

Contribution from the Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maalla M'jid, to the draft basic principles and guidelines on remedies and procedures on the right of anyone deprived of his or her liberty

1. The general principles of the Convention on the Rights of the Child, namely non-discrimination to avoid the marginalisation, stigmatisation or punishment of children on any ground; the best interests of the child as a primary consideration in any decision affecting the child; child participation and respect for the views of the child in proceedings concerning the child should be taken into account.
2. The principle of personal freedom should be respected: detention is never in the best interest of children, whatever their status is.
 - Children in conflict with law: Detention should be the last resort, alternatives to detention should be sought; children should never be detained with adults.
 - Migrant children: administrative detention of migrant children can always be avoided. Detention of migrant children cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof. States should ensure that migrant children are not criminalised solely for reasons of illegal entry or presence in the country: children in any migration situation should not be detained on the sole basis of their migration status. Detaining migrant children with their parents on the premise of maintaining family unity violates the principle of the best interest of the child, principle which should prevail and used as the key evaluation tool in all decisions affecting migrant children.
3. An age limit of 18 years should be established for defining a person as a child. It should be recognised that the consent of persons under 18 is not relevant and that children under 18 should not be criminalised, for example for sexual exploitation, for being homeless, for running away or living on the streets (vulnerable and marginalised children often face added stigmatisation and violence during interrogation by police and in detention).
4. Child participation to judicial proceedings should be in compliance with UN guidelines¹: Ensuring that children have access to child-sensitive information about their rights and relevant procedures, including for free legal assistance and that they exercise their right to be heard and listened to.

November 2013

¹ The Beijing Rules, the Riyadh Guidelines and the UN Rules for the Protection of Juveniles Deprived of Liberty