



Human Rights Council

Forty-second session

9–27 September 2019

Agenda item 3

**Resolution adopted by the Human Rights Council
on 26 September 2019****42/11. Human rights in the administration of justice, including juvenile justice***The Human Rights Council,**Guided by the purposes and principles of the Charter of the United Nations,*

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 International Convention for the Protection of All Persons from Enforced Disappearance, and encouraging all States that have not ratified or acceded to the aforementioned treaties to consider doing so expeditiously,

Bearing in mind the numerous other international standards and norms in the field of administration of justice, in particular of juvenile justice, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,

Recalling all resolutions of the Commission on Human Rights, the Human Rights Council, the General Assembly and the Economic and Social Council relevant to the subject, in particular Human Rights Council resolution 36/16 of 29 September 2017, General Assembly resolution 73/177 of 17 December 2018 and Economic and Social Council resolution 2017/19 of 6 July 2017,

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 (1992) on humane treatment of prisoners



deprived of their liberty, No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, No. 35 (2014) on liberty and security of person and No. 36 (2018) on the right to life, noting with interest also the adoption by the Committee on the Rights of the Child of its general comments No. 24 (2019) on children's rights in the child justice system replacing general comment No. 10 (2007) on children's rights in juvenile justice, and No. 13 (2011) on the right of the child to freedom from all forms of violence, and noting with interest further the adoption by the Committee on the Elimination of Racial Discrimination of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system and by the Committee on the Elimination of Discrimination against Women of its general recommendation No. 33 (2015) on women's access to justice,

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

Convinced that the independence and impartiality of the judiciary, and the integrity of the judicial system and an independent legal profession are essential prerequisites for the protection of human rights, the rule of law, good governance and democracy, and for ensuring that there is no discrimination in the administration of justice, and should therefore be respected in all circumstances,

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

Recognizing also that States have a duty of care to take any measures necessary to protect the lives and bodily integrity of individuals deprived of their liberty by the State, and noting that failure to conduct independent, impartial and effective investigations into the death or serious injury of a person while in the custody of the State can give rise to a rebuttable presumption of responsibility of the State, in accordance with the State's international and regional human rights obligations and commitments,

Aware of the need for special vigilance and safeguards with regard to the specific situation of suspects and offenders who are children, women, persons with disabilities, persons belonging to national or ethnic, religious and linguistic minorities and other persons with increased vulnerability in the administration of justice, in particular while they are deprived of their liberty, and their vulnerability to violence, abuse, injustice and humiliation,

Recognizing that women in detention or imprisonment have certain different needs, including different health-care needs, and in this context noting the importance of gender-sensitive justice systems, including for the prevention of sexual and gender-based violence,

Reaffirming that the best interests of the child must be a primary consideration in all decisions concerning the deprivation of liberty and, in particular, that depriving children 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 be,

Concerned about reports that mortality rates of persons deprived of liberty are often much higher than among the general population and that violence is prevalent in situations of deprivation of liberty,

Recognizing that inadequate conditions of detention, overcrowding, understaffing, lack of adequate access to health care, and lack of adequate investigations and accountability as well as of complaint mechanisms can be important contributing factors to violence, death and serious injuries, including through self-harm, in situations of deprivation of liberty,

1. *Takes note with appreciation* of the report of the United Nations High Commissioner for Human Rights on violence, death and serious injury in situations of deprivation of liberty;¹

2. *Calls upon* States to spare no effort to provide for effective legislative, judicial, social, educative and other relevant mechanisms and procedures, as well as adequate resources, to ensure the full implementation of all United Nations standards on human rights in the administration of justice, in particular the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), and invites them to assess their national legislation and practice in accordance with those standards;

3. *Invites* States to take into consideration the issue of human rights in the administration of justice in the context of the universal periodic review;

4. *Also invites* States to include in their efforts to implement the 2030 Agenda for Sustainable Development and their national development plans the administration of justice as an integral part of the development process;

5. *Stresses* that ensuring that any individual arrested or detained is promptly brought before a judge or other independent judicial officer in person, and permitting prompt and regular medical care and legal counsel throughout all stages of detention, as well as visits by family members and independent monitoring mechanisms, are effective measures for the prevention of torture and other cruel, inhuman or degrading treatment or punishment as well as other forms of violence leading to death and serious injuries in situations of deprivation of liberty;

6. *Urges* all States to consider establishing, maintaining or enhancing independent mechanisms with the mandate to monitor all places of detention, including by making unannounced visits, and to hold private interviews without witnesses with all persons deprived of their liberty;

7. *Calls upon* States to maintain or establish independent, effective, accessible, safe, and, if so requested, confidential request and complaint mechanisms for detainees and prisoners that promptly deal with and reply to these and have the capacity to provide remedial action;

8. *Also calls upon* States to ensure a proper file and data management system on prisoners that allows the tracking of the number of persons deprived of their liberty, their detention period, offences or grounds for detention, and developments regarding the prison population, and encourages States to collect, compile and analyse other up-to-date, comprehensive and disaggregated data about the circumstances and causes of violence, death and serious injury in situations of deprivation of liberty;

9. *Recalls* the absolute prohibition of torture and other 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 other cruel, inhuman or degrading treatment or punishment;

10. *Calls upon* States to investigate promptly, effectively and impartially all alleged human rights violations and abuses suffered by persons deprived of their liberty, in particular cases involving violence, death, serious injury, torture and cruel, inhuman or degrading treatment or punishment, to provide effective remedies to victims and to ensure that any custodial death, disappearance or serious injury is reported without delay to a judicial or other competent authority that is independent of the detention administration and that detention administrations cooperate fully with the investigating authority and preserve all evidence;

11. *Also calls upon* States to address and prevent violence in situations of deprivation of liberty, including inter-prisoner violence, by taking effective measures, such as reasserting responsible control over prisons and prison populations where prisons are de facto managed by prisoners, keeping the different categories of prisoners separated, taking

¹ A/HRC/42/20.

account of their sex, age, criminal records, the legal reason for their detention and the necessities of their treatment, ensuring good and safe working conditions for staff and avoiding understaffing;

12. *Encourages* States to address overcrowding in detention facilities by taking effective measures, including by enhancing the availability and use of alternatives to pretrial detention and custodial sentences, access to legal aid, mechanisms for crime prevention, early release and rehabilitation programmes and the efficiency and capacity of the criminal justice system and its facilities, and to make use in this regard of, inter alia, the United Nations Office on Drugs and Crime *Handbook on Strategies to Reduce Overcrowding in Prisons*;

13. *Calls upon* States to review penal policies, including sentencing policies, practices and guidelines, that can contribute to overincarceration and overcrowding, and to apply the principle of proportionality, in particular regarding so-called “zero-tolerance policies”, such as the application of mandatory pretrial detention and mandatory minimum sentences, including life imprisonment sentences, especially for minor and/or non-violent crimes;

14. *Underscores* the particular importance of providing appropriate training in the administration of justice, including for prosecutorial, judicial and prison authorities, with a view to preventing all forms of violence and human rights violations and abuses, raising awareness of and eliminating prejudice and discrimination, ensuring proportionate sentencing and enhancing the implementation of non-custodial measures at the pretrial and post-conviction stages;

15. *Calls upon* States to develop and implement clear policies and regulations on the conduct of and use of force and restraint by staff in accordance with international norms and standards, including those aimed at providing maximum protection for women deprived of their liberty from any gender-based physical or verbal violence, abuse and sexual harassment;

16. *Urges* States to take all necessary and effective measures to prevent and respond to all forms of violence against children within the justice system, and to consider applying the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice,² as appropriate, in the design, implementation, monitoring and evaluation of laws, policies, programmes, budgets and mechanisms aimed at eliminating violence against children in the field of crime prevention and criminal justice, and encourages them to support and to benefit from the programme proposed by the United Nations Office on Drugs and Crime and the United Nations Children’s Fund in this regard;

17. *Encourages* States not to set the minimum age of criminal responsibility at too low an age, bearing in mind the emotional, mental and intellectual maturity of the child, and in this regard refers to the recommendation of the Committee on the Rights of the Child to increase the minimum age of criminal responsibility to at least 14 years of age;

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

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

20. *Welcomes* the work on the in-depth global study on children deprived of liberty,³ and the submission of the report on the global study⁴ to the General Assembly;

² General Assembly resolution 69/194, annex.

³ See General Assembly resolution 69/157, para. 52 (d).

⁴ See A/74/136.

21. *Invites* States, upon their request, to benefit from the technical advice and assistance provided by the relevant United Nations agencies and programmes in order to strengthen their national capacities and infrastructures in the field of the administration of justice, including in addressing overcrowding, overincarceration and violence against children in the field of crime prevention and criminal justice, and calls upon the High Commissioner to strengthen advisory services and technical assistance in this regard;

22. *Calls upon* relevant special procedures of the Human Rights Council to pay special attention to questions relating to the effective protection of human rights in the administration of justice, including issues relating to violence, death and serious injury in situations of deprivation of liberty;

23. *Invites* States to take into account aspects relating to human rights in the administration of justice at the upcoming Fourteenth United Nations Congress on Crime Prevention and Criminal Justice to be held in Kyoto, Japan, from 20 to 27 April 2020;

24. *Requests* the High Commissioner to submit to the Human Rights Council, at its forty-seventh session, an analytical report on human rights in the administration of justice, in particular on current and emerging challenges in the protection of persons deprived of their liberty, including judicial oversight, drawing on the experience of United Nations and regional human rights mechanisms and seeking the views of States, including on their policies and best practices, civil society, and other relevant stakeholders;

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

*39th meeting
26 September 2019*

[Adopted without a vote.]
