exploitation or trafficking. They disproportionately suffer from malnourishment and illness as they are deprived from access to basic social services, health care and education. At any given time, an estimated 300 000 children are associated with armed forces and groups, among which 40% girls. The EU will continue its work on safeguarding rights of children in and affected by armed conflicts based on the concrete actions envisaged in the 2010 Implementation Strategy of the EU Guidelines on Children in Armed Conflicts.

Child sex tourism must be eradicated. This phenomenon is part of an organised sex industry that includes prostitution, human trafficking, the production and distribution of child pornography and the exploitation of children by travelling sex offenders. Since few travelling sex offenders face legal consequences in their respective home countries in the EU, action

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[40] The 2006 Communication Towards an EU Strategy on the Rights of the Child led to the development of a comprehensive policy framework in the external EU action, including the Communication "A Special Place for Children in EU External Action" and its accompanying Staff Working Paper on "Children in Emergency and Crisis Situations" (2008), the EU Guidelines on the Rights of the Child (2007), the EU Guidelines on Children and Armed Conflicts (2003, updated 2008), the Council Conclusions on Children in Development and Humanitarian Settings (2008) and the Council Conclusions on Child Labour (2010).

[41] In the past decade alone, armed conflicts are estimated to have claimed the lives of over 2 million children and physically maimed 6 million more while some 20 million children are displaced or refugee and one million have become orphans due to conflicts.

should be undertaken to increase the number of investigations and prosecutions within the EU for offences committed outside the EU.

The EU will continue to pursue a **political dialogue** with third countries and international organisations, in order to maintain or improve the respect and promotion of the rights of the child. As part of its **enlargement policy**, the EU will continue to promote the reform of child protection and will closely monitor progress on the rights of the child throughout the accession process in the candidate countries and potential candidates, especially as regards children of ethnic minorities and marginalised groups, such as Roma, which have been identified as particularly vulnerable.

Bilateral co-operation with third countries will be structured around measures such as scaling up development programmes focused on the rights of the child to, for instance, support stronger national structures and institutions, including the development of independent child rights institutions, promote legislative reforms in conformity with relevant international standards and promote the rights of the child through **trade instruments and in international negotiations**.

In **multilateral cooperation** the EU will continue its support for international initiatives, including tabling resolutions at the UN General Assembly and the UN Human Rights Council. It will also intensify coordination with international stakeholders.

In **humanitarian aid**, the EU will continue and increase the support to projects and activities that directly target the specific needs of children in emergencies along the lines set in the 2008 Staff Working Paper on "Children in Situations of Emergency and Crisis".[42]

Action:	
10.	The EU will continue the implementation of the 2007 EU Guidelines on the Protection and Promotion of the Rights of the Child[43] that focus on combating all forms of violence against children. The EU will also evaluate the implementation of the Guidelines. The EU will implement the EU Guidelines on Children and Armed Conflicts[44] based on the 2010 Revised Implementation Strategy.

3. CHILD PARTICIPATION AND AWARENESS RAISING

The results of two Eurobarometer surveys of 2008 and 2009 showed that 76% of children[45] interviewed were not aware of having rights and 79% did not know who to contact in case of need. When asked what action the EU should take to promote and protect the rights of the child, 88% of respondents indicated that the EU should provide more information to children about their rights in an accessible way.

Full recognition of the rights of the child means that **children must be given a chance to voice their opinions** and participate in the making of decisions that affect them. Article 24(1) of the Charter requires the EU to take children's views into considerations on matters which concern them in accordance with their age and maturity.

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42 Commission Communication on a Special Place for Children in EU External Action, COM (2008) 55 final, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0055:FIN:EN:PDF

43 Available at: http://www.consilium.europa.eu/uedocs/cmsUpload/16031.07.pdf

44 Available at: http://www.consilium.europa.eu/uedocs/cmsUpload/10019.en08.pdf

45 Available at: http://ec.europa.eu/public_opinion/flash/fl_235_en.pdf and http://ec.europa.eu/public_opinion/flash/fl_273_en.pdf.

Steps taken by the Commission so far to **consult children and listen to them**[46] are a starting point in providing possibilities for greater participation of children in the development and implementation of actions and policies that affect them, such as for example education, health or environment policies. To this end, the Commission will draw on the expertise of the European Forum on the Rights of the Child and will continue to work with this Forum and with Ombudspersons for children and other relevant partners in this area.

To ensure **better and more effective information of children** about their rights and about relevant EU policies will require consolidation and modernisation of existing information tools. At present the information targeting children on the EU's web portal *EUROPA* can be found via ***Quick links for kids***[47] and the ***Teachers' Corner***[48]. These links give access to material provided by all EU institutions which is relevant for children. Many of the material accessible from these web pages are also hosted on individual Commission Directorate Generals' or the websites of other EU institutions. However, comprehensive, consolidated and easily accessibly information on the rights of the child and EU policies relevant for children is currently missing.

Action:

11. The Commission will set up, in the course of 2011, a single entry point on EUROPA with information for children on the EU and on the rights of the child. This single entry point will provide easy access to information that can be understood by children of different age groups and can be used by parents and teachers to find information and teaching materials. The Commission will invite other EU institutions to join this initiative.

CONCLUSION

With this EU Agenda for the Rights of the Child, the Commission calls on the EU institutions and on the Member States to renew their commitment to step up efforts in protecting and promoting the rights of children. The action of the EU should be exemplary in ensuring the respect of the provisions of the Treaties, the Charter of Fundamental Rights of the European Union and of the UNCRC with regard to the rights of children. The Commission will review regularly progress made in the implementation of the EU Agenda for the Rights of the Child in its Annual Report on the application of the Charter.

As underlined in the Europe 2020 Strategy, the long-term effects of not investing enough in policies affecting children may have a profound impact on our societies. Many of these policies require determined action by the Member States, and the Commission is ready to offer its support and cooperation. The Commission will continue to play its part in joint efforts to achieve well-being and safety of all children. A renewed commitment of all actors is necessary to bring to life the vision of a world where children can be children and can safely live, play, learn, develop their full potential, and make the most of all existing opportunities.

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46 Eurobarometer Qualitative study on the Rights of the Child, October 2010, available at: http://ec.europa.eu/public_opinion/archives/quali/ql_right_child_sum_en.pdf

47 http://europa.eu/quick-links/eu-kids/index_en.htm

48 http://europa.eu/teachers-corner/index_en.htm

UNITED NATIONS

1. **A/RES/40/33**, United Nations Standard Minimum Rules for the administration of Juvenile Justice – The Beijing Rules, **1985 (8 p.)**
2. **A/RES/45/112**, United Nations Guidelines for the Prevention of Juvenile delinquency – The Riyadh Guidelines, **1990 (5 p.)**
3. **A/RES/45/113**, United Nations Rules for the Protection of juveniles deprived of their liberty – La Havana Guidelines, **1990 (6 p.)**
4. **ECOSOC/RES/1997/30**, Administration de la justice pour mineurs, **1997 (13 p.)**
5. **ECOSOC/RES/2002/12**, Basic principles on the use of restorative justice programmes in criminal matters, **2002 (5 p.)**
6. **CRC/C/GC/10**, General Comment No. 10, Children's rights in juvenile justice, **2007 (26 p.)**
7. **A/RES/63/241** – Rights of the child, paragraph 43 to 47 Children alleged to have infringed or recognized as having infringed penal law, **2008 (4 p.)**
8. **Guidance Note** of the Secretary-General - UN approach to justice for children, **2008 (7 p.)**
9. **ECOSOC/RES/2009/26,** Supporting national and international efforts for child justice reform, in particular through improved coordination in technical assistance, **2009 (3 p.)**
10. **A/CONF/213/18**, Extracts of the Report of the 12th United Nations Congress on Crime prevention and Criminal justice, "Children, youth and crime, and making the United Nations guidelines on crime prevention work, paragraph 83-128, **2010 (7 p.)**

is disseminated as widely as possible, and to strengthen information activities in this field;

15. *Requests* the Secretary-General to submit to the General Assembly, at its forty-first session, a report on the measures taken to implement the present resolution;

16. *Decides* to include in the provisional agenda of its forty-first session the item entitled "Crime prevention and criminal justice".

96th plenary meeting
29 November 1985

40/33. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)

The General Assembly,

Bearing in mind the Universal Declaration of Human Rights,[6] the International Covenant on Civil and Political Rights[7] and the International Covenant on Economic, Social and Cultural Rights,[7] as well as other international human rights instruments pertaining to the rights of young persons,

Also bearing in mind that 1985 was designated the International Youth Year: Participation, Development, Peace and that the international community has placed importance on the protection and promotion of the rights of the young, as witnessed by the significance attached to the Declaration of the Rights of the Child,[62]

Recalling resolution 4 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[63] which called for the development of standard minimum rules for the administration of juvenile justice and the care of juveniles which could serve as a model for Member States,

Recalling also Economic and Social Council decision 1984/153 of 25 May 1984, by which the draft rules were forwarded to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, Italy, from 26 August to 6 September 1985 through the Interregional Preparatory Meeting held at Beijing from 14 to 18 May 1984,[64]

Recognizing that the young, owing to their early stage of human development, require particular care and assistance with regard to physical, mental and social development, and require legal protection in conditions of peace freedom, dignity and security,

Considering that existing national legislation, policies and practices may well require review and amendment in view of the standards contained in the rules,

Considering further that, although such standards may seem difficult to achieve at present, in view of existing social, economic, cultural, political and legal conditions, they are nevertheless intended to be attainable as a policy minimum,

1. *Notes with appreciation* the work carried out by the Committee on Crime Prevention and Control, the Secretary-General, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders and other United Nations institutes in the development of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice;

2. *Takes note with appreciation* of the report of the Secretary-General on the draft United Nations Standard Minimum Rules for the Administration of Juvenile Justice;[65]

3. *Commends* the Interregional Preparatory Meeting held at Beijing for having finalized the text of the rules submitted to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders for consideration and final action;

4. *Adopts* the United Nations Standard Minimum Rules for the Administration of Juvenile Justice recommended by the Seventh Congress, contained in the annex to the present resolution, and approves the recommendation of the Seventh Congress that the Rules should be known as "the Beijing Rules";

5. *Invites* Member States to adapt, wherever this is necessary, their national legislation, policies and practices, particularly in training juvenile justice personnel, to the Beijing Rules and to bring the Rules to the attention of relevant authorities and the public in general;

6. *Calls upon* the Committee on Crime Prevention and Control to formulate measures for the effective implementation of the Beijing Rules, with the assistance of the United Nations institutes on the prevention of crime and the treatment of offenders;

7. *Invites* Member States to inform the Secretary-General on the implementation of the Beijing Rules and to report regularly to the Committee on Crime Prevention and Control on the results achieved;

8. *Requests* Member States and the Secretary-General to undertake research and to develop a data base with respect to effective policies and practices in the administration of juvenile justice;

9. *Requests* the Secretary-General and invites Member States to ensure the widest possible dissemination of the text of the Beijing Rules in all of the official languages of the United Nations, including the intensification of information activities in the field of juvenile justice;

10. *Requests* the Secretary-General to develop pilot projects on the implementation of the Beijing Rules;

11. *Requests* the Secretary-General and Member States to provide the necessary resources to ensure the successful implementation of the Beijing Rules, in particular in the areas of recruitment, training and exchange of personnel, research and evaluation, and the development of new alternatives to institutionalization;

12. *Requests* the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to review the progress made in the implementation of the Beijing Rules and of the recommendations contained in the present resolution, under a separate agenda item on juvenile justice;

13. *Urges* all relevant bodies of the United Nations system, in particular the regional commissions and specialized agencies, the United Nations institutes for the prevention of crime and the treatment of offenders, other intergovernmental organizations and non-governmental organizations to collaborate with the Secretariat and to take the necessary measures to ensure a concerted and sustained effort, within their respective fields of technical competence, to implement the principles contained in the Beijing Rules.

96th plenary meeting
29 November 1985

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[62] Resolution 1386 (XIV).

[63] See *Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August - 5 September 1980: report prepared by the Secretariat* (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

[64] See "Report of the Interregional Preparatory Meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic IV: youth, crime and justice" (A/CONF.121/IPM/1).

[65] A/CONF.121/14 and Corr.1.

ANNEX

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)

Part one. *General principles*

1. *Fundamental perspectives*

1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.

1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.

1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

1.5 These Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State.

1.6 Juvenile justice services shall be systematically developed and co-ordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

Commentary

These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the Rules.

Rules 1.1 to 1.3 point to the important role that a constructive social policy for juveniles will play, *inter alia*, in the prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of social justice for juveniles, while rule 1.6 refers to the necessity of constantly improving juvenile justice, without falling behind the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services.

Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular rules necessarily to be different from the manner adopted in other States.

2. *Scope of the Rules and definitions used*

2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:

(*a*) A *juvenile* is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult;

(*b*) An *offence* is any behaviour (act or omission) that is punishable by law under the respective legal systems;

(*c*) A *juvenile offender* is a child or young person who is alleged to have committed or who has been found to have committed an offence.

2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

(*a*) To meet the varying needs of juvenile offenders, while protecting their basic rights;

(*b*) To meet the needs of society;

(*c*) To implement the following rules thoroughly and fairly.

Commentary

The Standard Minimum Rules are deliberately formulated so as to be applicable within different legal systems and, at the same time, to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders. The Rules are always to be applied impartially and without distinction of any kind.

Rule 2.1 therefore stresses the importance of the Rules always being applied impartially and without distinction of any kind. The rule follows the formulation of principle 2 of the Declaration of the Rights of the Child.[66]

Rule 2.2 defines "juvenile" and "offence" as the components of the notion of the "juvenile offender", who is the main subject of these Standard Minimum Rules (see, however, also rules 3 and 4). It should be noted that age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of "juvenile", ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these Standard Minimum Rules.

Rule 2.3 is addressed to the necessity of specific national legislation for the optimal implementation of these Standard Minimum Rules, both legally and practically.

3. *Extension of the Rules*

3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.

3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

Commentary

Rule 3 extends the protection afforded by the Standard Minimum Rules for the Administration of Juvenile Justice to cover:

(*a*) The so-called "status offences" prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults (for example, truancy, school and family disobedience, public drunkenness, etc.) (rule 3.1);

(*b*) Juvenile welfare and care proceedings (rule 3.2);

(*c*) Proceedings dealing with young adult offenders, depending of course on each given age limit (rule 3.3).

The extension of the Rules to cover these three areas seems to be justified. Rule 3.1 provides minimum guarantees in those fields, and rule 3.2 is considered a desirable step in the direction of more fair, equitable and humane justice for all juveniles in conflict with the law.

4. *Age of criminal responsibility*

4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

Commentary

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially anti-social behaviour. If the age of criminal responsibility is fixed too low

[66] Resolution 1386 (XIV). See also the Convention on the Elimination of All Forms of Discrimination against Women (resolution 34/180, annex); the Declaration of the World Conference to Combat Racism and Racial Discrimination (*Report of the World Conference to Combat Racism and Racial Discrimination, Geneva, 14-25 August 1978* (United Nations publication, Sales No. E.79.XIV.2), chap. II); the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (resolution 36/55); the Standard Minimum Rules for the Treatment of Prisoners (see *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.83.XIV.1), the Caracas Declaration (resolution 35/171, annex), and rule 9.

or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority etc.).

Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.

5. *Aims of juvenile justice*

5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

Commentary

Rule 5 refers to two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well-being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions. (See also rule 14.)

The second objective is "the principle of proportionality". This principle is well-known as an instrument for curbing punitive sanctions, mostly expressed in terms of just desert in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reaction (for example by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to a wholesome and useful life).

By the same token, reactions aiming to ensure the welfare of the young offender may go beyond necessity and therefore infringe upon the fundamental rights of the young individual, as has been observed in some juvenile justice systems. Here, too, the proportionality of the reaction to the circumstances of both the offender and the offence, including the victim, should be safeguarded.

In essence, rule 5 calls for no less and no more than a fair reaction in any given case of juvenile delinquency and crime. The issues combined in the rule may help to stimulate development in both regards. New and innovative types of reactions are as desirable as precautions against any undue widening of the net of formal social control over juveniles.

6. *Scope of discretion*

6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.

6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.

6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

Commentary

Rules 6.1, 6.2 and 6.3 combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing so that those who make determinations can take the actions deemed to be most appropriate in each individual case; and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. Accountability and professionalism are instruments best apt to curb broad discretion. Thus, professional qualifications and expert training are emphasized here as a valuable means of ensuring the judicious exercise of discretion in matters of juvenile offenders. (See also rules 1.6 and 2.2.) The formulation of specific guidelines on the exercise of discretion and the provision of systems of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context. Such mechanisms are not specified here, as they do not easily lend themselves to incorporation into international standard minimum rules, which cannot possibly cover all differences in justice systems.

7. *Rights of juveniles*

7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

Commentary

Rule 7.1 emphasizes some important points that represent essential elements for a fair and just trial and that are internationally recognized in existing human rights instruments. (See also rule 14.) The presumption of innocence, for instance, is also to be found in article 11 of the Universal Declaration of Human Rights[6] and in article 14, paragraph 2, of the International Covenant on Civil and Political Rights.[7]

Rules 14 *seq.* of these Standard Minimum Rules specify issues that are important for proceedings in juvenile cases, in particular, while rule 7.1 affirms the most basic procedural safeguards in a general way.

8. *Protection of privacy*

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

Commentary

Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal".

Rule 8 also stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle. (The general contents of rule 8 are further specified in rule 21.)

9. *Saving clause*

9.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners[67] adopted by the United Nations and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

Commentary

Rule 9 is meant to avoid any misunderstanding in interpreting and implementing the present Rules in conformity with principles contained in relevant existing or emerging international human rights instruments and standards — such as the Universal Declaration of Human Rights;[6] the International Covenant on Economic, Social and Cultural Rights[7] and the International Covenant on Civil and Political Rights;[7] and the Declaration of the Rights of the Child[66] and the draft convention on the rights of the child.[68] It should be understood that the application of the present Rules is without prejudice to any such international instruments which may contain provisions of wider application.[67] (See also rule 27.)

Part two. *Investigation and prosecution*

10. *Initial contact*

10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

10.2 A judge or other competent official or body shall, without delay, consider the issue of release.

10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

Commentary

Rule 10.1 is in principle contained in rule 92 of the Standard Minimum Rules for the Treatment of Prisoners.[69]

[67] See *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.83.XIV.1).

[68] See Economic and Social Council resolution 1985/...

[69] The Standard Minimum Rules for the Treatment of Prisoners and related recommendations were adopted in 1955 (see *First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva,*

The question of release (rule 10.2) shall be considered without delay by a judge or other competent official. The latter refers to any person or institution in the broadest sense of the term, including community boards or police authorities having power to release an arrested person. (See also the International Covenant on Civil and Political Rights, article 9, paragraph 3.[7])

Rule 10.3 deals with some fundamental aspects of the procedures and behaviour on the part of the police and other law enforcement officials in cases of juvenile crime. To "avoid harm" admittedly is flexible wording and covers many features of possible interaction (for example the use of harsh language, physical violence or exposure to the environment). Involvement in juvenile justice processes in itself can be "harmful" to juveniles; the term "avoid harm" should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile's attitude towards the State and society. Moreover, the success of any further intervention is largely dependent on such initial contacts. Compassion and kind firmness are important in these situations.

11. *Diversion*

11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

Commentary

Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practised on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence). In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.

As stated in rule 11.2, diversion may be used at any point of decision-making – by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one authority or several or all authorities, according to the rules and policies of the respective systems and in line with the present Rules. It need not necessarily be limited to petty cases, thus rendering diversion an important instrument.

Rule 11.3 stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s). (Diversion to community service without such consent would contradict the Abolition of Forced Labour Convention.[70]) However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (for example in order to avoid court appearance) or be pressured into consenting to diversion programmes. Thus, it is advocated that provision should be made for an objective appraisal of the appropriateness of dispositions involving young offenders by a "competent authority upon application". (The "competent authority" may be different from that referred to in rule 14.)

Rule 11.4 recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed (for example first offence; the act having been committed under peer pressure, etc.).

12. *Specialization within the police*

12.1 In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

Commentary

Rule 12 draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. As police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner.

While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialized police units would therefore be indispensable, not only in the interest of implementing specific principles contained in the present instrument (such as rule 1.6) but more generally for improving the prevention and control of juvenile crime and the handling of juvenile offenders.

13. *Detention pending trial*

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners[67] adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance – social, educational, vocational, psychological, medical and physical – that they may require in view of their age, sex and personality.

Commentary

The danger to juveniles of "criminal contamination" while in detention pending trial must not be underestimated. It is therefore important to stress the need for alternative measures. By doing so, rule 13.1 encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile.

Juveniles under detention pending trial are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights,[7] especially article 9 and article 10, paragraphs 2 (*b*) and 3.

Rule 13.4 does not prevent States from taking other measures against the negative influences of adult offenders which are at least as effective as the measures mentioned in the rule.

Different forms of assistance that may become necessary have been enumerated to draw attention to the broad range of particular needs of young detainees to be addressed (for example females or males, drug addicts, alcoholics, mentally ill juveniles, young persons suffering from the trauma, for example, of arrest, etc.).

Varying physical and psychological characteristics of young detainees may warrant classification measures by which some are kept separate while

22 August - 3 September 1955: *report prepared by the Secretariat* (United Nations publication, Sales No. 1956.IV.4). In its resolution 663 C (XXIV) of 31 July 1957, the Economic and Social Council approved the Standard Minimum Rules and endorsed, *inter alia*, the recommendations on the selection and training of personnel for penal and correctional institutions and on open penal and correctional institutions. The Council recommended that Governments should give favourable consideration to the adoption and application of the Standard Minimum Rules and should take the other two groups of recommendations as fully as possible into account in the administration of penal and correctional institutions. The inclusion of a new rule, rule 95, was authorized by the Economic and Social Council in its resolution 2076 (LXII) of 13 May 1977. The complete text of the Standard Minimum Rules for the Treatment of Prisoners is contained in *Human Rights: A Compilation of International Instruments*.

[70] Convention No. 105, adopted on 25 June 1957 by the General Conference of the International Labour Organisation at its fortieth session. With regard to the text of the Convention, see footnote 67.

in detention pending trial, thus contributing to the avoidance of victimization and rendering more appropriate assistance.

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4[63] on juvenile justice standards, specified that the Rules, *inter alia*, should reflect the basic principle that pre-trial detention should be used only as a last resort, that no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees and that account should always be taken of the needs particular to their stage of development.

Part three. *Adjudication and disposition*

14. *Competent authority to adjudicate*

14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.

14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

Commentary

It is difficult to formulate a definition of the competent body or person that would universally describe an adjudicating authority. "Competent authority" is meant to include those who preside over courts or tribunals (composed of a single judge or of several members), including professional and lay magistrates as well as administrative boards (for example the Scottish and Scandinavian systems) or other more informal community and conflict resolution agencies of an adjudicatory nature.

The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as "due process of law". In accordance with due process, a "fair and just trial" includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defences, the right to remain silent, the right to have the last word in a hearing, the right to appeal, etc. (See also rule 7.1.)

15. *Legal counsel, parents and guardians*

15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

Commentary

Rule 15.1 uses terminology similar to that found in rule 93 of the Standard Minimum Rules for the Treatment of Prisoners.[67] Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in rule 15.2 should be viewed as general psychological and emotional assistance to the juvenile – a function extending throughout the procedure.

The competent authority's search for an adequate disposition of the case may profit, in particular, from the co-operation of the legal representatives of the juvenile (or, for that matter, some other personal assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role, for instance, if they display a hostile attitude towards the juvenile; hence, the possibility of their exclusion must be provided for.

16. *Social inquiry reports*

16.1 In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

Commentary

Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile such as social and family background, school career, educational experiences, etc. For this purpose, some jurisdictions use special social services or personnel attached to the court or board. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.

17. *Guiding principles in adjudication and disposition*

17.1 The disposition of the competent authority shall be guided by the following principles:

(*a*) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;

(*b*) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;

(*c*) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;

(*d*) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

17.2 Capital punishment shall not be imposed for any crime committed by juveniles.

17.3 Juveniles shall not be subject to corporal punishment.

17.4 The competent authority shall have the power to discontinue the proceedings at any time.

Commentary

The main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:

(*a*) Rehabilitation versus just desert;

(*b*) Assistance versus repression and punishment;

(*c*) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;

(*d*) General deterrence versus individual incapacitation.

The conflict between these approaches is more pronounced in juvenile cases than in adult cases. With the variety of causes and reactions characterizing juvenile cases these alternatives become intricately interwoven.

It is not the function of the Standard Minimum Rules for the Administration of Juvenile Justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles. Therefore the essential elements as laid down in rule 17.1, in particular in subparagraphs (*a*) and (*c*), are mainly to be understood as practical guidelines that should ensure a common starting point; if heeded by the concerned authorities (see also rule 5), they could contribute considerably to ensuring that the fundamental rights of juvenile offenders are protected, especially the fundamental rights of personal development and education.

Rule 17.1 (*b*) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.

In line with resolution 8 of the Sixth United Nations Congress,[63] rule 17.1 (*b*) encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed, bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.

Rule 17.1 (*c*) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress[63] which aims at avoiding incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety.

The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights.[7]

The provision against corporal punishment is in line with article 7 of the International Covenant on Civil and Political Rights[7] and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[71] as well

[71] Resolution 3452 (XXX), annex.

as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[72] and the draft convention on the rights of the child.[68]

The power to discontinue the proceedings at any time (rule 17.4) is a characteristic inherent in the handling of juvenile offenders as opposed to adults. At any time, circumstances may become known to the competent authority which would make a complete cessation of the intervention appear to be the best disposition of the case.

18. *Various disposition measures*

18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

(*a*) Care, guidance and supervision orders;

(*b*) Probation;

(*c*) Community service orders;

(*d*) Financial penalties, compensation and restitution;

(*e*) Intermediate treatment and other treatment orders;

(*f*) Orders to participate in group counselling and similar activities;

(*g*) Orders concerning foster care, living communities or other educational settings;

(*h*) Other relevant orders.

18.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

Commentary

Rule 18.1 attempts to enumerate some of the important reactions and sanctions that have been practised and proved successful thus far, in different legal systems. On the whole they represent promising options that deserve replication and further development. The rule does not enumerate staffing requirements because of possible shortages of adequate staff in some regions; in those regions measures requiring less staff may be tried or developed.

The examples given in rule 18.1 have in common, above all, a reliance on and an appeal to the community for the effective implementation of alternative dispositions. Community-based correction is a traditional measure that has taken on many aspects. On that basis, relevant authorities should be encouraged to offer community-based services.

Rule 18.2 points to the importance of the family which, according to article 10, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, is "the natural and fundamental group unit of society".[7] Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Rule 18.2, therefore, requires that the separation of children from their parents is a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this grave step (for example child abuse).

19. *Least possible use of institutionalization*

19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

Commentary

Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.

Rule 19 aims at restricting institutionalization in two regards: in quantity ("last resort") and in time ("minimum necessary period"). Rule 19 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress:[63] a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to "open" over "closed" institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

20. *Avoidance of unnecessary delay*

20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

Commentary

The speedy conduct of formal procedures in juvenile cases is a paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.

21. *Records*

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

Commentary

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the interests of the juvenile offender. (See also rule 8.) "Other duly authorized persons" would generally include, among others, researchers

22. *Need for professionalism and training*

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

Commentary

The authorities competent for disposition may be persons with very different backgrounds (magistrates in the United Kingdom of Great Britain and Northern Ireland and in regions influenced by the common law system; legally trained judges in countries using Roman law and in regions influenced by them; and elsewhere elected or appointed laymen or jurists, members of community-based boards etc.). For all these authorities, a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required. This is considered as important as the organizational specialization and independence of the competent authority

For social workers and probation officers, it might not be feasible to require professional specialization as a prerequisite for taking over any function dealing with juvenile offenders. Thus, professional on-the-job instruction would be minimum qualifications.

Professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfil their functions.

All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice. This was recommended by the Sixth Congress. Furthermore, the Sixth Congress called on Member States to ensure the fair and equal treatment of women as criminal justice personnel and recommended that special measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.[63]

Part four. ***Non-institutional treatment***

23. *Effective implementation of disposition*

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require.

23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

[72] Resolution 39/46, annex

Commentary

Disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time. Thus, it is important that the competent authority or an independent body (parole board, probation office, youth welfare institutions or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. In some countries, a *juge de l'exécution des peines* has been installed for this purpose.

The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 23 in order to ensure wide acceptability.

24. *Provision of needed assistance*

24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

Commentary

The promotion of the well-being of the juvenile is of paramount consideration. Thus, rule 24 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

25. *Mobilization of volunteers and other community services*

25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

Commentary

This rule reflects the need for a rehabilitative orientation of all work with juvenile offenders. Co-operation with the community is indispensable if the directives of the competent authority are to be carried out effectively. Volunteers and voluntary services, in particular, have proved to be valuable resources but are at present underutilized. In some instances, the co-operation of ex-offenders (including ex-addicts) can be of considerable assistance.

Rule 25 emanates from the principles laid down in rules 1.1 to 1.6 and follows the relevant provisions of the International Covenant on Civil and Political Rights.[7]

Part five. *Institutional treatment*

26. *Objectives of institutional treatment*

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance – social, educational, vocational, psychological, medical and physical – that they may require because of their age, sex and personality and in the interest of their wholesome development.

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

Commentary

The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.

Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, violent and mentally ill young persons.

The avoidance of negative influences through adult offenders and the safeguarding of the well-being of juveniles in an institutional setting, as stipulated in rule 26.3, are in line with one of the basic guiding principles of the Rules, as set out by the Sixth Congress in its resolution 4.[63] The rule does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule. (See also rule 13.4.)

Rule 26.4 addresses the fact that female offenders normally receive less attention than their male counterparts, as pointed out by the Sixth Congress. In particular, resolution 9 of the Sixth Congress[63] calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. Moreover, this rule should also be considered in the light of the Caracas Declaration of the Sixth Congress, which, *inter alia*, calls for equal treatment in criminal justice administration,[73] and against the background of the Declaration on the Elimination of Discrimination against Women[74] and the Convention on the Elimination of All Forms of Discrimination against Women.[75]

The right of access (rule 26.5) follows from the provisions of rules 7.1, 10.1, 15.2 and 18.2. Inter-ministerial and inter-departmental co-operation (rule 26.6) are of particular importance in the interest of generally enhancing the quality of institutional treatment and training.

27. *Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations*

27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

Commentary

The Standard Minimum Rules for the Treatment of Prisoners were among the first instruments of this kind to be promulgated by the United Nations. It is generally agreed that they have had a world-wide impact. Although there are still countries where implementation is more an aspiration than a fact, those Standard Minimum Rules continue to be an important influence in the humane and equitable administration of correctional institutions.

Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules for the Treatment of Prisoners (accommodation, architecture, bedding, clothing, complaints and requests, contact with the outside world, food, medical care, religious service, separation of ages, staffing, work, etc.) as are provisions concerning punishment and discipline, and restraint for dangerous offenders. It would not be appropriate to modify those Standard Minimum Rules according to the particular characteristics of institutions for juvenile offenders within the scope of the Standard Minimum Rules for the Administration of Juvenile Justice.

Rule 27 focuses on the necessary requirements for juveniles in institutions (rule 27.1) as well as on the varying needs specific to their age, sex and personality (rule 27.2). Thus, the objectives and content of the rule interrelate to the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners.

28. *Frequent and early recourse to conditional release*

28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

Commentary

The power to order conditional release may rest with the competent authority, as mentioned in rule 14.1, or with some other authority. In view of this, it is adequate to refer here to the "appropriate" rather than to the "competent" authority.

Circumstances permitting, conditional release shall be preferred to serving a full sentence. Upon evidence of satisfactory progress towards rehabil

[73] See resolution 35/171, annex, para. 1.6.

[74] Resolution 2263 (XXII).

[75] Resolution 34/180, annex.

itation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible. Like probation, such release may be conditional on the satisfactory fulfilment of the requirements specified by the relevant authorities for a period of time established in the decision, for example relating to "good behaviour" of the offender, attendance in community programmes, residence in half-way houses, etc.

In the case of offenders conditionally released from an institution, assistance and supervision by a probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged.

29. *Semi-institutional arrangements*

29.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

Commentary

The importance of care following a period of institutionalization should not be underestimated. This rule emphasizes the necessity of forming a net of semi-institutional arrangements.

This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide guidance and structural support as an important step towards successful reintegration into society.

Part six. *Research, planning, policy formulation and evaluation*

30. *Research as a basis for planning, policy formulation and evaluation*

30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.

30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.

30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.

30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

Commentary

The utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The mutual feedback between research and policy is especially important in juvenile justice. With rapid and often drastic changes in the life-styles of the young and in the forms and dimensions of juvenile crime, the societal and justice responses to juvenile crime and delinquency quickly become outmoded and inadequate.

Rule 30 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures and for planning within the broader context of overall development objectives.

A constant appraisal of the needs of juveniles, as well as the trends and problems of delinquency, is a prerequisite for improving the methods of formulating appropriate policies and establishing adequate interventions, at both formal and informal levels. In this context, research by independent persons and bodies should be facilitated by responsible agencies, and it may be valuable to obtain and to take into account the views of juveniles themselves, not only those who come into contact with the system.

The process of planning must particularly emphasize a more effective and equitable system for the delivery of necessary services. Towards that end, there should be a comprehensive and regular assessment of the wide-ranging, particular needs and problems of juveniles and an identification of clear-cut priorities. In that connection, there should also be a co-ordination in the use of existing resources, including alternatives and community support that would be suitable in setting up specific procedures designed to implement and monitor established programmes.

40/34. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

The General Assembly,

Recalling that the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders recommended that the United Nations should continue its present work on the development of guidelines and standards regarding abuse of economic and political power,[56]

Cognizant that millions of people throughout the world suffer harm as a result of crime and the abuse of power and that the rights of these victims have not been adequately recognized,

Recognizing that the victims of crime and the victims of abuse of power, and also frequently their families, witnesses and others who aid them, are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders,

1. *Affirms* the necessity of adopting national and international measures in order to secure the universal and effective recognition of, and respect for, the rights of victims of crime and of abuse of power;

2. *Stresses* the need to promote progress by all States in their efforts to that end, without prejudice to the rights of suspects or offenders;

3. *Adopts* the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, annexed to the present resolution, which is designed to assist Governments and the international community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power;

4. *Calls upon* Member States to take the necessary steps to give effect to the provisions contained in the Declaration and, in order to curtail victimization as referred to hereinafter, endeavour:

(*a*) To implement social, health, including mental health, educational, economic and specific crime prevention policies to reduce victimization and encourage assistance to victims in distress;

(*b*) To promote community efforts and public participation in crime prevention;

(*c*) To review periodically their existing legislation and practices in order to ensure responsiveness to changing circumstances, and to enact and enforce legislation proscribing acts that violate internationally recognized norms relating to human rights, corporate conduct and other abuses of power;

(*d*) To establish and strengthen the means of detecting, prosecuting and sentencing those guilty of crimes;

(*e*) To promote disclosure of relevant information to expose official and corporate conduct to public scrutiny, and other ways of increasing responsiveness to public concerns;

(*f*) To promote the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, medical, social service and military personnel, as well as the staff of economic enterprises;

(*g*) To prohibit practices and procedures conducive to abuse, such as secret places of detention and incommunicado detention;

(*h*) To co-operate with other States, through mutual judicial and administrative assistance, in such matters as the detection and pursuit of offenders, their extradition and the seizure of their assets, to be used for restitution to the victims;

5. *Recommends* that, at the international and regional levels, all appropriate measures should be taken:

Considering the concern of previous United Nations congresses on the prevention of crime and the treatment of offenders, regarding the obstacles of various kinds that prevent the full implementation of the Standard Minimum Rules,

Believing that the full implementation of the Standard Minimum Rules would be facilitated by the articulation of the basic principles underlying them,

Recalling resolution 10 on the status of prisoners and resolution 17 on the human rights of prisoners, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[77]

Recalling also the statement submitted at the tenth session of the Committee on Crime Prevention and Control by Caritas Internationalis, the Commission of the Churches on International Affairs of the World Council of Churches, the International Association of Educators for World Peace, the International Council for Adult Education, the International Federation of Human Rights, the International Prisoners' Aid Association, the International Union of Students, the World Alliance of Young Men's Christian Associations and the World Council of Indigenous Peoples,[84] which are non-governmental organizations in consultative status with the Economic and Social Council, category II,

Recalling further the relevant recommendations contained in the report of the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic II, "Criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures",[78]

Aware that the Eighth Congress coincided with International Literacy Year, proclaimed by the General Assembly in its resolution 42/104 of 7 December 1987,

Desiring to reflect the perspective noted by the Seventh Congress, namely, that the function of the criminal justice system is to contribute to safeguarding the basic values and norms of society,

Recognizing the usefulness of drafting a declaration on the human rights of prisoners,

Affirms the Basic Principles for the Treatment of Prisoners, contained in the annex to the present resolution, and requests the Secretary-General to bring them to the attention of Member States.

68th plenary meeting
14 December 1990

ANNEX

Basic Principles for the Treatment of Prisoners

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

2. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.

4. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.

5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights[5] and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights[33] and the International Covenant on Civil and Political Rights and the Optional Protocol thereto,[33] as well as such other rights as are set out in other United Nations covenants.

6. All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.

7. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.

8. Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.

9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

10. With the participation and help of the community and social institution, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.

11. The above Principles shall be applied impartially.

45/112. United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)

The General Assembly,

Bearing in mind the Universal Declaration of Human Rights,[5] the International Covenant on Economic, Social and Cultural Rights[33] and the International Covenant on Civil and Political Rights,[33] as well as other international instruments pertaining to the rights and well-being of young persons, including relevant standards established by the International Labour Organisation,

Bearing in mind also the Declaration of the Rights of the Child,[85] the Convention on the Rights of the Child[52] and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules),[82]

Recalling General Assembly resolution 40/33 of 29 November 1985, by which the Assembly adopted the Beijing Rules recommended by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling that the General Assembly, in its resolution 40/35 of 29 November 1985, called for the development of standards for the prevention of juvenile delinquency which would assist Member States in formulating and implementing specialized programmes and policies, emphasizing assistance, care and community involvement, and called upon the Economic and Social Council to report to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on the progress achieved with respect to these standards, for review and action,

Recalling also that the Economic and Social Council, in section II of its resolution 1986/10 of 21 May 1986,

[84] See E/AC.57/1988/NGO/3.

[85] Resolution 1386 (XIV).

requested the Eighth Congress to consider the draft standards for the prevention of juvenile delinquency, with a view to their adoption,

Recognizing the need to develop national, regional and international approaches and strategies for the prevention of juvenile delinquency,

Affirming that every child has basic human rights, including, in particular, access to free education,

Mindful of the large number of young persons who may or may not be in conflict with the law but who are abandoned, neglected, abused, exposed to drug abuse, and are in marginal circumstances and in general at social risk,

Taking into account the benefits of progressive policies for the prevention of delinquency and for the welfare of the community,

1. *Notes with satisfaction* the substantive work accomplished by the Committee on Crime Prevention and Control and the Secretary-General in the formulation of the guidelines for the prevention of juvenile delinquency;

2. *Expresses appreciation* for the valuable collaboration of the Arab Security Studies and Training Centre at Riyadh in hosting the International Meeting of Experts on the Development of the United Nations Draft Guidelines for the Prevention of Juvenile Delinquency, held at Riyadh from 28 February to 1 March 1988, in co-operation with the United Nations Office at Vienna;

3. *Adopts* the United Nations Guidelines for the Prevention of Juvenile Delinquency contained in the annex to the present resolution, to be designated "the Riyadh Guidelines";

4. *Calls upon* Member States, in their comprehensive crime prevention plans, to apply the Riyadh Guidelines in national law, policy and practice and to bring them to the attention of relevant authorities, including policy makers, juvenile justice personnel, educators, the mass media, practitioners and scholars;

5. *Requests* the Secretary-General and invites Member States to ensure the widest possible dissemination of the text of the Riyadh Guidelines in all of the official languages of the United Nations;

6. *Requests* the Secretary-General and invites all relevant United Nations offices and interested institutions, in particular the United Nations Children's Fund, as well as individual experts, to make a concerted effort to promote the application of the Riyadh Guidelines;

7. *Also requests* the Secretary-General to intensify research on particular situations of social risk and on the exploitation of children, including the use of children as instruments of criminality, with a view to developing comprehensive countermeasures and to report thereon to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

8. *Further requests* the Secretary-General to issue a composite manual on juvenile justice standards, containing the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the United Nations Guidelines on the Prevention of Juvenile Delinquency (The Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty,[86] and a set of full commentaries on their provisions;

9. *Urges* all relevant bodies within the United Nations system to collaborate with the Secretary-General in taking appropriate measures to ensure the implementation of the present resolution;

10. *Invites* the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights to consider this new international instrument with a view to promoting the application of its provisions;

11. *Invites* Member States to support strongly the organization of technical and scientific workshops and pilot and demonstration projects on practical issues and policy matters relating to the application of the provisions of the Riyadh Guidelines and to the establishment of concrete measures for community-based services designed to respond to the special needs, problems and concerns of young persons, and requests the Secretary-General to co-ordinate efforts in this respect;

12. *Also invites* Member States to inform the Secretary-General on the implementation of the Riyadh Guidelines and to report regularly to the Committee on Crime Prevention and Control on the results achieved;

13. *Recommends* that the Committee on Crime Prevention and Control request the Ninth Congress to review the progress made in the promotion and application of the Riyadh Guidelines and the recommendations contained in the present resolution, under a separate agenda item on juvenile justice, and keep the matter under constant review.

68th plenary meeting
14 December 1990

ANNEX

United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)

I. FUNDAMENTAL PRINCIPLES

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.

2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.

3. For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control.

4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.

5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:

(*a*) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;

[86] Resolution 45/113, annex.

(*b*) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;

(*c*) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;

(*d*) Safeguarding the well-being, development, rights and interests of all young persons;

(*e*) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;

(*f*) Awareness that, in the predominant opinion of experts, labelling a young person as "deviant", "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

6. Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.

II. SCOPE OF THE GUIDELINES

7. The present Guidelines should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights,[5] the International Covenant on Economic, Social and Cultural Rights,[33] the International Covenant on Civil and Political Rights,[33] the Declaration of the Rights of the Child[85] and the Convention on the Rights of the Child,[52] and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules),[82] as well as other instruments and norms relating to the rights, interests and well-being of all children and young persons.

8. The present Guidelines should also be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. GENERAL PREVENTION

9. Comprehensive prevention plans should be instituted at every level of government and include the following:

(*a*) In-depth analyses of the problem and inventories of programmes, services, facilities and resources available;

(*b*) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;

(*c*) Mechanisms for the appropriate co-ordination of prevention efforts between governmental and non-governmental agencies;

(*d*) Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;

(*e*) Methods for effectively reducing the opportunity to commit delinquent acts;

(*f*) Community involvement through a wide range of services and programmes;

(*g*) Close interdisciplinary co-operation between national, state, provincial and local governments, with the involvement of the private sector, representative citizens of the community to be served, and labour, child-care, health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime;

(*h*) Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes;

(*i*) Specialized personnel at all levels.

IV. SOCIALIZATION PROCESSES

10. Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processes.

A. FAMILY

11. Every society should place a high priority on the needs and well-being of the family and of all its members.

12. Since the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. Adequate arrangements including day-care should be provided.

13. Governments should establish policies that are conducive to the bringing up of children in stable and settled family environments. Families in need of assistance in the resolution of conditions of instability or conflict should be provided with requisite services.

14. Where a stable and settled family environment is lacking and when community efforts to assist parents in this regard have failed and the extended family cannot fulfil this role, alternative placements, including foster care and adoption, should be considered. Such placements should replicate, to the extent possible, a stable and settled family environment, while, at the same time, establishing a sense of permanency for children, thus avoiding problems associated with "foster drift".

15. Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous, migrant and refugee families. As such changes may disrupt the social capacity of the family to secure the traditional rearing and nurturing of children, often as a result of role and culture conflict, innovative and socially constructive modalities for the socialization of children have to be designed.

16. Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and child care, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities.

17. Governments should take measures to promote family cohesion and harmony and to discourage the separation of children from their parents, unless circumstances affecting the welfare and future of the child leave no viable alternative.

18. It is important to emphasize the socialization function of the family and extended family; it is also equally important to recognize the future role, responsibilities, participation and partnership of young persons in society.

19. In ensuring the right of the child to proper socialization, Governments and other agencies should rely on existing social and legal agencies, but, whenever traditional institutions and customs are no longer effective, they should also provide and allow for innovative measures.

B. EDUCATION

20. Governments are under an obligation to make public education accessible to all young persons.

21. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:

(*a*) Teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child's own and for human rights and fundamental freedoms;

(*b*) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;

(*c*) Involvement of young persons as active and effective participants in, rather than mere objects of, the educational process;

(*d*) Undertaking activities that foster a sense of identity with and of belonging to the school and the community;

(*e*) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences;

(*f*) Provision of information and guidance regarding vocational training, employment opportunities and career development;

(*g*) Provision of positive emotional support to young persons and the avoidance of psychological maltreatment;

(*h*) Avoidance of harsh disciplinary measures, particularly corporal punishment.

22. Educational systems should seek to work together with parents, community organizations and agencies concerned with the activities of young persons.

23. Young persons and their families should be informed about the law and their rights and responsibilities under the law, as well as the universal value system, including United Nations instruments.

24. Educational systems should extend particular care and attention to young persons who are at social risk. Specialized prevention programmes and educational materials, curricula, approaches and tools should be developed and fully utilized.

25. Special attention should be given to comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons. Teachers and other professionals should be equipped and trained to prevent and deal with these problems. Information on the use and abuse of drugs, including alcohol, should be made available to the student body.

26. Schools should serve as resource and referral centres for the provision of medical, counselling and other services to young persons, particularly those with special needs and suffering from abuse, neglect, victimization and exploitation.

27. Through a variety of educational programmes, teachers and other adults and the student body should be sensitized to the problems, needs and perceptions of young persons, particularly those belonging to underprivileged, disadvantaged, ethnic or other minority and low-income groups.

28. School systems should attempt to meet and promote the highest professional and educational standards with respect to curricula, teaching and learning methods and approaches, and the recruitment and training of qualified teachers. Regular monitoring and assessment of performance by the appropriate professional organizations and authorities should be ensured.

29. School systems should plan, develop and implement extra-curricular activities of interest to young persons, in co-operation with community groups.

30. Special assistance should be given to children and young persons who find it difficult to comply with attendance codes, and to "drop-outs".

31. Schools should promote policies and rules that are fair and just; students should be represented in bodies formulating school policy, including policy on discipline, and decision-making.

C. COMMUNITY

32. Community-based services and programmes which respond to the special needs, problems, interests and concerns of young persons and which offer appropriate counselling and guidance to young persons and their families should be developed, or strengthened where they exist.

33. Communities should provide, or strengthen where they exist, a wide range of community-based support measures for young persons, including community development centres, recreational facilities and services to respond to the special problems of children who are at social risk. In providing these helping measures, respect for individual rights should be ensured.

34. Special facilities should be set up to provide adequate shelter for young persons who are no longer able to live at home or who do not have homes to live in.

35. A range of services and helping measures should be provided to deal with the difficulties experienced by young persons in the transition to adulthood. Such services should include special programmes for young drug abusers which emphasize care, counselling, assistance and therapy-oriented interventions.

36. Voluntary organizations providing services for young persons should be given financial and other support by Governments and other institutions.

37. Youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs. These organizations should encourage youth to organize collective and voluntary projects, particularly projects aimed at helping young persons in need of assistance.

38. Government agencies should take special responsibility and provide necessary services for homeless or street children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons.

39. A wide range of recreational facilities and services of particular interest to young persons should be established and made easily accessible to them.

D. MASS MEDIA

40. The mass media should be encouraged to ensure that young persons have access to information and material from a diversity of national and international sources.

41. The mass media should be encouraged to portray the positive contribution of young persons to society.

42. The mass media should be encouraged to disseminate information on the existence of services, facilities and opportunities for young persons in society.

43. The mass media generally, and the television and film media in particular, should be encouraged to minimize the level of pornography, drugs and violence portrayed and to display violence and exploitation disfavourably, as well as to avoid demeaning and degrading presentations, especially of children, women and interpersonal relations, and to promote egalitarian principles and roles.

44. The mass media should be aware of its extensive social role and responsibility, as well as its influence, in communications relating to youthful drug and alcohol abuse. It should use its power for drug abuse prevention by relaying consistent messages through a balanced approach. Effective drug awareness campaigns at all levels should be promoted.

V. SOCIAL POLICY

45. Government agencies should give high priority to plans and programmes for young persons and should provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse prevention and treatment, ensuring that such resources reach and actually benefit young persons.

46. The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Criteria authorizing formal intervention of this type should be strictly defined and limited to the following situations: (*a*) where the child or young person has suffered harm that has been inflicted by the parents or guardians; (*b*) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians; (*c*) where the child or young person has been neglected, abandoned or exploited by the parents or guardians; (*d*) where the child or young person is threatened by physical or moral danger due to the behaviour of the parents or guardians; and (*e*) where a serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and neither the parents, the guardians, the juvenile himself or herself nor non-residential community services can meet the danger by means other than institutionalization.

47. Government agencies should provide young persons with the opportunity of continuing in full-time education, funded by the State where parents or guardians are unable to support the young persons, and of receiving work experience.

48. Programmes to prevent delinquency should be planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly.

49. Scientific information should be disseminated to the professional community and to the public at large about the sort of behaviour or situation which indicates or may result in physical and psychological victimization, harm and abuse, as well as exploitation, of young persons.

50. Generally, participation in plans and programmes should be voluntary. Young persons themselves should be involved in their formulation, development and implementation.

51. Governments should begin or continue to explore, develop and implement policies, measures and strategies within and outside the criminal justice system to prevent domestic violence against and affecting young persons and to ensure fair treatment to these victims of domestic violence.

VI. LEGISLATION AND JUVENILE JUSTICE ADMINISTRATION

52. Governments should enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons.

53. Legislation preventing the victimization, abuse, exploitation and the use for criminal activities of children and young persons should be enacted and enforced.

54. No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.

55. Legislation and enforcement aimed at restricting and controlling accessibility of weapons of any sort to children and young persons should be pursued.

56. In order to prevent further stigmatization, 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.

57. Consideration should be given to the establishment of an office of ombudsman or similar independent organ, which would ensure that the status, rights and interests of young persons are upheld and that proper referral to available services is made. The ombudsman or other organ designated would also supervise the implementation of the Riyadh Guidelines, the Beijing Rules and the Rules for the Protection of Juveniles Deprived of their Liberty. The ombudsman or other organ would, at regular intervals, publish a report on the progress made and on the difficulties encountered in the implementation of the instrument. Child advocacy services should also be established.

58. Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system.

59. Legislation should be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.

VII. RESEARCH, POLICY DEVELOPMENT AND CO-ORDINATION

60. Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an intradisciplinary basis, interaction and co-ordination between economic, social, educational and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.

61. The exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at the national, regional and international levels.

62. Regional and international co-operation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision makers should be further developed and strengthened.

63. Technical and scientific co-operation on practical and policy-related matters, particularly in training, pilot and demonstration projects, and on specific issues concerning the prevention of youth crime and juvenile delinquency should be strongly supported by all Governments, the United Nations system and other concerned organizations.

64. Collaboration should be encouraged in undertaking scientific research with respect to effective modalities for youth crime and juvenile delinquency prevention and the findings of such research should be widely disseminated and evaluated.

65. Appropriate United Nations bodies, institutes, agencies and offices should pursue close collaboration and co-ordination on various questions related to children, juvenile justice and youth crime and juvenile delinquency prevention.

66. On the basis of the present Guidelines, the United Nations Secretariat, in co-operation with interested institutions, should play an active role in the conduct of research, scientific collaboration, the formulation of policy options and the review and monitoring of their implementation, and should serve as a source of reliable information on effective modalities for delinquency prevention.

45/113. United Nations Rules for the Protection of Juveniles Deprived of their Liberty

The General Assembly,

Bearing in mind the Universal Declaration of Human Rights,[5] the International Covenant on Civil and Political Rights,[33] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[87] and the Convention on the Rights of the Child,[52] as well as other international instruments relating to the protection of the rights and well-being of young persons,

Bearing in mind also the Standard Minimum Rules for the Treatment of Prisoners[79] adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Bearing in mind further the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, approved by the General Assembly by its resolution 43/173 of 9 December 1988 and contained in the annex thereto,

Recalling the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules),[82]

Recalling also resolution 21 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[77] in which the Congress called for the development of rules for the protection of juveniles deprived of their liberty,

Recalling further that the Economic and Social Council, in section II of its resolution 1986/10 of 21 May 1986, requested the Secretary-General to report on progress achieved in the development of the rules to the Committee on Crime Prevention and Control at its tenth session and requested the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to consider the proposed rules with a view to their adoption,

Alarmed at the conditions and circumstances under which juveniles are being deprived of their liberty world wide,

Aware that juveniles deprived of their liberty are highly vulnerable to abuse, victimization and the violation of their rights,

Concerned that many systems do not differentiate between adults and juveniles at various stages of the administration of justice and that juveniles are therefore being held in gaols and facilities with adults,

1. *Affirms* that the placement of a juvenile in an institution should always be a disposition of last resort and for the minimum necessary period;

2. *Recognizes* that, because of their high vulnerability, juveniles deprived of their liberty require special attention and protection and that their rights and well-being should be guaranteed during and after the period when they are deprived of their liberty;

3. *Notes with appreciation* the valuable work of the Secretariat and the collaboration which has been established between the Secretariat and experts, practitioners, intergovernmental organizations, the non-governmental community, particularly Amnesty International, Defence for Children International and Rädda Barnen

[87] Resolution 39/46, annex.

VI. LEGISLATION AND JUVENILE JUSTICE ADMINISTRATION

52. Governments should enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons.

53. Legislation preventing the victimization, abuse, exploitation and the use for criminal activities of children and young persons should be enacted and enforced.

54. No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.

55. Legislation and enforcement aimed at restricting and controlling accessibility of weapons of any sort to children and young persons should be pursued.

56. In order to prevent further stigmatization, 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.

57. Consideration should be given to the establishment of an office of ombudsman or similar independent organ, which would ensure that the status, rights and interests of young persons are upheld and that proper referral to available services is made. The ombudsman or other organ designated would also supervise the implementation of the Riyadh Guidelines, the Beijing Rules and the Rules for the Protection of Juveniles Deprived of their Liberty. The ombudsman or other organ would, at regular intervals, publish a report on the progress made and on the difficulties encountered in the implementation of the instrument. Child advocacy services should also be established.

58. Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system.

59. Legislation should be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.

VII. RESEARCH, POLICY DEVELOPMENT AND CO-ORDINATION

60. Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an intradisciplinary basis, interaction and co-ordination between economic, social, educational and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.

61. The exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at the national, regional and international levels.

62. Regional and international co-operation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision makers should be further developed and strengthened.

63. Technical and scientific co-operation on practical and policy-related matters, particularly in training, pilot and demonstration projects, and on specific issues concerning the prevention of youth crime and juvenile delinquency should be strongly supported by all Governments, the United Nations system and other concerned organizations.

64. Collaboration should be encouraged in undertaking scientific research with respect to effective modalities for youth crime and juvenile delinquency prevention and the findings of such research should be widely disseminated and evaluated.

65. Appropriate United Nations bodies, institutes, agencies and offices should pursue close collaboration and co-ordination on various questions related to children, juvenile justice and youth crime and juvenile delinquency prevention.

66. On the basis of the present Guidelines, the United Nations Secretariat, in co-operation with interested institutions, should play an active role in the conduct of research, scientific collaboration, the formulation of policy options and the review and monitoring of their implementation, and should serve as a source of reliable information on effective modalities for delinquency prevention.

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Recalling also resolution 21 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[77] in which the Congress called for the development of rules for the protection of juveniles deprived of their liberty,

Recalling further that the Economic and Social Council, in section II of its resolution 1986/10 of 21 May 1986, requested the Secretary-General to report on progress achieved in the development of the rules to the Committee on Crime Prevention and Control at its tenth session and requested the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to consider the proposed rules with a view to their adoption,

Alarmed at the conditions and circumstances under which juveniles are being deprived of their liberty world wide,

Aware that juveniles deprived of their liberty are highly vulnerable to abuse, victimization and the violation of their rights,

Concerned that many systems do not differentiate between adults and juveniles at various stages of the administration of justice and that juveniles are therefore being held in gaols and facilities with adults,

1. *Affirms* that the placement of a juvenile in an institution should always be a disposition of last resort and for the minimum necessary period;

2. *Recognizes* that, because of their high vulnerability, juveniles deprived of their liberty require special attention and protection and that their rights and well-being should be guaranteed during and after the period when they are deprived of their liberty;

3. *Notes with appreciation* the valuable work of the Secretariat and the collaboration which has been established between the Secretariat and experts, practitioners, intergovernmental organizations, the non-governmental community, particularly Amnesty International, Defence for Children International and Rädda Barnen

[87] Resolution 39/46, annex.

International (Swedish Save the Children Federation), and scientific institutions concerned with the rights of children and juvenile justice in the development of the United Nations draft Rules for the Protection of Juveniles Deprived of their Liberty;

4. *Adopts* the United Nations Rules for the Protection of Juveniles Deprived of their Liberty contained in the annex to the present resolution;

5. *Calls upon* the Committee on Crime Prevention and Control to formulate measures for the effective implementation of the Rules, with the assistance of the United Nations institutes on the prevention of crime and the treatment of offenders;

6. *Invites* Member States to adapt, wherever necessary, their national legislation, policies and practices, particularly in the training of all categories of juvenile justice personnel, to the spirit of the Rules, and to bring them to the attention of relevant authorities and the public in general;

7. *Also invites* Member States to inform the Secretary-General of their efforts to apply the Rules in law, policy and practice and to report regularly to the Committee on Crime Prevention and Control on the results achieved in their implementation;

8. *Requests* the Secretary-General and invites Member States to ensure the widest possible dissemination of the text of the Rules in all of the official languages of the United Nations;

9. *Requests* the Secretary-General to conduct comparative research, pursue the requisite collaboration and devise strategies to deal with the different categories of serious and persistent young offenders, and to prepare a policy-oriented report thereon for submission to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

10. *Also requests* the Secretary-General and urges Member States to allocate the necessary resources to ensure the successful application and implementation of the Rules, in particular in the areas of recruitment, training and exchange of all categories of juvenile justice personnel;

11. *Urges* all relevant bodies of the United Nations system, in particular the United Nations Children's Fund, the regional commissions and specialized agencies, the United Nations institutes for the prevention of crime and the treatment of offenders and all concerned intergovernmental and non-governmental organizations, to collaborate with the Secretary-General and to take the necessary measures to ensure a concerted and sustained effort within their respective fields of technical competence to promote the application of the Rules;

12. *Invites* the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights to consider this new international instrument, with a view to promoting the application of its provisions;

13. *Requests* the Ninth Congress to review the progress made on the promotion and application of the Rules and on the recommendations contained in the present resolution, under a separate agenda item on juvenile justice.

68th plenary meeting
14 December 1990

ANNEX

United Nations Rules for the Protection of Juveniles Deprived of their Liberty

I. FUNDAMENTAL PERSPECTIVES

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.

2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).[82] Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.

3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.

4. The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.

5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.

6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.

7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons.

10. In the event that the practical application of particular rules contained in sections II to V, inclusive, presents any conflict with the rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

II. SCOPE AND APPLICATION OF THE RULES

11. For the purposes of the Rules, the following definitions should apply:

(*a*) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(*b*) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial.

16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. JUVENILES UNDER ARREST OR AWAITING TRIAL

17. Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

(*a*) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;

(*b*) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;

(*c*) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

IV. THE MANAGEMENT OF JUVENILE FACILITIES

A. RECORDS

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.

B. ADMISSION, REGISTRATION, MOVEMENT AND TRANSFER

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

(*a*) Information on the identity of the juvenile;

(*b*) The fact of and reasons for commitment and the authority therefor;

(*c*) The day and hour of admission, transfer and release;

(*d*) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;

(*e*) Details of known physical and mental health problems, including drug and alcohol abuse.

22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

25. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints, and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.

26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

C. CLASSIFICATION AND PLACEMENT

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities

should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

D. PHYSICAL ENVIRONMENT AND ACCOMMODATION

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, account being taken of local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.

36. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

E. EDUCATION, VOCATIONAL TRAINING AND WORK

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

40. Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

44. All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.

45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

F. RECREATION

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

G. RELIGION

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

H. MEDICAL CARE

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of

recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testees in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

I. NOTIFICATION OF ILLNESS, INJURY AND DEATH

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.

57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.

58. A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

J. CONTACTS WITH THE WIDER COMMUNITY

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

60. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel.

61. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.

62. Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

K. LIMITATIONS OF PHYSICAL RESTRAINT AND THE USE OF FORCE

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

L. DISCIPLINARY PROCEDURES

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

(*a*) Conduct constituting a disciplinary offence;

(*b*) Type and duration of disciplinary sanctions that may be inflicted;

(*c*) The authority competent to impose such sanctions;

(*d*) The authority competent to consider appeals.

69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

M. INSPECTION AND COMPLAINTS

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.

74. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.

75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

78. Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

N. RETURN TO THE COMMUNITY

79. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

80. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

V. PERSONNEL

81. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

83. To secure the foregoing ends, personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile detention facilities should be continually encouraged to fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.

84. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance co-operation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfilment of their duties.

85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

86. The director of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis.

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

(*a*) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;

(*b*) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;

(*c*) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;

(*d*) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

(*e*) All personnel should respect the right of the juvenile to privacy, and in particular should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;

(*f*) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

45/114. Domestic violence

The General Assembly,

Reaffirming its resolution 40/36 of 29 November 1985 on domestic violence and resolution 6 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[77] concerning the fair treatment of women by the criminal justice system,

Taking into account the recommendations made at the Expert Group Meeting on Violence in the Family with Special Emphasis on its Effects on Women, held at Vienna from 8 to 12 December 1986,

Also taking into account the recommendations made on the subject of domestic violence by the World Con-

Administration of juvenile justice

Economic and Social Council resolution 1997/30

The Economic and Social Council,

Recalling General Assembly resolution 50/181 of 22 December 1995 on human rights in the administration of justice, Commission on Human Rights resolutions 1996/85 of 24 April 1996 1/ and 1997/44 of 11 April 1997, 2/ on the rights of the child, and resolution 7 of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 3/

Recalling also its resolution 1996/13 of 23 July 1996 on the administration of juvenile justice,

Recalling further Commission on Human Rights resolution 1996/32 of 19 April 1996 on human rights in the administration of justice, in particular with regard to children and juveniles in detention, 1/

Welcoming the fact that the Committee on the Rights of the Child attaches particular importance to the question of the administration of juvenile justice and that it has made concrete recommendations concerning the improvement of juvenile justice systems, through action by the Secretariat and other relevant United Nations entities, including the provision of advisory services and technical cooperation,

Noting the importance of advisory services and technical cooperation programmes for assisting States in implementing such recommendations,

Expressing its appreciation to the Government of Austria for having hosted an expert group meeting at Vienna from 23 to 25 February 1997 on the elaboration of a programme of action to promote the effective use and application of international standards and norms in juvenile justice,

Recognizing the need to further strengthen international cooperation and technical assistance in the field of juvenile justice,

1. Welcomes the Guidelines for Action on Children in the Criminal Justice System, annexed to the present resolution, which were elaborated by the expert group meeting on the elaboration of a programme of action to promote the effective use and application of international standards and norms in juvenile justice held at Vienna from 23 to 25 February 1997 in response to Economic and Social Council resolution 1996/13 and amended by the Commission on Crime Prevention and Criminal Justice at its sixth session, and invites all parties concerned to make use of the Guidelines in the implementation of the provisions of the Convention on the Rights of the Child 4/ with regard to juvenile justice;

2. Encourages Member States to make use of the technical assistance offered through United Nations programmes, including in particular the United Nations Crime Prevention and Criminal Justice Programme, in order to strengthen national capacities and infrastructures in the field of juvenile justice, with a view to fully implementing the provisions of the Convention on

the Rights of the Child relating to juvenile justice, as well as making effective use and application of the United Nations standards and norms in juvenile justice;

3. Invites the Crime Prevention and Criminal Justice Division of the Secretariat, the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the United Nations Children's Fund and other relevant United Nations bodies and programmes to give favourable consideration to requests of Member States for technical assistance in the field of juvenile justice;

4. Calls on Member States to contribute financial and other resources to project activities designed to assist in the use of the Guidelines for Action;

5. Invites the Secretary-General to strengthen the system-wide coordination of activities in the field of juvenile justice, including the prevention of juvenile delinquency, particularly with regard to research, dissemination of information, training and the effective use and application of existing standards and norms, as well as the implementation of technical assistance projects;

6. Also invites the Secretary-General to consider establishing a coordination panel on technical advice and assistance in juvenile justice, subject to the availability of regular budget or extrabudgetary funds, as recommended in the Guidelines for Action, which could be convened at least annually with a view to coordinating such international activities in the field of juvenile justice and could consist of representatives of the Committee on the Rights of the Child, the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights and the Crime Prevention and Criminal Justice Division of the Secretariat, together with representatives of the institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network, the United Nations Children's Fund, the United Nations Development Programme and other relevant United Nations organizations and specialized agencies, as well as of other interested intergovernmental, regional and non-governmental organizations, including international networks concerned with juvenile justice issues and academic institutions involved in the provision of technical advice and assistance;

7. Invites the Secretary-General to undertake, subject to the availability of regular budget or extrabudgetary funds and in cooperation with interested Governments, needs assessment missions on the basis of recommendations made by the Committee on the Rights of the Child, with a view to reforming or improving the juvenile justice systems of requesting States, through joint initiatives involving, as required, the Crime Prevention and Criminal Justice Division, the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund, the United Nations Development Programme, the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the World Bank and other international and regional financial institutions and organizations, as well as non-governmental organizations and academic institutions, including existing international networks concerned with juvenile justice issues, taking into account the advice of any panel established pursuant to paragraph 6 above;

8. Requests those organizations, subject to the availability of regular

budget or extrabudgetary funds, as well as interested Governments, to offer assistance through short-, medium- and long-term projects to those States parties to the Convention on the Rights of the Child which the Committee on the Rights of the Child considers to be in need of improvement in their juvenile justice systems and recommends that such projects be undertaken in the context of the report of the States parties concerned on the implementation of the Convention, in accordance with article 44 of the Convention;

9. Invites the governing bodies of the organizations referred to in paragraph 7 above to include in their programme activities a component on juvenile justice, with a view to ensuring the implementation of the present resolution;

10. Requests the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice on the implementation of the present resolution on a biennial basis.

Annex

GUIDELINES FOR ACTION ON CHILDREN IN THE CRIMINAL JUSTICE SYSTEM

1. Pursuant to Economic and Social Council resolution 1996/13 of 23 July 1996, the present Guidelines for Action on Children in the Criminal Justice System were developed at an expert group meeting held at Vienna from 23 to 25 February 1997 with the financial support of the Government of Austria. In developing the Guidelines for Action, the experts took into account the views expressed and the information submitted by Governments.

2. Twenty-nine experts from eleven States in different regions, representatives of the Centre for Human Rights of the Secretariat, the United Nations Children's Fund and the Committee on the Rights of the Child, as well as observers for non-governmental organizations concerned with juvenile justice, participated in the meeting.

3. The Guidelines for Action are addressed to the Secretary-General and relevant United Nations agencies and programmes, States parties to the Convention on the Rights of the Child, 5/ as regards its implementation, as well as Member States as regards the use and application of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 6/ the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) 7/ and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 8/ hereinafter together referred to as United Nations standards and norms in juvenile justice.

I. AIMS, OBJECTIVES AND BASIC CONSIDERATIONS

4. The aims of the Guidelines for Action are to provide a framework to achieve the following objectives:

(a) To implement the Convention on the Rights of the Child and to pursue the goals set forth in the Convention with regard to children in the context of the administration of juvenile justice, as well as to use and apply the United Nations standards and norms in juvenile justice and other related

instruments, such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; 9/

(b) To facilitate the provision of assistance to States parties for the effective implementation of the Convention on the Rights of the Child and related instruments.

5. In order to ensure effective use of the Guidelines for Action, improved cooperation between Governments, relevant entities of the United Nations system, non-governmental organizations, professional groups, the media, academic institutions, children and other members of civil society is essential.

6. The Guidelines for Action should be based on the principle that the responsibility to implement the Convention clearly rests with the States parties thereto.

7. The basis for the use of the Guidelines for Action should be the recommendations of the Committee on the Rights of the Child.

8. In the use of the Guidelines for Action at both the international and national levels, consideration should be given to the following:

(a) Respect for human dignity, compatible with the four general principles underlying the Convention, namely: non-discrimination, including gender-sensitivity; upholding the best interests of the child; the right to life, survival and development; and respect for the views of the child;

(b) A rights-based orientation;

(c) A holistic approach to implementation through maximization of resources and efforts;

(d) The integration of services on an interdisciplinary basis;

(e) Participation of children and concerned sectors of society;

(f) Empowerment of partners through a developmental process;

(g) Sustainability without continuing dependency on external bodies;

(h) Equitable application and accessibility to those in greatest need;

(i) Accountability and transparency of operations;

(j) Proactive responses based on effective preventive and remedial measures.

9. Adequate resources (human, organizational, technological, financial and information) should be allocated and utilized efficiently at all levels (international, regional, national, provincial and local) and in collaboration with relevant partners, including Governments, United Nations entities, non-governmental organizations, professional groups, the media, academic institutions, children and other members of civil society, as well as other partners.

II. PLANS FOR THE IMPLEMENTATION OF THE CONVENTION ON THE

RIGHTS OF THE CHILD, THE PURSUIT OF ITS GOALS AND THE USE AND APPLICATION OF INTERNATIONAL STANDARDS AND NORMS IN JUVENILE JUSTICE

A. Measures of general application

10. The importance of a comprehensive and consistent national approach in the area of juvenile justice should be recognized, with respect for the interdependence and indivisibility of all rights of the child.

11. Measures relating to policy, decision-making, leadership and reform should be taken, with the goal of ensuring that:

(a) The principles and provisions of the Convention on the Rights of the Child and the United Nations standards and norms in juvenile justice are fully reflected in national and local legislation policy and practice, in particular by establishing a child-oriented juvenile justice system that guarantees the rights of children, prevents the violation of the rights of children, promotes children's sense of dignity and worth, and fully respects their age, stage of development and their right to participate meaningfully in, and contribute to, society;

(b) The relevant contents of the above-mentioned instruments are made widely known to children in language accessible to children. In addition, if necessary, procedures should be established to ensure that each and every child is provided with the relevant information on his or her rights set out in those instruments, at least from his or her first contact with the criminal justice system, and is reminded of his or her obligation to obey the law;

(c) The public's and the media's understanding of the spirit, aims and principles of justice centred on the child is promoted in accordance with the United Nations standards and norms in juvenile justice.

B. Specific targets

12. States should ensure the effectiveness of their birth registration programmes. In those instances where the age of the child involved in the justice system is unknown, measures should be taken to ensure that the true age of a child is ascertained by independent and objective assessment.

13. Notwithstanding the age of criminal responsibility, civil majority and the age of consent as defined by national legislation, States should ensure that children benefit from all their rights, as guaranteed to them by international law, specifically in this context those set forth in articles 3, 37 and 40 of the Convention.

14. Particular attention should be given to the following points:

(a) There should be a comprehensive child-centred juvenile justice process;

(b) Independent expert or other types of panels should review existing and proposed juvenile justice laws and their impact on children;

(c) No child who is under the legal age of criminal responsibility should be subject to criminal charges;

(d) States should establish juvenile courts with primary jurisdiction over juveniles who commit criminal acts and special procedures should be designed to take into account the specific needs of children. As an alternative, regular courts should incorporate such procedures, as appropriate. Wherever necessary, national legislative and other measures should be considered to accord all the rights of and protection for the child, where the child is brought before a court other than a juvenile court, in accordance with articles 3, 37 and 40 of the Convention.

15. A review of existing procedures should be undertaken and, where possible, diversion or other alternative initiatives to the classical criminal justice systems should be developed to avoid recourse to the criminal justice systems for young persons accused of an offence. Appropriate steps should be taken to make available throughout the State a broad range of alternative and educative measures at the pre-arrest, pre-trial, trial and post-trial stages, in order to prevent recidivism and promote the social rehabilitation of child offenders. Whenever appropriate, mechanisms for the informal resolution of disputes in cases involving a child offender should be utilized, including mediation and restorative justice practices, particularly processes involving victims. In the various measures to be adopted, the family should be involved, to the extent that it operates in favour of the good of the child offender. States should ensure that alternative measures comply with the Convention, the United Nations standards and norms in juvenile justice, as well as other existing standards and norms in crime prevention and criminal justice, such as the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), 10/ with special regard to ensuring respect for due process rules in applying such measures and for the principle of minimum intervention.

16. Priority should be given to setting up agencies and programmes to provide legal and other assistance to children, if needed free of charge, such as interpretation services, and, in particular, to ensure that the right of every child to have access to such assistance from the moment that the child is detained is respected in practice.

17. Appropriate action should be ensured to alleviate the problem of children in need of special protection measures, such as children working or living on the streets or children permanently deprived of a family environment, children with disabilities, children of minorities, immigrants and indigenous peoples and other vulnerable groups of children.

18. The placement of children in closed institutions should be reduced. Such placement of children should only take place in accordance with the provisions of article 37 (b) of the Convention and as a matter of last resort and for the shortest period of time. Corporal punishment in the child justice and welfare systems should be prohibited.

19. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty and article 37 (d) of the Convention also apply to any public or private setting from which the child cannot leave at will, by order of any judicial, administrative or other public authority.

20. In order to maintain a link between the detained child and his or her family and community, and to facilitate his or her social reintegration, it is important to ensure easy access by relatives and persons who have a legitimate interest in the child to institutions where children are deprived of their liberty, unless the best interests of the child would suggest otherwise.

21. An independent body to monitor and report regularly on conditions in custodial facilities should be established, if necessary. Monitoring should take place within the framework of the United Nations standards and norms in juvenile justice, in particular the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. States should permit children to communicate freely and confidentially with the monitoring bodies.

22. States should consider positively requests from concerned humanitarian, human rights and other organizations for access to custodial facilities, where appropriate.

23. In relation to children in the criminal justice system, due account should be taken of concerns raised by intergovernmental and non-governmental organizations and other interested parties, in particular systemic issues, including inappropriate admissions and lengthy delays that have an impact on children deprived of their liberty.

24. All persons having contact with, or being responsible for, children in the criminal justice system should receive education and training in human rights, the principles and provisions of the Convention and other United Nations standards and norms in juvenile justice as an integral part of their training programmes. Such persons include police and other law enforcement officials; judges and magistrates, prosecutors, lawyers and administrators; prison officers and other professionals working in institutions where children are deprived of their liberty; and health personnel, social workers, peacekeepers and other professionals concerned with juvenile justice.

25. In the light of existing international standards, States should establish mechanisms to ensure a prompt, thorough and impartial investigation into allegations against officials of deliberate violation of the fundamental rights and freedoms of children. States should equally ensure that those found responsible are duly sanctioned.

C. Measures to be taken at the international level

26. Juvenile justice should be given due attention internationally, regionally and nationally, including within the framework of the United Nations system-wide action.

27. There is an urgent need for close cooperation between all bodies in this field, in particular, the Crime Prevention and Criminal Justice Division of the Secretariat, the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the Office of the United Nations High

Commissioner for Refugees, the United Nations Children's Fund, the United Nations Development Programme, the Committee on the Rights of the Child, the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization. In addition, the World Bank and other international and regional financial institutions and organizations, as well as non-governmental organizations and academic institutions, are invited to support the provision of advisory services and technical assistance in the field of juvenile justice. Cooperation should therefore be strengthened, in particular with regard to research, dissemination of information, training, implementation and monitoring of the Convention on the Rights of the Child and the use and application of existing standards, as well as with regard to the provision of technical advice and assistance programmes, for example by making use of existing international

networks on juvenile justice.

28. The effective implementation of the Convention on the Rights of the Child, as well as the use and application of international standards through technical cooperation and advisory service programmes, should be ensured by giving particular attention to the following aspects related to protecting and promoting human rights of children in detention, strengthening the rule of law and improving the administration of the juvenile justice system:

(a) Assistance in legal reform;

(b) Strengthening national capacities and infrastructures;

(c) Training programmes for police and other law enforcement officials, judges and magistrates, prosecutors, lawyers, administrators, prison officers and other professionals working in institutions where children are deprived of their liberty, health personnel, social workers, peacekeepers and other professionals concerned with juvenile justice;

(d) Preparation of training manuals;

(e) Preparation of information and education material to inform children about their rights in juvenile justice;

(f) Assistance with the development of information and management systems.

29. Close cooperation should be maintained between the Crime Prevention and Criminal Justice Division and the Department of Peacekeeping Operations of the Secretariat in view of the relevance of the protection of children's rights in peacekeeping operations, including the problems of children and youth as victims and perpetrators of crime in peace-building and post-conflict or other emerging situations.

D. Mechanisms for the implementation of technical advice and assistance projects

30. In accordance with articles 43, 44 and 45 of the Convention, the Committee on the Rights of the Child reviews the reports of States parties on the implementation of the Convention. According to article 44 of the Convention, these reports should indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the Convention.

31. States parties to the Convention are invited to provide in their initial and periodic reports comprehensive information, data and indicators on the implementation of the provisions of the Convention and on the use and application of the United Nations standards and norms in juvenile justice. 11/

32. As a result of the process of examining the progress made by States parties in fulfilling their obligations under the Convention, the Committee may make suggestions and general recommendations to the State party to ensure full compliance with the Convention (in accordance with article 45 (d) of the Convention). In order to foster the effective implementation of the Convention and to encourage international cooperation in the area of juvenile justice, the Committee transmits, as it may consider appropriate, to specialized agencies, the United Nations Children's Fund and other competent bodies any reports from States parties that contain a request, or indicate a

need, for advisory services and technical assistance, together with observations and suggestions of the Committee, if any, on those requests or indications (in accordance with article 45 (b) of the Convention).

33. Accordingly, should a State party report and the review process by the Committee reveal any necessity to initiate reform in the area of juvenile justice, including through assistance by the United Nations technical advice and assistance programmes or those of the specialized agencies, the State party may request such assistance, including assistance from the Crime Prevention and Criminal Justice Division, the Centre for Human Rights and the United Nations Children's Fund.

34. In order to provide adequate assistance in response to those requests, a coordination panel on technical advice and assistance in juvenile justice should be established, to be convened at least annually by the Secretary-General. The panel will consist of representatives of the Division, the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the United Nations Children's Fund, the United Nations Development Programme, the Committee on the Rights of the Child, the institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network and other relevant United Nations entities, as well as other interested intergovernmental, regional and non-governmental organizations, including international networks on juvenile justice and academic institutions involved in the provision of technical advice and assistance, in accordance with paragraph 39 below.

35. Prior to the first meeting of the coordination panel, a strategy should be elaborated for addressing the issue of how to activate further international cooperation in the field of juvenile justice. The coordination panel should also facilitate the identification of common problems, the compilation of examples of good practice and the analysis of shared experiences and needs, which in turn would lead to a more strategic approach to needs assessment and to effective proposals for action. Such a compilation would allow for concerted advisory services and technical assistance in juvenile justice, including an early agreement with the Government requesting such assistance, as well as with all other partners having the capacity and competence to implement the various segments of a country project, thus ensuring the most effective and problem-oriented action. This compilation should be developed continuously in close cooperation with all parties involved. It will take into account the possible introduction of diversion programmes and measures to improve the administration of juvenile justice, to reduce the use of remand homes and pre-trial detention, to improve the treatment of children deprived of their liberty and to create effective reintegration and recovery programmes.

36. Emphasis should be placed on formulating comprehensive prevention plans, as called for in the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines). 12/ Projects should focus on strategies to socialize and integrate all children and young persons successfully, in particular through the family, the community, peer groups, schools, vocational training and the world of work. These projects should pay particular attention to children in need of special protection measures, such as children working or living on the streets or children permanently deprived of a family environment, children with disabilities, children of minorities, immigrants and indigenous peoples and other vulnerable groups of children. In particular, the placement of these children in institutions should be proscribed as much as possible. Measures of social protection should be developed in order to limit the risks of criminalization for these children.

37. The strategy will also set out a coordinated process for the delivery of international advisory services and technical assistance to States parties to the Convention, on the basis of joint missions to be undertaken, whenever appropriate, by staff of the different organizations and agencies involved, with a view to devising longer term technical assistance projects.

38. Important actors in the delivery of advisory services and technical assistance programmes at the country level are the United Nations resident coordinators, with significant roles to be played by the field offices of the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the United Nations Children's Fund and the United Nations Development Programme. The vital nature of the integration of juvenile justice technical cooperation in country planning and programming, including through the United Nations country strategy note, is emphasized.

39. Resources must be mobilized for both the coordinating mechanism of the coordination panel and regional and country projects formulated to improve observance of the Convention. Resources for those purposes (see paragraphs 34 to 38 above) will come either from regular budgets or from extrabudgetary resources. Most of the resources for specific projects will have to be mobilized from external sources.

40. The coordination panel may wish to encourage, and in fact be the vehicle for, a coordinated approach to resource mobilization in this area. Such resource mobilization should be on the basis of a common strategy as contained in a programme document drawn up in support of a global programme in this area. All interested United Nations bodies and agencies as well as non-governmental organizations that have a demonstrated capacity to deliver technical cooperation services in this area should be invited to participate in such a process.

E. Further considerations for the implementation of country projects

41. One of the obvious tenets in juvenile delinquency prevention and juvenile justice is that long-term change is brought about not only when symptoms are treated but also when root causes are addressed. For example, excessive use of juvenile detention will be dealt with adequately only by applying a comprehensive approach, which involves both organizational and managerial structures at all levels of investigation, prosecution and the judiciary, as well as the penitentiary system. This requires communication, inter alia, with and among police, prosecutors, judges and magistrates, authorities of local communities, administration authorities and with the relevant authorities of detention centres. In addition, it requires the will and ability to cooperate closely with each other.

42. To prevent further overreliance on criminal justice measures to deal with children's behaviour, efforts should be made to establish and apply programmes aimed at strengthening social assistance, which would allow for the diversion of children from the justice system, as appropriate, as well as improving the application of non-custodial measures and reintegration programmes. To establish and apply such programmes, it is necessary to foster close cooperation between the child justice sectors, different services in charge of law enforcement, social welfare and education sectors.

III. PLANS CONCERNED WITH CHILD VICTIMS AND WITNESSES

43. In accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 13/ States should undertake to ensure that child victims and witnesses are provided with appropriate access to justice and fair treatment, restitution, compensation and social assistance. If applicable, measures should be taken to prevent the settling of penal matters through compensation outside the justice system, when doing so is not in the best interests of the child.

44. Police, lawyers, the judiciary and other court personnel should receive training in dealing with cases where children are victims. States should consider establishing, if they have not yet done so, specialized offices and units to deal with cases involving offences against children. States should establish, as appropriate, a code of practice for proper management of cases involving child victims.

45. Child victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm they have suffered.

46. Child victims should have access to assistance that meets their needs, such as advocacy, protection, economic assistance, counselling, health and social services, social reintegration and physical and psychological recovery services. Special assistance should be given to those children who are disabled or ill. Emphasis should be placed upon family- and community-based rehabilitation rather than institutionalization.

47. Judicial and administrative mechanisms should be established and strengthened where necessary to enable child victims to obtain redress through formal or informal procedures that are prompt, fair and accessible. Child victims and/or their legal representatives should be informed accordingly.

48. Access should be allowed to fair and adequate compensation for all child victims of violations of human rights, specifically torture and other cruel, inhuman or degrading treatment or punishment, including rape and sexual abuse, unlawful or arbitrary deprivation of liberty, unjustifiable detention and miscarriage of justice. Necessary legal representation to bring an action within an appropriate court or tribunal, as well as interpretation into the native language of the child, if necessary, should be available.

49. Child witnesses need assistance in the judicial and administrative processes. States should review, evaluate and improve, as necessary, the situation for children as witnesses of crime in their evidential and procedural law to ensure that the rights of children are fully protected. In accordance with the different law traditions, practices and legal framework, direct contact should be avoided between the child victim and the offender during the process of investigation and prosecution as well as during trial hearings as much as possible. The identification of the child victim in the media should be prohibited, where necessary to protect the privacy of the child. Where prohibition is contrary to the fundamental legal principles of Member States, such identification should be discouraged.

50. States should consider, if necessary, amendments of their penal procedural codes to allow for, inter alia, videotaping of the child's testimony and presentation of the videotaped testimony in court as an official piece of evidence. In particular, police, prosecutors, judges and magistrates

should apply more child-friendly practices, for example, in police operations and interviews of child witnesses.

51. The responsiveness of judicial and administrative processes to the needs of child victims and witnesses should be facilitated by:

(a) Informing child victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved;

(b) Encouraging the development of child witness preparation schemes to familiarize children with the criminal justice process prior to giving evidence. Appropriate assistance should be provided to child victims and witnesses throughout the legal process;

(c) Allowing the views and concerns of child victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and in accordance with the relevant national criminal justice system;

(d) Taking measures to minimize delays in the criminal justice process, protecting the privacy of child victims and witnesses and, when necessary, ensuring their safety from intimidation and retaliation.

52. Children displaced illegally or wrongfully retained across borders are as a general principle to be returned to the country of origin. Due attention should be paid to their safety, and they should be treated humanely and receive necessary assistance, pending their return. They should be returned promptly to ensure compliance with the Convention on the Rights of the Child. Where the Hague Convention on the Civil Aspects of International Child Abduction of 1980 14/ or the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993, approved by the Hague Conference on Private International Law, the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of the Child are applicable, the provisions of these conventions with regard to the return of the child should be promptly applied. Upon the return of the child, the country of origin should treat the child with respect, in accordance with international principles of human rights, and offer adequate family-based rehabilitation measures.

53. The United Nations Crime Prevention and Criminal Justice Programme, including the institutes comprising the Programme network, the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the United Nations Children's Fund, the United Nations Development Programme, the Committee on the Rights of the Child, the United Nations Educational, Scientific and Cultural Organization, the World Bank and interested non-governmental organizations should assist Member States, at their request, within the overall appropriations of the United Nations budgets or from extrabudgetary resources, in developing multidisciplinary training, education and information activities for law enforcement and other criminal justice personnel, including police officers, prosecutors, judges and magistrates.

Notes

1/ Official Records of the Economic and Social Council, 1996, Supplement No. 3 (E/1996/23), chap. II, sect. A.

2/ Ibid., 1997, Supplement No. 3 (S/1997/23), chap. II, sect. A.
3/ Report of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Cairo, 29 April-8 May 1995 (A/CONF.169/16/Rev.1), chap. I.
4/ General Assembly resolution 44/25, annex.
5/ General Assembly resolution 44/25, annex.
6/ General Assembly resolution 44/33, annex.
7/ General Assembly resolution 45/112, annex.
8/ General Assembly resolution 45/113, annex.
9/ General Assembly resolution 40/34, annex.
10/ General Assembly resolution 45/110, annex.
11/ See the general guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b) of the Convention, adopted by the Committee at its 343rd meeting (thirteenth session), on 11 October 1996 (CRC/C/58); for a summary of discussion on the topic (the administration of juvenile justice) of the special thematic day of the Committee on the Rights of the Child, see the report of the Committee on its tenth session (Geneva, 30 October-17 November 19975) (CRC/C/46), pp. 33-39.
12/ General Assembly resolution 45/112, annex.
13/ General Assembly resolution 40/34, annex.
14/ United Nations, Treaty Series, vol. 1343, No. 22514.

36th plenary meeting

21 July 1997

ECOSOC Resolution 2002/12

Basic principles on the use of restorative justice programmes in criminal matters

The Economic and Social Council,

Recalling its resolution 1999/26 of 28 July 1999, entitled "Development and implementation of mediation and restorative justice measures in criminal justice", in which the Council requested the Commission on Crime Prevention and Criminal Justice to consider the desirability of formulating United Nations standards in the field of mediation and restorative justice,

Recalling also its resolution 2000/14 of 27 July 2000, entitled "Basic principles on the use of restorative justice programmes in criminal matters", in which it requested the Secretary-General to seek comments from Member States and relevant intergovernmental and non-governmental organizations, as well as institutes of the United Nations Crime Prevention and Criminal Justice Programme network, on the desirability and the means of establishing common principles on the use of restorative justice programmes in criminal matters, including the advisability of developing a new instrument for that purpose,

Taking into account the existing international commitments with respect to victims, in particular the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,[1]

Noting the discussions on restorative justice during the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, under the agenda item entitled "Offenders and victims: accountability and fairness in the justice process",[2]

Taking note of General Assembly resolution 56/261 of 31 January 2002, entitled "Plans of action for the implementation of the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century", in particular the action on restorative justice in order to follow up the commitments undertaken in paragraph 28 of the Vienna Declaration,[3]

Noting with appreciation the work of the Group of Experts on Restorative Justice at their meeting held in Ottawa from 29 October to 1 November 2001,

Taking note of the report of the Secretary-General on restorative justice[4] and the report of the Group of Experts on Restorative Justice,[5]

1. *Takes note* of the basic principles on the use of restorative justice programmes in criminal matters annexed to the present resolution;

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[1] General Assembly resolution 40/34, annex.

[2] See *tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10-17 April 2000: Report prepared by the Secretariat* (United Nations publication, Sales No. E.00.IV.8), chap. V, sect. E.

[3] General Assembly resolution 55/59, annex.

[4] E/CN.15/2002/5 and Corr.1.

[5] E/CN.15/2002/5/Add.1.

2. *Encourages* Member States to draw on the basic principles on the use of restorative justice programmes in criminal matters in the development and operation of restorative justice programmes;

3. *Requests* the Secretary-General to ensure the widest possible dissemination of the basic principles on the use of restorative justice programmes in criminal matters among Member States, the institutes of the United Nations Crime Prevention and Criminal Justice Programme network and other international, regional and non-governmental organizations;

4. *Calls upon* Member States that have adopted restorative justice practices to make information about those practices available to other States upon request;

5. *Also calls* upon Member States to assist one another in the development and implementation of research, training or other programmes, as well as activities to stimulate discussion and the exchange of experience on restorative justice;

6. *Further calls upon* Member States to consider, through voluntary contributions, the provision of technical assistance to developing countries and countries with economies in transition, on request, to assist them in the development of restorative justice programmes.

37th plenary meeting
24 July 2002

Annex

Basic principles on the use of restorative justice programmes in criminal matters

Preamble

Recalling that there has been, worldwide, a significant growth of restorative justice initiatives,

Recognizing that those initiatives often draw upon traditional and indigenous forms of justice which view crime as fundamentally harmful to people,

Emphasizing that restorative justice is an evolving response to crime that respects the dignity and equality of each person, builds understanding, and promotes social harmony through the healing of victims, offenders and communities,

Stressing that this approach enables those affected by crime to share openly their feelings and experiences, and aims at addressing their needs,

Aware that this approach provides an opportunity for victims to obtain reparation, feel safer and seek closure; allows offenders to gain insight into the causes and effects of their behaviour and to take responsibility in a meaningful way; and enables communities to understand the underlying causes of crime, to promote community well-being and to prevent crime,

Noting that restorative justice gives rise to a range of measures that are flexible in their adaptation to established criminal justice systems and that complement those systems, taking into account legal, social and cultural circumstances,

Recognizing that the use of restorative justice does not prejudice the right of States to prosecute alleged offenders,

I. Use of terms

1. "Restorative justice programme" means any programme that uses restorative processes and seeks to achieve restorative outcomes.

2. "Restorative process" means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.

3. "Restorative outcome" means an agreement reached as a result of a restorative process. Restorative outcomes include responses and programmes such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.

4. "Parties" means the victim, the offender and any other individuals or community members affected by a crime who may be involved in a restorative process.

5. "Facilitator" means a person whose role is to facilitate, in a fair and impartial manner, the participation of the parties in a restorative process.

II. Use of restorative justice programmes

6. Restorative justice programmes may be used at any stage of the criminal justice system, subject to national law.

7. Restorative processes should be used only where there is sufficient evidence to charge the offender and with the free and voluntary consent of the victim and the offender. The victim and the offender should be able to withdraw such consent at any time during the process. Agreements should be arrived at voluntarily and should contain only reasonable and proportionate obligations.

8. The victim and the offender should normally agree on the basic facts of a case as the basis for their participation in a restorative process. Participation of the offender shall not be used as evidence of admission of guilt in subsequent legal proceedings.

9. Disparities leading to power imbalances, as well as cultural differences among the parties, should be taken into consideration in referring a case to, and in conducting, a restorative process.

10. The safety of the parties shall be considered in referring any case to, and in conducting, a restorative process.

11. Where restorative processes are not suitable or possible, the case should be referred to the criminal justice authorities and a decision should be taken as to how to proceed without delay. In such cases, criminal justice officials should endeavour to encourage the offender to take responsibility vis-à-vis the victim and affected communities, and support the reintegration of the victim and the offender into the community.

III. Operation of restorative justice programmes

12. Member States should consider establishing guidelines and standards, with legislative authority when necessary, that govern the use of restorative justice programmes. Such guidelines and standards should respect the basic principles set forth in the present instrument and should address, inter alia:

(a) The conditions for the referral of cases to restorative justice programmes;

(b) The handling of cases following a restorative process;

(c) The qualifications, training and assessment of facilitators;

(d) The administration of restorative justice programmes;

(e) Standards of competence and rules of conduct governing the operation of restorative justice programmes.

13. Fundamental procedural safeguards guaranteeing fairness to the offender and the victim should be applied to restorative justice programmes and in particular to restorative processes:

(a) Subject to national law, the victim and the offender should have the right to consult with legal counsel concerning the restorative process and, where necessary, to translation and/or interpretation. Minors should, in addition, have the right to the assistance of a parent or guardian;

(b) Before agreeing to participate in restorative processes, the parties should be fully informed of their rights, the nature of the process and the possible consequences of their decision;

(c) Neither the victim nor the offender should be coerced, or induced by unfair means, to participate in restorative processes or to accept restorative outcomes.

14. Discussions in restorative processes that are not conducted in public should be confidential, and should not be disclosed subsequently, except with the agreement of the parties or as required by national law.

15. The results of agreements arising out of restorative justice programmes should, where appropriate, be judicially supervised or incorporated into judicial decisions or judgements. Where that occurs, the outcome should have the same status as any other judicial decision or judgement and should preclude prosecution in respect of the same facts.

16. Where no agreement is reached among the parties, the case should be referred back to the established criminal justice process and a decision as to how to proceed should be taken without delay. Failure to

reach an agreement alone shall not be used in subsequent criminal justice proceedings.

17. Failure to implement an agreement made in the course of a restorative process should be referred back to the restorative programme or, where required by national law, to the established criminal justice process and a decision as to how to proceed should be taken without delay. Failure to implement an agreement, other than a judicial decision or judgement, should not be used as justification for a more severe sentence in subsequent criminal justice proceedings.

18. Facilitators should perform their duties in an impartial manner, with due respect to the dignity of the parties. In that capacity, facilitators should ensure that the parties act with respect towards each other and enable the parties to find a relevant solution among themselves.

19. Facilitators shall possess a good understanding of local cultures and communities and, where appropriate, receive initial training before taking up facilitation duties.

IV. Continuing development of restorative justice programmes

20. Member States should consider the formulation of national strategies and policies aimed at the development of restorative justice and at the promotion of a culture favourable to the use of restorative justice among law enforcement, judicial and social authorities, as well as local communities.

21. There should be regular consultation between criminal justice authorities and administrators of restorative justice programmes to develop a common understanding and enhance the effectiveness of restorative processes and outcomes, to increase the extent to which restorative programmes are used, and to explore ways in which restorative approaches might be incorporated into criminal justice practices.

22. Member States, in cooperation with civil society where appropriate, should promote research on and evaluation of restorative justice programmes to assess the extent to which they result in restorative outcomes, serve as a complement or alternative to the criminal justice process and provide positive outcomes for all parties. Restorative justice processes may need to undergo change in concrete form over time. Member States should therefore encourage regular evaluation and modification of such programmes. The results of research and evaluation should guide further policy and programme development.

V. Saving clause

23. Nothing in these basic principles shall affect any rights of an offender or a victim which are established in national law or applicable international law.

UNITED
NATIONS

CRC

Convention on the
Rights of the Child

Distr.
GENERAL

CRC/C/GC/10
25 April 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

GE.07-41351 (E) 270407

CONTENTS

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 CRC. However, it is also clear that many States parties still have a long way to go in achieving full compliance with 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.

3. The experience in reviewing the States parties' performance in the field of juvenile justice is the reason for the present 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 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 society at large.

II. THE OBJECTIVES OF THE PRESENT GENERAL COMMENT

4. At the outset, the Committee wishes to underscore that 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 of CRC, but should also take into account the general principles enshrined in articles 2, 3, 6 and 12, and in all other relevant articles of CRC, such as articles 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 CRC, and to seek in this regard advice and support from the Interagency Panel on Juvenile Justice, with representatives of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF), the United Nations Office on Drugs and Crime (UNODC) and non-governmental organizations (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 to 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 contained in articles 37 and 40 of 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 (the "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

5. Before elaborating on the requirements of 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 of CRC, as well as the fundamental principles of juvenile justice enshrined in articles 37 and 40.

Non-discrimination (art. 2)

6. 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, indigenous children, 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 paragraph 97 below), as well as the establishment of rules, regulations or protocols which enhance equal treatment of child offenders and provide redress, remedies and compensation.

7. Many children in conflict with the law are also 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, as 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)).

8. 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 victims of this criminalization. These acts, also known as Status Offences, are not considered to be such if committed by adults. The Committee recommends that the States parties 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 Riyadh Guidelines which reads: "In order to prevent further stigmatization, 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."

9. 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.

Best interests of the child (art. 3)

10. In all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be a primary consideration. Children differ from adults in their physical and psychological development, 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 for children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as 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.

The right to life, survival and development (art. 6)

11. 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 under article 37 (a) of CRC (see paragraphs 75-77 below). 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) 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 paragraphs 78-88 below).[1]

The right to be heard (art. 12)

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

[1] Note that the rights of a child deprived of his/her liberty, as recognized in 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.

justice (see paragraphs 43-45 below). The Committee notes that the voices of children involved in the juvenile justice system are increasingly becoming a powerful force for improvements and reform, and for the fulfilment of their rights.

Dignity (art. 40 (1))

13. 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 of UDHR, which stipulates 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 CRC makes explicit reference, has to be respected and protected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies and all the way 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 consideration in the preamble 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 (art. 29 (1) (b) of CRC and general comment No. 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) (see paragraphs 40-67 below). 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 to the implementation of all measures for dealing with the child. It 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 be 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 pretrial 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 such 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 United Nations Study on Violence Against Children presented to the General Assembly in October 2006 (A/61/299).

14. The Committee acknowledges that the preservation of public safety is a legitimate aim of the justice system. However, it 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 CRC.

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

15. 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 pretrial detention and post-trial incarceration.

A. Prevention of juvenile delinquency

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

17. 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 in its resolution 45/112 of 14 December 1990.

18. The Committee fully supports the Riyadh Guidelines and agrees that emphasis should be placed on prevention policies that facilitate 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, the 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 of school or otherwise do not complete their education. The use of peer group support and a strong involvement of parents are recommended. The States parties should also develop

community-based services and programmes that respond to the special needs, problems, concerns and interests of children, in particular of children repeatedly in conflict with the law, and that provide appropriate counselling and guidance to their families.

19. Articles 18 and 27 of CRC confirm the importance of the responsibility of parents for the upbringing of their children, but at the same time 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 even 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.

20. States parties should fully promote and support the involvement of children, in accordance with article 12 of CRC, and of parents, community leaders and other key actors (e.g. representatives of NGOs, probation services and social workers), in the development and implementation of prevention programmes. The quality of this involvement is a key factor in the success of these programmes.

21. The Committee recommends that States parties seek support and advice from the Interagency Panel on Juvenile Justice in their efforts to develop effective prevention programmes.

B. Interventions/diversion (see also section E below)

22. 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.

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

Interventions without resorting to judicial proceedings

24. According to article 40 (3) of 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 (i.e. diversion) should be a well-established practice that can and should be used in most cases.

25. 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, 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 into these categories. It is in line with the principles set out in article 40 (1) of CRC to deal with all such cases without resorting to criminal law procedures in court. In addition to avoiding stigmatization, this approach has good results for children and is in the interests of public safety, and has proven to be more cost-effective.

26. States parties should take measures for dealing with children in conflict with the law without resorting to judicial proceedings as 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)).

27. 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 for example 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 of CRC and emphasizes the following:

- Diversion (i.e. 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 compelling evidence that the child committed the alleged offence, that he/she freely and voluntarily admits responsibility, and that no intimidation or pressure has been used to get that admission and, finally, that the admission will not be used against him/her in any subsequent legal proceeding;

- The child must freely and voluntarily give 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 also consider requiring the consent of parents, 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 seek 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, access to that information should be given exclusively and for a limited period of time, e.g. for a maximum of one year, to the competent authorities authorized to deal with children in conflict with the law.

Interventions in the context of judicial proceedings

28. 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 section D below). 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 pretrial 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)). This means that States parties should have in place a well-trained probation service to allow for the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day report centres, and the possibility of early release from detention.

29. The Committee reminds States parties that, pursuant to article 40 (1) of CRC, reintegration requires that no action 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

The minimum age of criminal responsibility

30. The reports submitted by States parties show the existence of a wide range 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 few States parties use two minimum ages of criminal responsibility. Children in conflict with the law who at the time of the commission of the crime are 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 this wide range of minimum ages for criminal responsibility the Committee feels that there is a need to provide the States parties with clear guidance and recommendations regarding the minimum age of criminal responsibility.

31. Article 40 (3) of CRC requires States parties to seek to promote, inter alia, 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 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 interests;

- 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 paragraphs 35-38 below) can be formally charged and subject to penal law procedures. But these procedures, including the final outcome, must be in full compliance with the principles and provisions of CRC as elaborated in the present general comment.

32. Rule 4 of the Beijing Rules recommends that the beginning of 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 the 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 encouraged 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.

33. 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) of 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 MACR.

34. The Committee wishes to express its concern about the practice of allowing exceptions to a MACR which permit the use of 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.

35. 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 paragraph 39 below).

The upper age-limit for juvenile justice

36. The Committee also wishes to draw the attention of States parties to the upper age-limit for the application of the rules of juvenile justice. These special rules - in terms both of special procedural rules and of rules for diversion and special measures - 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.

37. The Committee wishes 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 of 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 in accordance with the rules of juvenile justice.

38. The Committee, therefore, recommends that those States parties which limit the applicability of their juvenile justice rules to children under the age of 16 (or lower) years, or which allow by way of exception that 16 or 17-year-old children are treated as adult criminals, change their laws with a view to achieving a non-discriminatory full application 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 aged 18 and older, usually till the age of 21, either as a general rule or by way of exception.

39. Finally, the Committee wishes to emphasize the fact that it is crucial for the full implementation of article 7 of CRC requiring, inter alia, that every child shall be registered immediately after birth to set age-limits one way or another, which is the case for all States parties. A child without a provable date of birth is extremely vulnerable to all kinds of abuse and injustice regarding the family, work, education and labour, 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

40. Article 40 (2) of CRC contains an important list of rights and guarantees that are all meant to ensure that every child alleged as or accused of having infringed the penal law receives fair treatment and trial. Most of these guarantees can also be found in article 14 of the International Covenant on Civil and Political Rights (ICCPR), which the Human Rights Committee elaborated and commented on in its general comment No. 13 (1984) (Administration of justice) 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 wishes to emphasize that a key condition for a proper and effective implementation of these rights or guarantees is the quality of the persons involved in the administration of juvenile justice. The training of professionals, such as police officers, prosecutors, legal and 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 the child's, and particularly about the adolescent's physical, psychological, mental and social development, as well as 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 paragraphs 6-9 above). Since girls in the juvenile justice system may be easily overlooked because they represent only a small group, special attention must be paid 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 freedoms of others, and which promotes the child's reintegration and his/her assuming a constructive role in society (art. 40 (1)). All the guarantees recognized in article 40 (2), which will be 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.

No retroactive juvenile justice (art. 40 (2) (a))

41. Article 40 (2) (a) of 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 article 15 of 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 under 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 that States parties ensure that these changes do not result in retroactive or unintended punishment of children. The Committee also wishes 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 of ICCPR, is in the light of article 41 of CRC, applicable to children in the States parties to 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 penalty, the child should benefit from this change.

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

42. 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 other reasons, the child may behave in a suspicious manner, but the authorities must not assume that the child is guilty without proof of guilt beyond any reasonable doubt.

The right to be heard (art. 12)

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

44. 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 must be fully observed at all stages of the process, starting with pretrial 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 to the stages of adjudication and 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)), throughout the juvenile justice process. This means that the child, in order to effectively participate in the proceedings, must be informed not only of the charges (see paragraphs 47-48 below), but also of the juvenile justice process as such and of the possible measures.

45. 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 paragraph 46 below). It goes without saying that the judges involved are responsible for taking the decisions. But to treat the child as a passive object does not recognize his/her rights nor does it contribute to an effective response to his/her behaviour. This also applies to the implementation of the measure(s) imposed. Research shows that an active engagement of the child in this implementation will, in most cases, contribute to a positive result.

The right to effective participation in the proceedings (art 40 (2) (b) (iv))

46. 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 himself/herself freely. Taking into account the child’s age and maturity may also require modified courtroom procedures and practices.

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

47. Every child alleged as or accused of having infringed the penal law has the right to be informed promptly and directly of the charges brought 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) of 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 jargon often used in criminal/juvenile charges into a language that the child can understand.

48. 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 brought against him/her. The Committee is of the opinion that the 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.

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

49. The child must be guaranteed legal or other appropriate assistance in the preparation and presentation of his/her defence. CRC does require that the child be 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 to determine how this assistance is provided but it should be free of charge. The Committee recommends the State parties 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.

50. As required by article 14 (3) (b) of 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 such communications is fully respected in accordance with the guarantee provided for in article 40 (2) (b) (vii) of CRC, and the right of the child to be protected against interference with his/her privacy and correspondence (art. 16 of CRC). A number of States parties have made reservations regarding this guarantee (art. 40 (2) (b) (ii) of 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.

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

51. 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) of 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 term "prompt" is even stronger - and justifiably so given the seriousness of deprivation of liberty - than the term "without delay" (art. 40 (2) (b) (iii) of CRC), which is stronger than the term "without undue delay" of article 14 (3) (c) of ICCPR.

52. The Committee recommends that the States parties 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 decision by the court or other competent judicial body. These time limits should be much shorter than those set 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.

53. 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 of CRC), to limit, restrict or exclude the presence of the parents from the proceedings.

54. The Committee recommends that States parties 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.

55. 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 damage 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 their becoming active partners in the social reintegration of their child.

Freedom from compulsory self-incrimination (art. 40 (2) (b) (iii))

56. In line with article 14 (3) (g) of ICCPR, CRC requires that a child be 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 extract an admission or a confession constitutes a grave violation of the rights of the child (art. 37 (a) of CRC) and is wholly unacceptable. No such admission or confession can be admissible as evidence (article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

57. 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.

58. The child being questioned must have access to a legal or other appropriate representative, and must be able to request the presence of his/her parent(s) during questioning. There must be independent scrutiny of the methods of interrogation to ensure 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 voluntary nature 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 of 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.

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

59. The guarantee in article 40 (2) (b) (iv) of 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 term "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 of 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).

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

60. 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) of ICCPR. This right of appeal is not limited to the most serious offences.

61. This seems to be the reason why quite a few States parties have made reservations regarding this provision in order to limit this right of appeal by the child to the more serious offences and/or imprisonment sentences. The Committee reminds States parties to the ICCPR

that a similar provision is made in article 14 (5) of the Covenant. In the light of article 41 of CRC, it means that this article should provide every adjudicated child with the right to appeal. The Committee recommends that the States parties withdraw their reservations to the provision in article 40 (2) (b) (v).

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

62. If a child cannot understand or speak the language used by the juvenile justice system, he/she has the right to get free assistance of an interpreter. This assistance should not be limited to the court trial but should also be available at all stages of the juvenile justice process. It is also important that the interpreter has been trained to work with children, because the use and understanding of their mother tongue might be different from that of adults. Lack of knowledge and/or experience 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 a foreign or ethnic origin for example, 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.

63. The Committee also wishes 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 measures provided to children with disabilities in article 23, the Committee recommends that States parties ensure that children with speech impairment or other disabilities are provided with adequate and effective 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 (The rights of children with disabilities) of the Committee on the Rights of the Child.

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

64. The right of a child to have his/her privacy fully respected during all stages of the proceedings reflects the right to protection of privacy enshrined in article 16 of 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. In this particular context, it is 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 stigmatization, and possible impact on his/her ability to have access to 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.

65. 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.

66. The Committee recommends that all States parties introduce the rule that court and other hearings of a child in conflict with the law be conducted behind closed doors. Exceptions to this rule should be very limited and clearly stated in the law. The verdict/sentence should be pronounced in public at a court session in such a way that the identity of the child is not revealed. The right to privacy (art. 16) 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 the identification of the child confidential in all their external contacts. Furthermore, the right to privacy also means that the records of child offenders should be kept strictly confidential and closed to third parties except for those directly involved in the investigation and adjudication of, and the ruling on, the case. With a view to avoiding stigmatization and/or prejudgements, records of child offenders should 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.

67. The Committee also recommends that the States parties introduce rules which would allow for an automatic removal from the criminal records of 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. Measures (see also chapter IV, section B, above)

Pretrial alternatives

68. 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 section B, the Committee wishes 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 section 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.

69. 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 in paragraph 27 above, which equally apply here.

Dispositions by the juvenile court/judge

70. After a fair and just trial in full compliance with article 40 of CRC (see chapter IV, section D, above), 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) of 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) of CRC).

71. The Committee wishes 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 to the various and particularly 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) of CRC (see paragraphs 5-14 above). The Committee reiterates that corporal punishment as a sanction is a violation of these principles as well as of article 37 which prohibits all forms of cruel, inhuman and degrading treatment or punishment (see also the Committee's general comment No. 8 (2006) (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, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of the need of public safety and sanctions. In the case of children, such considerations must always be outweighed by the need to safeguard the well-being and the best interests of the child and to promote his/her reintegration.

72. 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, he/she shall have the right to the rule of the benefit of the doubt (see also paragraphs 35 and 39 above).

73. As far as alternatives to deprivation of liberty/institutional care are concerned, there is a wide range of experience with the use and implementation of such measures. States parties should benefit from this experience, and develop and implement these alternatives by adjusting them 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.

74. After these general remarks, the Committee wishes to draw attention to the measures prohibited under article 37 (a) of CRC, and to deprivation of liberty.

Prohibition of the death penalty

75. Article 37 (a) of CRC reaffirms the internationally accepted standard (see for example article 6 (5) of 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 of his/her age at the time of the trial or sentencing or of the execution of the sanction.

76. 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 CRC.

No life imprisonment without parole

77. 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 of 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) of 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 pretrial detention and post-trial incarceration

78. Article 37 of 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.

Basic principles

79. 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.

80. The Committee notes with concern that, in many countries, children languish in pretrial detention for months or even years, which constitutes a grave violation of article 37 (b) of CRC. An effective package of alternatives must be available (see chapter IV, section B, above), for the States parties to realize their obligation under article 37 (b) of 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 pretrial detention as well, rather than "widening the net" of sanctioned children. In addition, the States parties should take adequate legislative and other measures to reduce the

use of pretrial detention. Use of pretrial detention as a punishment violates the presumption of innocence. The law should clearly state the conditions that are required to determine whether to place or keep a child in pretrial detention, in particular to ensure his/her appearance at the court proceedings, and whether he/she is an immediate danger to himself/herself or others. The duration of pretrial detention should be limited by law and be subject to regular review.

81. The Committee recommends that the State parties ensure that a child can be released from pretrial detention as soon as possible, and if necessary under certain conditions. Decisions regarding pretrial detention, including its duration, should be made by a competent, independent and impartial authority or a judicial body, and the child should be provided with legal or other appropriate assistance.

Procedural rights (art. 37 (d))

82. 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.

83. 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 that the States parties ensure by strict legal provisions that the legality of a pretrial 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 30 days after his/her pretrial detention takes effect. The Committee, conscious of the practice of adjourning court 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 six months after they have been presented.

84. 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. the police, the prosecutor and 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.

Treatment and conditions (art. 37 (c))

85. 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) of 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.

86. 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.

87. 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 be left to the discretion of the competent authorities.

88. 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 in its resolution 45/113 of 14 December 1990. 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 also rule 9 of the Beijing Rules). In this regard, the Committee recommends that the States parties incorporate these rules into their national laws and regulations, and make them available, in the national or regional language, to all professionals, NGOs and volunteers involved in the administration of juvenile justice.

89. The Committee wishes 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 their needs for privacy, sensory stimuli, opportunities to associate with their peers, and to participate in sports, physical exercise, in 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 organizations, 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 violation 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 of 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 ORGANIZATION OF JUVENILE JUSTICE

90. In order to ensure the full implementation of the principles and rights elaborated 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) of 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.

91. What the basic provisions of these laws and procedures are required to be, has been presented in the present general comment. 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.

92. 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.

93. The Committee recommends that the States parties 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.

94. In addition, specialized services such as probation, counselling or supervision should be established together with specialized facilities including for example 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.

95. It is clear from many States parties' reports that non-governmental organizations can and do play an important role not only in the prevention of juvenile delinquency as such, but also in the administration of juvenile justice. The Committee therefore recommends that States parties seek the active involvement of these organizations in the development and implementation of their comprehensive juvenile justice policy and provide them with the necessary resources for this involvement.

VI. AWARENESS-RAISING AND TRAINING

96. 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 courts and other primarily punitive measures). To create a positive environment for a better understanding of the root causes of juvenile delinquency and a rights-based approach to 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 CRC. In this regard, the States parties should seek the active and positive involvement of members of parliament, NGOs and the media, and support their efforts in the 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 for children, in particular those who have experience with the juvenile justice system, to be involved in these awareness-raising efforts.

97. It is essential for the quality of the administration of juvenile justice that all the professionals involved, inter alia, in law enforcement and the judiciary receive appropriate training on the content and meaning of the provisions of CRC in general, particularly those directly relevant to their daily practice. This training should be organized in a systematic and ongoing manner and should not be limited to information on the relevant national and international legal provisions. It should include information on, inter alia, the social and other causes of juvenile delinquency, 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 dealing with children in conflict with the penal law, in particular measures without resorting to judicial proceedings (see chapter IV, section B, above).

VII. DATA COLLECTION, EVALUATION AND RESEARCH

98. The Committee is deeply concerned about the lack of even basic and disaggregated data on, inter alia, the number and nature of offences committed by children, the use and the average duration of pretrial detention, the number of children dealt with by resorting to measures other

than 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 to 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 effective responses to juvenile delinquency in full accordance with the principles and provisions of CRC.

99. The Committee recommends that States parties conduct regular evaluations of their practice of juvenile justice, in particular of the effectiveness of the measures taken, including those concerning discrimination, reintegration and recidivism, preferably carried out by independent academic institutions. Research, as for example 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 on the involvement of children in research.

General Assembly

Distr.: General
13 March 2009

Sixty-third session
Agenda item 60 (*a*)

Resolution adopted by the General Assembly

[*on the report of the Third Committee (A/63/426)*]

63/241. Rights of the child

The General Assembly,

Recalling its previous resolutions on the rights of the child, the most recent of which is resolution 62/141 of 18 December 2007, and its resolution 62/140 of 18 December 2007, as well as Human Rights Council resolution 7/29 of 28 March 2008,[1]

Emphasizing that the Convention on the Rights of the Child[2] must constitute the standard in the promotion and protection of the rights of the child, and bearing in mind the importance of the Optional Protocols to the Convention,[3] as well as other human rights instruments,

Reaffirming the Vienna Declaration and Programme of Action,[4] the United Nations Millennium Declaration[5] and the outcome document of the twenty-seventh special session of the General Assembly on children, entitled "A world fit for children",[6] and recalling the Copenhagen Declaration on Social Development and the Programme of Action,[7] the Dakar Framework for Action adopted at the World Education Forum,[8] the Declaration on Social Progress and Development,[9] the Universal Declaration on the Eradication of Hunger and Malnutrition,[10] the Declaration on the Right to Development[11] and the Declaration of the

[1] See *Official Records of the General Assembly, Sixty-third Session, Supplement No. 53* (A/63/53), chap. II.

[2] United Nations, *Treaty Series*, vol. 1577, No. 27531.

[3] Ibid., vols. 2171 and 2173, No. 27531.

[4] A/CONF.157/24 (Part I), chap. III.

[5] See resolution 55/2.

[6] Resolution S-27/2, annex.

[7] *Report of the World Summit for Social Development, Copenhagen, 6–12 March 1995* (United Nations publication, Sales No. E.96.IV.8), chap. I, resolution 1, annexes I and II.

[8] See United Nations Educational, Scientific and Cultural Organization, *Final Report of the World Education Forum, Dakar, Senegal, 26–28 April 2000* (Paris, 2000).

[9] See resolution 2542 (XXIV).

[10] *Report of the World Food Conference, Rome, 5–16 November 1974* (United Nations publication, Sales No. E.75.II.A.3), chap. I.

[11] Resolution 41/128, annex.

commemorative high-level plenary meeting devoted to the follow-up to the outcome of the special session on children, held in New York on 11 to 13 December 2007,[12]

Recognizing the link between an improved situation for children and achieving the internationally agreed development goals, including the Millennium Development Goals, in particular those related to education, poverty eradication, gender equality, reduction of child mortality and global partnership for development, and welcoming in this context the outcomes of the high-level event on the Millennium Development Goals, held in New York on 25 September 2008,

Recognizing also the importance of the integration of child rights issues into the follow-up of the outcome documents of all major United Nations conferences, special sessions and summits,

Taking note with appreciation of the reports of the Secretary-General on progress made towards achieving the commitments set out in the outcome document of the twenty-seventh special session of the General Assembly[13] and on the status of the Convention on the Rights of the Child and the issues raised in Assembly resolution 62/141,[14] as well as the report of the Committee on the Rights of the Child,[15]

Recognizing the importance of incorporating a child-protection perspective across the human rights agenda, as highlighted in the 2005 World Summit Outcome,[16]

Welcoming the entry into force of the Convention on the Rights of Persons with Disabilities,[17] and the attention paid to children in this international instrument,

Noting with appreciation the attention paid to children in the International Convention for the Protection of All Persons from Enforced Disappearance,[18] and stressing the importance of its entry into force,

Noting with appreciation also the attention paid to children in the United Nations Declaration on the Rights of Indigenous Peoples,[19]

Profoundly concerned that the situation of children in many parts of the world remains critical, in an increasingly globalized environment, as a result of the persistence of poverty, social inequality, inadequate social and economic conditions, pandemics, in particular HIV/AIDS, malaria and tuberculosis, environmental damage, natural disasters, armed conflict, foreign occupation, displacement, violence, terrorism, abuse, trafficking in children and their organs, all forms of exploitation, commercial sexual exploitation of children, child prostitution, child pornography and child sex tourism, neglect, illiteracy, hunger, intolerance, discrimination, racism, xenophobia, gender inequality, disability and inadequate legal protection, and convinced that urgent and effective national and international action is called for,

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[12] See resolution 62/88.

[13] A/63/308.

[14] A/63/160.

[15] *Official Records of the General Assembly, Sixty-third Session, Supplement No. 41* (A/63/41).

[16] See resolution 60/1, para. 128.

[17] Resolution 61/106, annex I.

[18] Resolution 61/177, annex.

[19] Resolution 61/295, annex.

Reiterating that eradicating poverty is the greatest global challenge facing the world today and an indispensable requirement for sustainable development, in particular for developing countries, and recognizing that chronic poverty remains the single biggest obstacle to meeting the needs of and promoting and protecting the rights of children, and that urgent national and international action is therefore required to eliminate it,

Reaffirming that democracy, development, peace and security, and the full and effective enjoyment of all human rights and fundamental freedoms are interdependent and mutually reinforcing and contribute to the eradication of extreme poverty,

Reaffirming also the need for mainstreaming a gender perspective in all policies and programmes relating to children, and recognizing the child as a rights holder in all policies and programmes relating to children,

Bearing in mind that 2009 marks the twentieth anniversary of the adoption of the Convention on the Rights of the Child and the fiftieth anniversary of the adoption of the Declaration of the Rights of the Child,[20] which provided a foundation for the Convention, and considering that these anniversaries are suitable occasions for strengthening the efforts of Member States to promote the rights of the child,

I

Implementation of the Convention on the Rights of the Child and the Optional Protocols thereto

1. *Reaffirms* that the general principles of, inter alia, the best interests of the child, non-discrimination, participation and survival and development provide the framework for all actions concerning children, including adolescents;

2. *Urges* States that have not yet done so to become parties to the Convention on the Rights of the Child[2] and the Optional Protocols thereto[3] as a matter of priority and to implement them fully by, inter alia, putting in place effective national legislation, policies and action plans, strengthening relevant governmental structures for children and ensuring adequate and systematic training in the rights of the child for all those working with and for children, as well as ensuring child rights education for children themselves;

3. *Urges* States parties to withdraw reservations that are incompatible with the object and purpose of the Convention or the Optional Protocols thereto and to consider reviewing regularly other reservations with a view to withdrawing them in accordance with the Vienna Declaration and Programme of Action;[4]

4. *Calls upon* States to designate, establish or strengthen governmental structures for children, including, where appropriate, ministers in charge of child and youth issues and independent ombudspersons for children or other institutions for the promotion and protection of the rights of the child;

5. *Welcomes* the work of the Committee on the Rights of the Child, and calls upon all States to strengthen their cooperation with the Committee, to comply in a timely manner with their reporting obligations under the Convention and the

[20] See resolution 1386 (XIV).

41. *Calls upon* States to protect all human rights of children in particularly difficult situations and to ensure that the best interests of the child are accorded primary consideration, and encourages the Committee on the Rights of the Child, the United Nations Children's Fund, other relevant United Nations bodies and mandate holders, within their respective mandates, to pay particular attention to the conditions of these children in all States and, as appropriate, to make recommendations to strengthen their protection;

42. *Recognizes* that the mass media and their organizations have a key role to play in raising awareness about the situation of children and the challenges facing them and that they should also play a more active role in informing children, parents, families and the general public about initiatives that promote and protect the rights of children and should also contribute to educational programmes for children;

Children alleged to have infringed or recognized as having infringed penal law

43. *Calls upon* all States:

(*a*) To abolish by law and in practice the death penalty and life imprisonment without possibility of release for those under the age of 18 years at the time of the commission of the offence, including by taking all necessary measures to comply with their obligations assumed under relevant provisions of international human rights instruments, including the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights;[25] and

(*b*) To keep in mind the safeguards guaranteeing protection of the rights of those facing the death penalty and the guarantees set out in United Nations safeguards adopted by the Economic and Social Council;

44. *Encourages* all States to develop and implement a comprehensive juvenile justice policy that includes, where appropriate, the introduction of alternative measures allowing for responses to juvenile delinquency without resorting to judicial procedures;

45. *Urges* States to take special measures to protect juvenile offenders, including the provision of adequate legal assistance, the training in juvenile justice of judges, police officers and prosecutors, as well as specialized defenders or other representatives who provide legal or other appropriate assistance, such as social workers, the establishment of specialized courts, the promotion of universal birth registration and age documentation and the protection of the right of juvenile offenders to maintain contact with their families through correspondence and visits, save in exceptional circumstances;

46. *Calls upon* all States to ensure that no child in detention is sentenced to forced labour or any form of cruel or degrading punishment or is deprived of access to and provision of health-care services, hygiene and environmental sanitation, education, basic instruction and vocational training;

[25] See resolution 2200 A (XXI), annex.

UNITED NATIONS NATIONS UNIES

GUIDANCE NOTE OF THE SECRETARY-GENERAL

UN Approach to Justice for Children

SEPTEMBER 2008

UNITED NATIONS NATIONS UNIES

GUIDANCE NOTE OF THE SECRETARY-GENERAL

UN Approach to Justice for Children

SUMMARY

This note provides the guiding principles and framework for UN justice for children activities at the national level that apply in all circumstances, including in conflict prevention, crisis, post-crisis, conflict, post-conflict and development contexts. It is framed within the UN mandate to support the realisation of human rights, poverty reduction and the Millennium Development Goals, and is a contribution to the UN coherence agenda in the rule of law area.

The goal of the justice for children approach is to ensure that children, defined by the Convention on the Rights of the Child as all persons under the age of eighteen, are better served and protected by justice systems, including the security and social welfare sectors. It specifically aims at ensuring full application of international norms and standards for all children who come into contact with justice and related systems as victims, witnesses and alleged offenders; or for other reasons where judicial, state administrative or non-state adjudicatory intervention is needed, for example regarding their care, custody or protection.

A. Guiding Principles

1. Ensuring that the best interests of the child is given primary consideration
2. Guaranteeing fair and equal treatment of every child, free from all kinds of discrimination
3. Advancing the right of the child to express his or her views freely and to be heard
4. Protecting every child from abuse, exploitation and violence
5. Treating every child with dignity and compassion
6. Respecting legal guarantees and safeguards in all processes
7. Preventing conflict with the law as a crucial element of any juvenile justice policy
8. Using deprivation of liberty of children only as a measure of last resort and for the shortest appropriate period of time
9. Mainstreaming children's issues in all rule of law efforts

B. Framework for Justice for Children

The UN approach to justice for children involves two tracks to ensure that children are better served and protected by justice systems. The first aims to ensure greater attention to children in rule of law initiatives, and the second suggests additional interventions necessary to strengthen rule of law efforts in terms of justice for children specially and to guarantee full respect for child rights. Both these tracks are described below and integrated in the framework for strengthening the rule of law as described in the UN approach to rule of law assistance.

INTRODUCTION

The way children are treated by national legal, social welfare, justice systems and security institutions is integral to the achievement of rule of law and its related aims. Despite important progress over the last two decades, children are yet to be viewed as key stakeholders in rule of law initiatives. Work to implement child justice standards is still frequently handled separately from broader justice and security reform. It is also often undertaken through vertical approaches, aimed at improving either the juvenile justice system or responses to child victims and witnesses, without acknowledging the frequent overlap between these categories and the professionals and institutions with responsibility towards them. Access to justice, though increasingly recognised as an important strategy for protecting the rights of vulnerable groups, and thus for fighting poverty, rarely takes children into account.

This guidance note outlines strategies for a common UN approach towards justice for children within existing rule of law principles and framework as outlined in the UN approach to rule of law assistance. The approach aims to ensure that relevant provisions of the Convention on the Rights of the Child (CRC) and other international legal instruments related to child justice are reflected in broader policy reform and implementation efforts. A common approach will help UN entities to leverage support through partners working on broader agendas around rule of law, including governance, security, social welfare and justice sector reform in which justice for children can easily be integrated.

A. GUIDING PRINCIPLES

The following principles, based on international legal norms and standards, should guide all justice for children interventions, from policy development to direct work with children:

1. Ensuring that the best interests of the child is given primary consideration

In all actions concerning children, whether undertaken by courts of law, administrative or other authorities, including non-state, the best interests of the child must be a primary consideration.

2. Guaranteeing fair and equal treatment of every child, free from all kinds of discrimination

The principle of non-discrimination underpins the development of justice for children programming and support programmes for all children's access to justice. A gender sensitive approach should be taken in all interventions.

3. Advancing the right of the child to express his or her views freely and to be heard

Children have a particular right to be heard in any judicial/administrative proceedings, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. It implies, for example, that the child receives adequate information about the process; the options and possible consequences of these options; and that the methodology used to question children and the context (e.g., where children are interviewed, by whom and how) be child-friendly and adapted to the particular child. In conflict and post-conflict contexts, it is also important to involve children in transitional justice processes.

4. Protecting every child from abuse, exploitation and violence

Children in contact with the law should be protected from any form of hardship while going through state and non-state justice processes and thereafter. Procedures have to be adapted, and appropriate protective measures against abuse, exploitation and violence, including sexual and gender-based violence put in place, taking into account that the risks faced by boys and girls will differ. Torture or other cruel, inhuman or degrading treatment or punishment (including corporal punishment) must be prohibited. Also, capital punishment and life imprisonment without possibility of release shall not be imposed for offences committed by children.

5. Treating every child with dignity and compassion

Every child has to be treated as a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected.

6. Respecting legal guarantees and safeguards in all processes

Basic procedural safeguards as set forth in relevant national and international norms and standards shall be guaranteed at all stages of proceedings in state and non-state systems, as well as in international justice. This includes, for example, the right to privacy, the right to legal aid and other types of assistance and the right to challenge decisions with a higher judicial authority.

7. Preventing conflict with the law as a crucial element of any juvenile justice policy

Within juvenile justice policies, emphasis should be placed on prevention strategies 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. Prevention programmes should focus especially on support for particularly vulnerable children and families.

8. Using deprivation of liberty of children only as a measure of last resort and for the shortest appropriate period of time

Provisions should be made for restorative justice, diversion mechanisms and alternatives to deprivation of liberty. For the same reason, programming on justice for children needs to build on informal and traditional justice systems as long as they respect basic human rights principles and standards, such as gender equality.

9. Mainstreaming children's issues in all rule of law efforts

Justice for children issues should be systematically integrated in national planning processes, such as national development plans, CCA/UNDAF, justice sector wide approaches (SWAPs), poverty assessments/Poverty Reduction Strategies, and policies or plans of action developed as a follow up to the UN Global Study on Violence against Children; in national budget and international aid allocation and fundraising; and in the UN's approach to justice and security initiatives in peace operations and country teams, in particular through joint and thorough assessments, development of a comprehensive rule of law strategy based on the results of the assessment, and establishment of a joint UN rule of law programme in country.

B. FRAMEWORK FOR JUSTICE FOR CHILDREN

Justice for children issues are to be integrated in the framework for strengthening the rule of law as described in the UN approach to rule of law assistance:

1. **Constitution, or equivalent, and a legal framework and the implementation thereof.** National and international norms and standards pertaining to justice for children need to be taken into account when developing, revising and implementing any legal instrument as described in the UN approach to rule of law assistance. In particular, children's issues must be integrated in:

   - Constitutional reform and/or constitution-making processes;
   - Law and policy reform efforts at national and regional levels. The CRC – the most widely-ratified human rights treaty – and its Committee's General Comment #10, as well as relevant UN norms and standards in crime prevention and criminal justice, including ECOSOC resolution on supporting national efforts for child justice reform (E/2007/23 of 26 July 2007), provide good entry points for broader law and policy reform;
   - Codes of conduct, standards for recruitment and standards of practice for law enforcement and judiciary personnel, detention facilities management and staff, lawyers, social workers, paralegals and other professionals in touch with children in contact with the law.

2. **Institutions of justice, governance, security and human rights.** The UN approach to rule of law assistance requires the establishment and/or maintenance of institutions of justice, governance, security and human rights that are well-structured and financed, trained and equipped to make, promulgate, enforce and adjudicate the law in a manner that ensures the equal enjoyment of human rights for all. In terms of justice for children, this should include the integration of children's issues into rule of law efforts such as:

   - Institutional reform and capacity development for legal and judicial institutions (prosecution, legal assistance and representation, ministries of justice, courts, criminal law, civil law) and law enforcement, parliaments, paralegal professionals, the social sector and prison managers and staff. In terms of security sector reform, capacity building should include a focus on child rights, gender sensitization, mediation and conflict resolution in training for security forces and law enforcement and a focus on their responsibilities as duty-bearers in the protection of children;
   - Programmes promoting the integrity and accountability of justice and law enforcement such as, for example, police accountability mechanisms or citizen review boards of police conduct or inspectorates for closed institutions including police detention;
   - Monitoring bodies (parliamentary committees, ombudsman offices, human rights commissions, etc.), ensuring that due attention is given to children in justice systems, including within closed institutions. These bodies could also play a role in ensuring that non-state mechanisms are compliant with human rights;
   - Promoting integration of child rights into support to non-state/informal justice mechanisms. Non-state justice mechanisms tend to address issues that are of direct relevance to the most disadvantaged children, including protection of land and property for children orphaned by HIV/AIDS or conflict, the resolution of family and community disputes and protection of entitlements, such as access to public services. These systems may be less intimidating and closer to children both physically and in terms of their concerns. In many instances, however, work needs to be done with communities to bring these mechanisms in line with child rights and to remove discriminatory biases towards women and girls. Non-state justice mechanisms might play a particularly crucial role in crisis/conflict and post-crisis/conflict situations, when the formal system is weakened or has collapsed;

- Peace agreements, as these provide important entry points and an opportunity to establish the justice systems' goals and principles and ensure that children are fully taken into account;

Additional interventions are necessary to strengthen rule of law efforts specifically in terms of justice for children and ensure full respect for children's rights. These include the following:

- Building the knowledge base on children in justice systems (formal and informal), such as through the creation and maintenance of national databases and the development of national research agendas on the nature and extent of crimes by and against children;
- Promoting the establishment of a juvenile justice system in line with international norms and standards, particularly in post-crisis/conflict situations which often provide opportunities for government restructuring and legislative overhaul and to 'build back better'. These efforts should be part of a broader strategy aimed at establishing a national justice system in line with international standards in the mid to long term;
- Supporting the establishment of restorative justice, diversion and alternatives to deprivation of liberty that promote the child's reintegration into society in line with the principle of deprivation of liberty as a measure of last resort;
- Enabling the full involvement of the social sector in justice for children issues and strengthening coordination between the social and justice sectors;
- Assisting governments' ability to prevent crimes against children, particularly in the home, and to detect, investigate and prosecute offenders, including through building the capacity of justice, military, law enforcement and social welfare professionals and reinforcing multi-disciplinary cooperation among sectors;
- Promoting child-sensitive procedures and methods that ensure the child's full-fledged participation in judicial, administrative and community-based processes. This might require changes in law, legal practice (such as interview techniques), capacities and physical environment and, more generally, attitudes towards child participation.

3. **Transitional justice processes and mechanisms.** Children's concerns need to be included in the discussions related to transitional justice processes and mechanisms from the outset. Provisions are to be made for their full-fledged participation and protection. Procedures need to be in line with the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime and children's participation must be guided by the principle of their best interests.
4. **A public and civil society that contributes to strengthening the rule of law and holds public officials and institutions accountable**. Children are also to be targeted in such efforts, for example as follows:
    - Ensuring child rights education and legal awareness for all children, as well as for families and communities. Such awareness programmes should be integrated as much as possible in school curricula as well as in existing initiatives such as life-skills education, psychosocial counseling or child-friendly spaces, as part of broader efforts to help children gain control over their lives. Parents and communities at large should also be empowered, in order to bring action on behalf of children (especially the younger) when necessary;
    - Drawing on child participation projects (or establish such projects if not available) to ensure that children are involved from the outset in identifying legal matters important to them, as

well as – in post-conflict situations – the most appropriate transitional justice mechanism(s) and ways to enhance dialogue within the community;

- Supporting community-based legal and paralegal services for children. This includes developing the capacity of lawyers' networks, bar associations and paralegal professionals, including women, from the concerned community; and supporting or establishing NGO services at the community level such as legal information centers, legal aid clinics, and socio-legal defense centers to provide legal information and representation to children;
- Developing the capacity of legal services, civil society and paralegals on legal issues of particular relevance to boys and girls in crisis/conflict and post-crisis/conflict situations, such as guardianship, housing, land and property rights, registration, national identification and citizenship, statelessness and other public law issues, in particular for orphaned, returning child refugees and internally displaced children, as well as grave violations of human rights such as sexual and gender-based violence;
- Supporting civil society organizations in facilitating children's access to non-state justice systems and assisting these mechanisms to become more responsive to the rights and needs of children. In particular, build civil society organizations' capacity in raising awareness on non-state justice mechanisms among the population, train justice providers in human rights issues, monitor the activities of non-state mechanisms, report on human rights abuses and help ensure fair outcomes;
- (Re)building the capacity of local human and child rights/child protection organizations, institutions and agencies, the media and community groups to advocate on behalf of children and monitor fulfillment of their rights;
- Developing the capacity of civil society to design and run programmes in relation to justice for children in crisis/conflict situations, aiming at keeping children away from conflict with the law, improving detention conditions or ensuring rapid disarmament, demobilization and reintegration of children who have been associated with armed forces;
- Raising awareness on the rights of children going through justice systems as victims, witnesses and offenders (or for any other reason), as well as the impact of going through such systems on children.

Resolution

2009/26
Supporting national and international efforts for child justice reform, in particular through improved coordination in technical assistance

The Economic and Social Council,

Recalling the Universal Declaration of Human Rights,[1] which states, in its article 25, that children are entitled to special care and assistance,

Recalling also the Convention on the Rights of the Child,[2] in particular its article 37, in which States parties to the Convention agreed to ensure that, inter alia, the deprivation of liberty of persons under the age of eighteen should be used only as a measure of last resort, and recalling also article 40 of the Convention,

Recalling further the numerous other United Nations standards and norms in the area of child justice, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),[3] the United Nations Rules for the Protection of Juveniles Deprived of their Liberty,[4] the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)[5] and the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime,[6]

Recalling further General Assembly resolutions 62/158 of 18 December 2007 and 63/241 of 24 December 2008, Commission on Human Rights resolution 2004/43 of 19 April 2004 and Human Rights Council resolutions 7/29 of 28 March 2008 and 10/2 of 25 March 2009,

Noting the adoption by the Committee on the Rights of the Child of general comment No. 10 (2007) on children's rights in juvenile justice,[7]

Noting also the guidance note of the Secretary-General on the United Nations approach to justice for children, of September 2008, and the report of the independent expert for the United Nations study on violence against children,[8] in particular the recommendations contained therein concerning children in care and justice systems,

Recalling its resolution 1997/30 of 21 July 1997, in which it welcomed the Guidelines for Action on Children in the Criminal Justice System, contained in the annex thereto, and invited the Secretary-General to consider establishing a coordination panel on technical advice and assistance in juvenile justice,

Recalling also its resolution 2007/23 of 26 July 2007 on child justice reform,

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[1] General Assembly resolution 217 A (III).
[2] United Nations, *Treaty Series*, vol. 1577, No. 27531.
[3] General Assembly resolution 40/33, annex.
[4] General Assembly resolution 45/113, annex.
[5] General Assembly resolution 45/112, annex.
[6] Economic and Social Council resolution 2005/20, annex.
[7] CRC/C/GC/10.
[8] A/61/299.

Welcoming the report of the Secretary-General on the support of national efforts for child justice reform, in particular through technical assistance and improved United Nations system-wide coordination,[9]

Noting that, according to that report, some States have reported on the implementation of effective measures to reduce the use of imprisonment and pretrial detention for juveniles in conflict with the law, while many States still use deprivation of liberty as the rule rather than an exception,

Noting also the increased specialization of institutions and professionals and the provision of appropriate training and retraining in this area and the development of diversion, restorative justice and alternatives to detention programmes reported by Member States, and encouraging other States to adopt such programmes,

Acknowledging with satisfaction the work of the Interagency Panel on Juvenile Justice and of its members, the Department of Peacekeeping Operations of the Secretariat, the Office of the United Nations High Commissioner for Human Rights, the United Nations Office on Drugs and Crime, the United Nations Children's Fund, the United Nations Development Programme, the United Nations Interregional Crime and Justice Research Institute, the Committee on the Rights of the Child and a number of non-governmental organizations, in particular the coordination of the provision of technical advice and assistance in the area of child justice and the active participation of civil society in that work,

Bearing in mind that the United Nations approach to justice for children contained in the guidance note of the Secretary-General of September 2008 aims at full application of United Nations standards and norms for all children who come into contact with justice and related systems as victims, witnesses or alleged offenders or in other circumstances where judicial intervention is needed,

1. *Urges* Member States to pay particular attention to or increase the attention paid to the issue of child justice and to take into consideration applicable international instruments and, as appropriate, applicable United Nations standards and norms for the treatment of children in conflict with the law, in particular juveniles deprived of their liberty, and child victims and witnesses of crimes, taking into account also the age, gender, social circumstances and development needs of such children;

2. *Invites* Member States to adopt, where appropriate, comprehensive national action plans on crime prevention and child justice reform dealing, in particular, with preventing child involvement in crime, ensuring access to legal assistance, especially for those children with scarce resources, and reducing the use and the duration of juvenile detention, especially at the pretrial stages, including through the use of diversion, restorative justice and alternatives to detention, the reintegration of children in conflict with the law into their communities and child-sensitive procedures for all children in contact with the justice system;

3. *Also invites* Member States and their relevant institutions to adopt, where appropriate, a comprehensive approach to child justice reform, including through policy reform, legal reform, the establishment of data collection and information management systems, the strengthening of

[9] E/CN.15/2009/12.

institutional capacity, including with regard to social workers and providers of legal assistance, awareness-building and monitoring, and the establishment of child-sensitive procedures and institutions;

4. *Encourages* Member States, where appropriate, to conduct scientific research in relation to children in conflict with the law, in such areas as their social environment and other risk factors, and measures for their social rehabilitation and integration into society;

5. *Invites* Member States, as appropriate, to make use of the technical assistance tools developed by the Interagency Panel on Juvenile Justice and by its members and to seek technical advice and assistance in the area of child justice from the members of the Panel in order to design, implement and monitor comprehensive child justice policies;

6. *Encourages* Member States and international funding agencies to provide adequate resources to the secretariat of the Interagency Panel on Juvenile Justice and to the members of the Panel so that they may continue to provide enhanced technical assistance, upon request, to Member States, in particular to those having expressed a need for technical assistance pursuant to Economic and Social Council resolution 2007/23 of 26 July 2007;

7. *Invites* the members of the Interagency Panel on Juvenile Justice to continue providing assistance to Member States, upon request and subject to the availability of resources, in the area of child justice, including by following up on the recommendations contained in the United Nations study on violence against children[124] and setting up national data collection and criminal justice information systems with regard to children in conflict with the law, using as a guide the *Manual for the Measurement of Juvenile Justice Indicators*;[10]

8. *Encourages* the members of the Interagency Panel on Juvenile Justice to further increase their cooperation, to share information and to pool their capacities and resources in order to increase the effectiveness of programme implementation, including through, when appropriate, joint programming, and the development of common tools and awareness-raising;

9. *Requests* the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice, at its twentieth session, on the implementation of the present resolution.

44th plenary meeting
30 July 2009

[10] United Nations publication, Sales No. E.107.V.7.

United Nations A/CONF.213/18

Twelfth United Nations Congress on Crime Prevention and Criminal Justice

Salvador, Brazil, 12-19 April 2010

Distr.: General
18 May 2010

Original: English

Report of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice*

Salvador, Brazil, 12-19 April 2010

Contents

* The present document is an advance version of the report. The final report will be issued as a United Nations sales publication.

V.10-53828 (E) 180610 210610

80. Speakers highlighted the importance of establishing and strengthening the capacities of Member States to collect statistical data on crime and criminal justice. It was noted that high-quality statistical data could lead to sound knowledge about the structure and trends of crime and were indispensable tools for developing evidence-based policy. Several speakers observed that statistics on crime and criminal justice should be reported and exchanged at the national, regional and international levels, including within the framework of mechanisms of the United Nations.

81. The Government of Qatar offered to act as host to the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, to be held in 2015.

C. Action taken at the high-level segment

82. At the fourth meeting of the high-level segment, on 17 April 2010, the Congress adopted the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World" (A/CONF.213/L.6/Rev.2). (For the text of the resolution, see chapter I, resolution 1.)

Chapter V

Consideration of agenda items in plenary meetings and by sessional bodies and action taken by the Congress

A. Children, youth and crime; and making the United Nations guidelines on crime prevention work

Proceedings

83. At its 2nd plenary meeting, on 12 April 2010, the Congress allocated to plenary meetings agenda item 3, entitled "Children, youth and crime", and agenda item 5, entitled "Making the United Nations guidelines on crime prevention work". The Congress considered the items at its 2nd, 3rd and 4th plenary meetings, on 12 and 13 April 2010. For its consideration of the item, the Congress had before it the following documents:

(a) Working paper prepared by the Secretariat on children, youth and crime (A/CONF.213/4);

(b) Working paper prepared by the Secretariat on making the United Nations guidelines on crime prevention work (A/CONF.213/6);

(c) Background paper on the Workshop on International Criminal Justice Education for the Rule of Law (A/CONF.213/12);

(d) Background paper on the Workshop on the Survey of United Nations and Other Best Practices in the Treatment of Prisoners in the Criminal Justice System (A/CONF.213/13);

(e) Background paper on the Workshop on Practical Approaches to Preventing Urban Crime (A/CONF.213/14);

(f) Background paper on the Workshop on Strategies and Best Practices against Overcrowding in Correctional Facilities (A/CONF.213/16);

(g) Report submitted by the Chair of the expert group on the outcome of the meeting of the expert group to develop supplementary rules specific to the treatment of women in detention and in custodial and non-custodial settings (A/CONF.213/17);

(h) Discussion guide (A/CONF.213/PM.1);

(i) Reports of the regional preparatory meetings for the Twelfth Congress (A/CONF.213/RPM.1/1, A/CONF.213/RPM.2/1, A/CONF.213/RPM.3/1 and A/CONF.213/RPM.4/1).

84. At the 2nd plenary meeting, items 3 and 5 were introduced by representatives of the Secretariat. A short film entitled "United Nations principles for the prevention of crime and their practical application around the world" was shown, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment addressed the Congress on the item on children, youth and crime. Statements were made by representatives of Chile, Finland, Germany, China, Switzerland, Canada, Argentina, Brazil, Egypt and the Libyan Arab Jamahiriya.

85. At the 3rd plenary meeting, on 13 April, statements were made by the representatives of the Russian Federation, South Africa, the Republic of Korea, the United States, Peru, the United Kingdom, Angola, India, Uganda, the Islamic Republic of Iran, Romania, Mexico, Chad, Algeria, Thailand, France, Brazil, the Libyan Arab Jamahiriya and Viet Nam. A statement was also made by the observer for the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD).

86. At its 4th plenary meeting, on 13 April, statements were made by the representatives of Saudi Arabia, China, the Philippines, Nigeria, Namibia, Zimbabwe, Cuba and the Plurinational State of Bolivia. Statements were also made by the observers for the League of Arab States, the Academic Council on the United Nations System (also on behalf of the Vienna Alliance of Non-Governmental Organizations on Crime Prevention and Criminal Justice and the International Commission of Catholic Prison Pastoral Care), the International Society for Traumatic Stress Studies (also on behalf of the New York Alliance of Non-Governmental Organizations on Crime Prevention and Criminal Justice), the Interagency Panel on Juvenile Justice, the Friends World Committee for Consultation, the Open Society Institute and Prison Fellowship International. Three individual experts also made statements.

General discussion on children, youth and crime

87. A representative of the Secretariat made an introductory statement, recalling that the adoption of the Convention on the Rights of the Child over 20 years ago marked a new era in children's rights. Noting that in 2010 the United Nations celebrates the International Year of Youth, for which 15 areas of action had been identified, including juvenile delinquency, she indicated that the rights of children and youth were very often challenged by violence and exploitation, as well as by

poverty, malnutrition and disease. Children and youth exposed to such circumstances were at greater risk of becoming involved in criminal activities. Therefore, strong preventive and reactive measures addressing the root causes of juvenile delinquency were needed. The representative of the Secretariat also stressed the fact that restorative justice measures had proved to be more effective than detention, with recidivism rates as low as 10 per cent in some cases, and underlined that detention should be used only as a measure of last resort in cases of child or juvenile offenders.

88. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment noted that worldwide more than 1 million children lived behind bars. Following his fact-finding missions, he had come to the conclusion that too many children were deprived of their liberty, in violation of international standards and norms. He had also observed that in many countries the criminal justice system functioned as an ill-suited substitute for a lacking or dysfunctional welfare system. He called for strong action to prevent children from being sent to prison and for a total ban on capital and corporal punishment and life imprisonment for children. He urged Member States to establish the minimum age of criminal responsibility at least 14 years and in no case below 12 years of age. He invited Member States to open to external scrutiny closed institutions where children were held by acceding to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 57/199, annex). He also invited Member States to contribute to the drafting and adoption of a United Nations convention on the rights of detainees containing special provisions on the rights of child detainees.

89. In the subsequent discussion, many speakers made reference to the Convention on the Rights of the Child, which had reached almost universal adherence and had marked an important evolution in the recognition of the rights and needs of children. Many speakers mentioned that their Governments had adopted national legislation and procedures to ensure compliance with the Convention. Various views were expressed with regard to the age of criminal responsibility, but many were of the view that it should not be lower than 12.

90. Most speakers highlighted the importance of the United Nations standards and norms on children, youth and crime, including the following: the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (General Assembly resolution 40/33, annex); the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (Assembly resolution 45/112, annex); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Assembly resolution 45/113, annex); the Guidelines for Action on Children in the Criminal Justice System (Economic and Social Council resolution 1997/30, annex); and the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (Council resolution 2005/20, annex). Speakers stated that those standards and norms provided excellent guidance in the areas of youth crime prevention, juvenile justice, children in detention and child victims or witnesses of crime. Some countries emphasized the use of standards and norms to ensure that children's rights were taken into account in the context of broad rule-of-law initiatives. A human rights-based approach was mentioned by several speakers.

91. Many speakers referred to comprehensive prevention frameworks and programmes, including effective awareness-raising initiatives and educational measures. Schools were mentioned as a particularly cost-effective means of providing crime prevention and criminal justice education for children and youth. Such programmes should address all forms of crime affecting children and youth, including cybercrime and school crimes such as bullying.

92. Some speakers noted the benefits of providing specialized training to a range of professionals including police, prosecutors, judges and medical practitioners to respond to individual needs of children and youth in contact with the criminal justice system.

93. Several speakers discussed the special needs of child victims and witnesses and the responses to such needs, including juvenile and child-friendly courts, non-uniformed staff and specialized training for professionals dealing with child victims and witnesses. Many speakers referred to the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, which gave detailed guidance on how to provide justice for child victims and witnesses of crime while protecting their rights and respecting their particular needs. Several speakers referred to the alarming increase in cases of sexual abuse of children and the special needs of the victims of such crimes. Speakers also referred to the vulnerability of refugee and internally displaced children, as well as orphans in contact with the criminal justice system.

94. Many speakers made reference to the importance of addressing the needs of children in conflict with the law outside the formal criminal justice system. Furthermore, speakers emphasized the benefits of restorative justice approaches that offered unique opportunities to create a community of care around children in conflict with the law. Several speakers stressed that alternative measures to imprisonment should be used whenever possible, including the use of community-based rehabilitation and social reintegration schemes.

95. Several speakers noted the lack of comparable data and scientific evidence on children, youth and crime and that such data were necessary to design strategies and policies to prevent and respond to juvenile delinquency. A few speakers made particular mention of the need to evaluate programmes as a basis for elaborating new approaches. Many speakers expressed an interest in sharing experience as a means of learning from each other. Several speakers mentioned the good practice of ensuring coordination between the criminal justice system and the social welfare system when responding to the needs of child and youth offenders, victims and witnesses.

96. Some speakers mentioned media and its responsibility to present information that distinguished between reality, as reflected in academic and scientific evidence and studies, and perceptions among the general public with regard to children and youth and their relation to crime.

97. A few speakers mentioned the challenges involved in mobilizing national and international financial and human resources for comprehensive reforms. Several speakers indicated that their Governments or organizations were providing international technical assistance in the area of justice for children, while others called on the international community to provide such support. Member States commended the work of the Interagency Panel on Juvenile Justice in coordinating

technical assistance related to children, youth and crime and recommended States to make use of the Panel's resources.

Conclusions and recommendations on children, youth and crime

98. It was emphasized that detention should be used only for the shortest appropriate time and be imposed only if no other alternative measure contributed to the reintegration and rehabilitation of the child.

99. The best interest of the child should be put at the centre of national juvenile justice systems.

100. Member States should step up efforts to adopt a comprehensive approach to juvenile justice and child victims and witnesses and take the necessary measures to integrate restorative processes as a means of dealing with children in conflict with the law at all stages of the administration of juvenile justice.

101. Member States were encouraged to adopt a participatory approach to all reform efforts in the area of children, youth and crime and to give effect to the right of all children in contact with the criminal justice system to be heard, regardless of their involvement in crime or state of victimization.

102. It was also recommended that UNODC, upon request, should increase its technical assistance capacity and programming in the area of children and youth in criminal justice systems, including through efforts to promote the use of restorative justice approaches in dealing with offences committed by children and against children, and special measures to address the needs of child victims and witnesses of crime.

103. It was further recommended that Member States establish or strengthen the systematic collection of data on the nature of and the responses to juvenile delinquency in order to inform their policies in that regard with a view to adjusting them as necessary and to conducting or supporting research on the nature and impact of the various responses to juvenile delinquency.

General discussion on making the United Nations guidelines on crime prevention work

104. A representative of the Secretariat made an introductory statement. She recalled that prevention was the first imperative of justice and that the United Nations Guidelines for the Prevention of Crime (Economic and Social Council resolution 2002/13, annex) had the purpose of providing guidance to Member States on the main elements of effective crime prevention. She recalled the key elements of successful crime prevention policies, which included establishing a central body charged with the implementation of national programmes; reviewing strategies regularly to identify real needs as well as best practices; producing guides, toolkits and manuals to assist in the dissemination of knowledge on crime prevention; securing the commitment of central and local governments to the success of crime prevention programmes; creating partnerships and cooperation with non-governmental organizations; and encouraging the participation of the public in crime prevention. The main and most pressing challenges that countries encountered in implementing the Guidelines for the Prevention of Crime included strengthening social prevention as public policy, improving coordination among government