



# General Assembly

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## Human Rights Council

### Twenty-fourth session

Agenda item 3

### Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

**Andorra\***, **Argentina**, **Austria**, **Belgium\***, **Benin**, **Botswana**, **Bulgaria\***, **Chile**, **Costa Rica**, **Croatia\***, **Cyprus\***, **Czech Republic**, **Denmark\***, **Estonia**, **Finland\***, **France\***, **Georgia\***, **Germany**, **Greece\***, **Guatemala**, **Honduras\***, **Hungary\***, **Iceland\***, **Ireland**, **Italy**, **Latvia\***, **Lithuania\***, **Luxembourg\***, **Mexico\***, **Mongolia\***, **Montenegro**, **Morocco\***, **Netherlands\***, **Nigeria\***, **Norway\***, **Peru**, **Poland**, **Portugal\***, **Romania**, **Saudi Arabia\***, **Slovakia\***, **Slovenia\***, **Spain**, **Sweden\***, **Switzerland**, **Thailand**, **Tunisia\***, **Turkey\***, **Uruguay\***: draft resolution

### 24/... Human rights in the administration of justice, including juvenile justice

*The Human Rights Council,*

*Recalling* the Universal Declaration of Human Rights and all relevant international treaties, including the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto, as well as the Convention for the Protection of All Persons from Enforced Disappearance, and encouraging all States that have not ratified or acceded to the afore-mentioned treaties to consider doing so expeditiously,

*Bearing in mind* the numerous other international standards and norms in the field of the administration of justice, in particular of juvenile justice, including the Standard Minimum Rules for the Treatment of Prisoners, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”),<sup>1</sup> the Basic Principles for the Treatment of Prisoners,<sup>2</sup> the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,<sup>3</sup> the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)<sup>4</sup> and the United Nations Rules

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\* Non-member State of the Human Rights Council.

<sup>1</sup> General Assembly resolution 40/33, annex.

<sup>2</sup> General Assembly resolution 45/111, annex.

<sup>3</sup> General Assembly resolution 43/173, annex.

<sup>4</sup> General Assembly resolution 45/112.

for the Protection of Juveniles Deprived of their Liberty (the Havana Rules),<sup>5</sup> the Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines)<sup>6</sup> the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime,<sup>7</sup> the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power<sup>8</sup> and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules),<sup>9</sup>

*Welcoming* the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,<sup>10</sup>

*Recalling* all resolutions of the Human Rights Council, the Commission on Human Rights, the General Assembly and the Economic and Social Council relevant to the subject, in particular Human Rights Council resolutions 10/2 of 25 March 2009 and 18/12 of 29 September 2011, Assembly resolutions 63/241 of 24 December 2008, 65/231 of 21 December 2010 and 67/166 of 20 December 2012, and Economic and Social Council resolution 2009/26 of 30 July 2009,

*Bearing in mind* its decision to devote the 2014 full-day meeting on the rights of the child to the question of access to justice for children,

*Noting with appreciation* the work of all special procedures of the Human Rights Council that address human rights in the administration of justice in the discharge of their mandates,

*Noting with interest* the work of all human rights treaty body mechanisms on human rights in the administration of justice, in particular the adoption by the Human Rights Committee of its general comments No. 21, on the humane treatment of prisoners deprived of their liberty, and No. 32, on the right to equality before courts and tribunals and to a fair trial, and noting its ongoing work on the liberty and security of persons, and noting with interest also the adoption by the Committee on the Rights of the Child of its general comments No. 10, on children's rights in juvenile justice, and No. 13, on the rights of the child to freedom from all violence,

*Acknowledging* the efforts made by the Secretary-General on improving the coordination of United Nations activities in the field of administration of justice, the rule of law and juvenile justice,

*Noting with appreciation* the important work of 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 Special Representative of the Secretary-General on Violence against Children and the Special Representative of the Secretary-General on Children and Armed Conflict in the field of the administration of justice,

*Noting with satisfaction* the work of the Interagency Panel on Juvenile Justice and its members, in particular their coordination in providing technical advice and assistance in juvenile justice, and the active participation of civil society in its work,

*Encouraging* continued regional and cross-regional efforts, the sharing of best practices and the provision of technical assistance in the field of juvenile justice, and noting

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<sup>5</sup> General Assembly resolution 45/113.

<sup>6</sup> Economic and Social Council resolution 1997/30, annex.

<sup>7</sup> Economic and Social Council resolution 2005/20, annex.

<sup>8</sup> General Assembly resolution 40/34, annex.

<sup>9</sup> General Assembly resolution 65/229, annex.

<sup>10</sup> General Assembly resolution 67/187, annex.

in this regard the initiative to convene a world congress on juvenile justice in Geneva from 26 to 30 January 2015,

*Reaffirming* that an independent and impartial judiciary, an independent legal profession and the integrity of the judicial system are essential prerequisites for the protection of human rights and for ensuring that there is no discrimination in the administration of justice,

*Emphasizing* that the right to access to justice for all forms an important basis for strengthening the rule of law through the administration of justice,

*Recalling* that every State should provide an effective framework in which to pursue remedies to redress human rights violations or grievances,

*Recalling also* that the social rehabilitation of prisoners shall be among the essential aims of the criminal justice system, ensuring, as far as possible, that offenders are willing and able to lead a law-abiding and self-supporting life upon their return to society,

*Recognizing* the importance of the principle that, except for those lawful limitations that are demonstrably necessitated by the fact of incarceration, persons deprived of their liberty shall retain their non-derogable human rights and all other human rights and fundamental freedoms,

*Aware* of the need for special vigilance with regard to the specific situation of children, juveniles and women in the administration of justice, in particular while deprived of their liberty, and their vulnerability to violence, abuse, injustice and humiliation,

*Reaffirming* that the best interests of the child must be a primary consideration in all decisions concerning deprivation of liberty and, in particular, that depriving children and juveniles of their liberty should be used only as a measure of last resort and for the shortest appropriate period of time, in particular before trial, and the need to ensure that, if they are arrested, detained or imprisoned, children should be separated from adults, to the greatest extent feasible, unless it is considered in the child's best interest not to do so,

*Reaffirming also* that the best interests of the child shall be an important consideration in all matters concerning the child related to sentencing of his or her parents or, where applicable, legal guardians or primary caregivers,

1. *Notes with appreciation* the latest report of the United Nations High Commissioner for Human Rights submitted to the Human Rights Council on the protection of human rights of juveniles deprived of their liberty;<sup>11</sup>

2. *Also notes with appreciation* the latest report of the Secretary-General submitted to the Human Rights Council on the latest developments, challenges and good practices in human rights in the administration of justice, analysing the international legal and institutional framework for the protection of all persons deprived of their liberty;<sup>12</sup>

3. *Further notes with appreciation* the joint report of the Office of the High Commissioner, the United Nations Office on Drug and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system;<sup>13</sup>

4. *Reaffirms* the importance of the full and effective implementation of all United Nations standards on human rights in the administration of justice;

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<sup>11</sup> A/HRC/21/26.

<sup>12</sup> See A/HRC/24/28.

<sup>13</sup> A/HRC/21/25.

5. *Calls upon* States to spare no effort in providing for effective legislative, judicial, social, educative and other relevant mechanisms and procedures, as well as adequate resources, to ensure the full implementation of those standards, and invites them to take into consideration the issue of human rights in the administration of justice in the universal periodic review procedure;

6. *Invites* Governments to include in their national development plans the administration of justice as an integral part of the development process, and to allocate adequate resources for the provision of legal aid services with a view to the promotion and protection of human rights, and invites the international community to provide an increased level of both technical and financial assistance to States and to respond favourably to their requests for the enhancement and strengthening of institutions concerned with the administration of justice;

7. *Stresses* the special need for national capacity-building in the field of the administration of justice, through reform of the judiciary, the police and the penal system, as well as juvenile justice reform;

8. *Reaffirms* that no one should be unlawfully or arbitrarily deprived of his or her liberty, and notes the principles of necessity and proportionality in this regard;

9. *Calls upon* States to apply individual criminal responsibility and to refrain from detaining persons based solely on their family ties with an alleged offender;

10. *Also calls upon* States to ensure that anyone who is deprived of his or her liberty has prompt access to a competent court with the effective power to determine the lawfulness of the detention, and to order release if the detention or imprisonment is determined not to be lawful as well as prompt access to legal counsel, in accordance with their international obligations and commitments;

11. *Encourages* States to address overcrowding in detention facilities by taking effective measures, including through enhancing the use of alternatives to pretrial detention and custodial sentences, access to legal aid, and the efficiency as well as the capacity of the criminal justice system and its facilities;

12. *Urges* States to endeavour to reduce pretrial detention by, inter alia, adopting legislative and administrative measures and policies on its preconditions, limitations, duration and alternatives and by taking measures aimed at the implementation of existing legislation, as well as by ensuring access to justice and legal advice and assistance;

13. *Urges* all States to consider establishing, maintaining or enhancing independent mechanisms with the mandate to monitor all places of detention and have private interviews with all persons deprived of liberty without witnesses;

14. *Recalls* the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment in international law, and calls upon States to address and prevent detention conditions of persons deprived of their liberty that amount to torture or cruel, inhuman or degrading treatment or punishment;

15. *Calls upon* States to investigate promptly, effectively and impartially all alleged human rights violations suffered by persons deprived of their liberty, in particular cases involving death, torture and cruel, inhuman or degrading treatment or punishment, and to provide effective remedies to the victims;

16. *Notes* the work of the open-ended intergovernmental expert group on the revision of the United Nations standard minimum rules for the treatment of prisoners reiterating that any changes should not lower any existing standards but should reflect recent advances in correctional science and best practices as well as human rights standards, and, in this regard, invites the expert group to continue to benefit from the

expertise of the United Nations Office on Drugs and Crime and of the Office of the United Nations High Commissioner for Human Rights and other relevant stakeholders;

17. *Recognizes* that every child and juvenile in conflict with the law must be treated in a manner consistent with his or her rights, dignity and needs, in accordance with international law, bearing in mind relevant international standards on human rights in the administration of justice, and calls on States parties to the Convention on the Rights of the Child to abide strictly by its principles and provisions;

18. *Encourages* States that have not yet integrated children's issues into their overall rule of law efforts to do so, and to develop and implement a comprehensive juvenile justice policy to prevent and address juvenile delinquency as well as with a view to promoting, inter alia, the use of alternative measures, such as diversion and restorative justice, and ensuring compliance with the principle that deprivation of liberty of children should only be used as a measure of last resort and for the shortest appropriate period of time, as well as to avoid, wherever possible, the use of pretrial detention for children;

19. *Encourages* States to foster close cooperation between the justice sectors, different services in charge of law enforcement, social welfare and education sectors in order to promote the use and improved application of alternative measures in juvenile justice;

20. *Stresses* the importance of including reintegration strategies for former child offenders in juvenile justice policies, in particular through educational programmes, with a view to their assuming a constructive role in society;

21. *Encourages* States not to set the minimum age of criminal responsibility at too low an age level, bearing in mind the emotional, mental and intellectual maturity of the child, and, in this respect, refers to the recommendation of the Committee of the Rights of the Child to increase their lower minimum age of criminal responsibility without exception to the age of 12 years as the absolute minimum age, and to continue to increase it to a higher age level;

22. *Urges* States to ensure that, under their legislation and practice neither capital punishment nor life imprisonment are imposed for offences committed by persons under 18 years of age;

23. *Calls upon* States to enact or review legislation to ensure that any conduct not considered a criminal offence or not penalized if committed by an adult is also not considered a criminal offence and not penalized if committed by a child, in order to prevent the child's stigmatization, victimization and criminalization;

24. *Urges* States to take all appropriate measures so that children who are victims of human trafficking are not subject to criminal sanctions for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons;

25. *Invites* Governments to provide for human rights training on the administration of justice and juvenile justice, including anti-racist, multicultural and gender-sensitive and child rights training, for all judges, lawyers, prosecutors, social workers, immigration, correction officers and police officers and other professionals working in the field of administration of justice;

26. *Calls upon* States to consider establishing or strengthening existing independent and child-friendly national monitoring and complaints mechanisms to contribute to safeguarding the rights of children deprived of their liberty;

27. *Stresses* the importance of paying greater attention to the impact of the imprisonment of parents on their children;

28. *Urges* States to take all necessary and effective measures, including legal reform where appropriate, to prevent and respond to all forms of violence against children within the justice system;

29. *Invites* States, upon their request, to benefit from technical advice and assistance in juvenile justice provided by the relevant United Nations agencies and programmes, in particular the Interagency Panel on Juvenile Justice, in order to strengthen national capacities and infrastructures in the field of the administration of justice, in particular juvenile justice, encouraging States to provide adequate resources to the secretariat of the Panel and to its members;

30. *Calls upon* relevant special procedures of the Human Rights Council to give special attention to questions relating to the effective protection of human rights in the administration of justice, including juvenile justice and the human rights of persons deprived of their liberty, and to provide, wherever appropriate, specific recommendations in this regard, including proposals for advisory services and technical assistance measures;

31. *Calls upon* the United Nations High Commissioner for Human Rights to reinforce advisory services and technical assistance relating to national capacity-building in the field of the administration of justice, in particular juvenile justice;

32. *Decides* to convene, at its twenty-seventh session, a panel discussion on the protection of the human rights of persons deprived of their liberty;

33. *Requests* the Office of the High Commissioner to organize, from within existing resources, at the twenty-seventh session of the Human Rights Council, the aforementioned panel discussion in consultation with States, relevant United Nations bodies and mechanisms, in particular the United Nations Office on Drugs and Crime, as well as with civil society and other stakeholders, with a view to ensuring their contribution to the panel discussion;

34. *Also requests* the Office of the High Commissioner to prepare a report on the outcome of the panel discussion in the form of a summary, and to present it to the Human Rights Council at its twenty-eighth session;

35. *Requests* the High Commissioner to submit to the Human Rights Council at its thirtieth session an analytical report on the human rights implications of over-incarceration and overcrowding, drawing on the experience of United Nations and regional human rights mechanisms, seeking the views of States, including on their practice regarding alternatives to detention, and other relevant stakeholders;

36. *Decides* to continue its consideration of this issue under the same agenda item in accordance with its annual programme of work.

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