



BUREAU  
INTERNATIONAL  
DES DROITS DES ENFANTS

INTERNATIONAL  
BUREAU  
FOR CHILDREN'S RIGHTS

OFICINA  
INTERNACIONAL DE  
LOS DERECHOS DEL NIÑO

# REFERENCE GUIDE to International and Regional Laws and Standards Relevant to Policing Practice



Child Protection Training  
for Security Forces in Africa



---

## International Bureau for Children's Rights (IBCR)

---

Created in 1994, the IBCR is an international non-governmental organisation based in Montreal, Canada. The IBCR's mission is to contribute to the promotion and respect of the Convention on the Rights of the Child (CRC), an international legal instrument adopted by the UN in 1989 and now ratified by 192 countries. It was this treaty that led to the creation of the IBCR. The principles enshrined in the CRC and its Optional Protocols continue to guide the IBCR in its rights-based approach.

The IBCR has had a special consultative status at the Economic and Social Council (ECOSOC) of the United Nations since 2005. This status enables the IBCR to effectively contribute to UN programmes and objectives in terms of children's rights. The Bureau also acts as a technical expert, advisor and consultant to the UN Secretariat, as well as national governments. It also participates in the work of ECOSOC and other subsidiary bodies of the UN.

Through its special status, the IBCR is regularly invited to attend international conferences convened by the UN, the Special Sessions of the General Assembly, and meetings of other intergovernmental bodies.

The IBCR is convinced that the sharing of knowledge and best practices in the implementation of child rights, along side the development of strategic partnerships will have a real impact on the realisation of the rights of the child.



### **International Bureau for Children's Rights (IBCR)**

2715 chemin Côte-Sainte-Catherine, Montréal (Québec) H3T 1B6

Tel.: + 1 514 932-7656, extension 222 – Fax: + 1 514 932-9453

info@ibcr.org – [www.ibcr.org](http://www.ibcr.org)





# Introduction



This inventory of international laws and standards on children and justice was prepared in the context of a project aimed at training security forces throughout the world on the protection and rights of the child. This project became a reality thanks to the strong partnerships between UNICEF, Save the Children, l'Organisation internationale de la Francophonie, the IBCR and security force training institutions from over 20 countries. The project's main goal is to integrate a rigorous and mandatory course on child rights in the training programme of the security forces of the participating countries.

Initiated at a regional level in Central and Western Africa, this training programme is the result of three years of discussion and dialogue introduced by the IBCR and its partners, as well as fifteen national francophone police and gendarmerie schools and other stakeholders. Three regional and two international meetings between these partners have highlighted the need to promote the rights of the child through a functional and pragmatic approach focused on strengthening the capacity of key actors in the areas of justice and security. As a result of this, six countries of the region (Cameroon, Cote d'Ivoire, Guinea, Niger, Senegal and Togo) have been developing a training programme in their security force training schools since 2012.

This document presents an inventory of the existing legislation and standards related to the rights of children involved in the judicial process. In addition to this, the reader will also find relevant references to juvenile justice and the role of security forces in the domain of children's rights, as outlined in the most recent Concluding Observations issued by the Committee on the Rights of the Child. The countries whose Concluding Observations are reviewed in this guide are those who participated in the most recent regional and global workshops on security forces and the rights of the child which were organised by the Bureau.

We hope that this guide will be useful to you.

The IBRC Team

## **Regional workshops to develop the security forces training programme held to date**

**Ouagadougou** (Burkina Faso, 2009) • **Cotonou** (Benin, 2010)  
**Dakar** (Senegal, 2011) • **Niamey** (Niger, 2011) • **Lomé** (Togo, 2012)





# SUMMARY



<b>Reference Guide to International and Regional Laws and Standards Relevant to Policing Practice .....</b>	<b>9</b>
United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rule" – 1985) .....	11
Convention on the Rights of the Child (1989) .....	25
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict .....	38
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography .....	42
African Charter on the Rights and Welfare of the Child (1990) .....	48
United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines – 1990) .....	59
United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules – 1990) ...	65
United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules – 1990) .....	74
Guidelines for Action on Children in the Criminal Justice System (Recommended by Economic and Social Council resolution 1997/30 of 21 July 1997) .....	80
The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (2004) .....	89
Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (2005) .....	95
General Comment No. 10 – Children's Rights in Juvenile Justice (United Nations – 2007) .....	102
UN Common Approach to Justice for Children (March 2008) .....	120
Guidance Note of the Secretary-General. UN Approach to Justice for Children (September 2008) .....	135
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) .....	140
Munyonyo Declaration on Justice for Children in Africa (24 January 2012) .....	150



## **Additional Documents: Consideration of Reports Submitted by States Parties under Article 44 of the Convention – *Concluding Observations of the Committee on the Rights of the Child* ..... 155**

Concluding Observations: Benin (20 October 2006 – CRC/C/BEN/CO/2) .....	157
Concluding Observations: Burkina Faso (9 February 2010 – CRC/C/BFA/CO/3-4).....	157
Concluding Observations: Burundi (13 September – CRC/C/BDI/CO/2) .....	158
Concluding Observations: Cameroon (18 February 2010 – CRC/C/CMR/2) .....	159
Concluding Observations: Central African Republic (18 October 2000 – CRC/C/15/Add.138).....	160
Concluding Observations: Chad (12 February 2009 – CRC/C/TCD/CO/2).....	161
Concluding Observations: Congo (20 October 2006 – CRC/C/COG/CO/1) .....	161
Concluding Observations: Cote d'Ivoire (9 July 2001 – CRC/C/15/Add.155) .....	162
Concluding Observations: Ethiopia (1st November 2006 – CRC/C/ETH/CO/3) .....	163
Concluding Observations: Gabon (3 April 2002 – CRC/C/15/Add.171).....	164
Concluding Observations: Guinea (10 May 1999, CRC/C/15/Add.100).....	165
Concluding Observations: Haiti (18 March 2003 – CRC/C/15/Add.202).....	165
Concluding Observations: Iraq (26 October 1998 – CRC/C/15/Add.94) .....	166
Concluding Observations: Jordan (29 September 2006 – CRC/C/JOR/CO/3) .....	166
Concluding Observations: Kenya (19 June 2007 – CRC/C/KEN/CO/2) .....	167
Concluding Observations: Lebanon (8 June 2006 – CRC/C/LBN/CO/3).....	168
Concluding Observations: Mali (3 May 2007 – CRC/C/MLI/CO/2).....	169
Concluding Observations: Mauritania (17 June 2009 – CRC/C/MRT/CO/2).....	170
Concluding Observations: Namibia (7 February – CRC/C/15/Add.14).....	171
Concluding Observations: Niger (18 June 2009 – CRC/C/NER/CO/2).....	171
Concluding Observations: Nigeria (21 June 2010 – CRC/C/NGA/CO/3-4) .....	172
Concluding Observations: Rwanda (1st July 2004 – CRC/C/15/Add.234).....	173
Concluding Observations: Senegal (20 October 2006 – CRC/C/SEN/CO/2).....	174
Concluding Observations: Sierra Leone (20 June 2008 – CRC/C/SLE/CO/2) .....	174
Concluding Observations: Swaziland (16 October 2006 – CRC/C/SWZ/CO1) .....	175
Concluding Observations: Tanzania (21 June 2006 – CRC/C/TZA/CO/2) .....	176
Concluding Observations: Togo (8 March 2012 – CRC/C/TGO/CO/3-4) .....	177
Concluding Observations: Yemen (21 September 2005 – CRC/C/15/Add.267).....	178

## **Other Recent IBCR Publications..... 183**





---

# **Reference Guide to International and Regional Laws and Standards Relevant to Policing Practice**

---







# United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rule" – 1985)



Adopted by General Assembly  
resolution 40/33 of 29 November 1985

## 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 coordinated 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 need 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.

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 antisocial behaviour. If the age of criminal responsibility is fixed too low 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 deserts 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 reactions (for example by having regard to the offender’s endeavour to indemnify the victim or to her or his willingness to turn to 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 cases 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 and in article 14, paragraph 2, of the International Covenant on Civil and Political Rights.

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 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 2 1.)

## 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 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, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and the Declaration of the Rights of the Child and the draft convention on the rights of the child. 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. (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.

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.)

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.) 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.

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 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, 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 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 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. 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, 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 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.

The provision against corporal punishment is in line with article 7 of the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the draft convention on the rights of the child.

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 opinions 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". 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: 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.

## **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.

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 judge 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.

## 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. 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 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, and against the background of the Declaration on the Elimination of Discrimination against Women and the Convention on the Elimination of All Forms of Discrimination against Women.

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 rehabilitation, even of-

fenders 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, 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.





# Convention on the Rights of the Child (1989)



Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989

Entry into force 2 September 1990, in accordance with article 49

## Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

## **PART I**

### **Article 1**

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

### **Article 2**

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

### **Article 3**

1. 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 shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

### **Article 4**

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

### **Article 5**

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

### **Article 6**

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

### **Article 7**

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

## Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

## Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

## Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

## Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

## Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and 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.

## Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- a) For respect of the rights or reputations of others; or
- b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

## Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

## Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

## Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or corres-

pondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

## Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

c) Encourage the production and dissemination of children's books;

d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

## Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents

and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

## **Article 19**

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

## **Article 20**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

## **Article 21**

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

## **Article 22**

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.



2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

## **Article 23**

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim

of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

## **Article 24**

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

a) To diminish infant and child mortality;

b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

d) To ensure appropriate pre-natal and post-natal health care for mothers;

e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

## Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

## Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

## Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall pro-

mote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

## Article 28

1. States Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- a) Make primary education compulsory and available free to all;
- b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- d) Make educational and vocational information and guidance available and accessible to all children;
- e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

## Article 29

1. States Parties agree that the education of the child shall be directed to:

- a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

## **Article 30**

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

## **Article 31**

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

## **Article 32**

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

a) Provide for a minimum age or minimum ages for admission to employment;

b) Provide for appropriate regulation of the hours and conditions of employment;

c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

## **Article 33**

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

## **Article 34**

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

a) The inducement or coercion of a child to engage in any unlawful sexual activity;

b) The exploitative use of children in prostitution or other unlawful sexual practices;

c) The exploitative use of children in pornographic performances and materials.

## Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

## Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

## Article 37

States Parties shall ensure that:

- a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. 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;
- c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- d) Every child deprived of his or her liberty shall have 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 or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

## Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law ap-

plicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

## Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

## Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vo-

cational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

## **Article 41**

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

a) The law of a State party; or

b) International law in force for that State.

## **PART II**

## **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.

## **Article 43**

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention.<sup>1</sup> The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

---

1. The General Assembly, in its resolution 50/155 of 21 December 1995, approved the amendment to article 43, paragraph 2, of the Convention on the Rights of the Child, replacing the word "ten" with the word "eighteen". The amendment entered into force on 18 November 2002 when it had been accepted by a two-thirds majority of the States parties (128 out of 191).

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

## **Article 44**

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

a) Within two years of the entry into force of the Convention for the State Party concerned;

b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

## **Article 45**

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

b) The Committee shall transmit, as it may consider appropriate, to the 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 technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

### **PART III**

#### **Article 46**

The present Convention shall be open for signature by all States.

#### **Article 47**

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### **Article 48**

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### **Article 49**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

#### **Article 50**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.



## Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

## Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

## Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

## Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.





# Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict



The States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences it has for durable peace, security and development,

Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places that generally have a significant presence of children, such as schools and hospitals,

Noting the adoption of the Rome Statute of the International Criminal Court, in particular, the inclusion therein as a war crime, of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflict,

Considering therefore that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child there is a need to increase the protection of children from involvement in armed conflict,

Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier,

Convinced that an optional protocol to the Convention that raises the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Noting that the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 recommended, inter alia, that parties to conflict take every feasible step to ensure that children below the age of 18 years do not take part in hostilities,

Welcoming the unanimous adoption, in June 1999, of International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits, inter alia, forced or compulsory recruitment of children for use in armed conflict,

Condemning with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard,

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

Stressing that the present Protocol is without prejudice to the purposes and principles contained in the Charter of the United Nations, including Article 51, and relevant norms of humanitarian law,

Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflict and foreign occupation,

Recognizing the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to the present Protocol owing to their economic or social status or gender,

Mindful of the necessity of taking into consideration the economic, social and political root causes of the involvement of children in armed conflict,

Convinced of the need to strengthen international cooperation in the implementation of the present Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict,

Encouraging the participation of the community and, in particular, children and child victims in the dissemination of informational and educational programmes concerning the implementation of the Protocol,

Have agreed as follows:

## **Article 1**

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

## **Article 2**

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

## **Article 3**

1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national

armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:

- a) Such recruitment is genuinely voluntary;
- b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;
- c) Such persons are fully informed of the duties involved in such military service;
- d) Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

## **Article 4**

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article shall not affect the legal status of any party to an armed conflict.

## **Article 5**

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

## Article 6

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of the present Protocol within its jurisdiction.
2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.
3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

## Article 7

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with the States Parties concerned and the relevant international organizations.
2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

## Article 8

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.
2. Following the submission of the comprehensive report, each State Party shall include in the reports it submits to the Committee on the Rights of the Child, in

accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

## Article 9

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.
3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article

## Article 10

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

## Article 11

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.



## Article 12

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

## Article 13

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.



# Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography



The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet, held in Vienna in 1999, in particular its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation,

intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children,

Believing also that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and believing further in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Have agreed as follows:

## **Article 1**

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

## **Article 2**

For the purposes of the present Protocol:

- a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
- c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

## **Article 3**

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

- a) In the context of sale of children as defined in article 2:

i) Offering, delivering or accepting, by whatever means, a child for the purpose of:

- a. Sexual exploitation of the child;
- b. Transfer of organs of the child for profit;
- c. Engagement of the child in forced labour;

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.

3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

## **Article 4**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;

b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

## **Article 5**

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the present Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

## **Article 6**

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

## **Article 7**

States Parties shall, subject to the provisions of their national law:

a) Take measures to provide for the seizure and confiscation, as appropriate, of:

i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;

(ii) Proceeds derived from such offences;

b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph a);

c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

## **Article 8**

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;



c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

d) Providing appropriate support services to child victims throughout the legal process;

e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

## **Article 9**

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social

policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

## **Article 10**

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root

causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

## **Article 11**

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- a) The law of a State Party;
- b) International law in force for that State.

## **Article 12**

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

## **Article 13**

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

## **Article 14**

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

## **Article 15**

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

## **Article 16**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

## **Article 17**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.





# African Charter on the Rights and Welfare of the Child (1990)



## Preamble

The African Member States of the Organization of African Unity, Parties to the present Charter entitled 'African Charter on the Rights and Welfare of the Child',

Considering that the Charter of the Organization of African Unity recognizes the paramountcy of Human Rights and the African Charter on Human and People's Rights proclaimed and agreed that everyone is entitled to all the rights and freedoms recognized and guaranteed therein, without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status,

Recalling the Declaration on the Rights and Welfare of the African Child (AHG/ST.4 Rev.I) adopted by the Assembly of Heads of State and Government of the Organization of African Unity, at its Sixteenth Ordinary Session in Monrovia, Liberia, from 17 to 20 July 1979, recognized the need to take appropriate measures to promote and protect the rights and welfare of the African Child,

Noting with concern that the situation of most African children, remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity he/she needs special safeguards and care,

Recognising that the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his personality, the child should grow up in a family environment in an atmosphere of happiness, love and understanding,

Recognizing that the child, due to the needs of his physical and mental development requires particular

care with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security,

Taking into consideration the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the rights and welfare of the child,

Considering that the promotion and protection of the rights and welfare of the child also implies the performance of duties on the part of everyone,

Reaffirming adherence to the principles of the rights and welfare of the child contained in the declaration, conventions and other instruments of the Organization of African Unity and in the United Nations and in particular the United Nations Convention on the Rights of the Child; and the OAU Heads of State and Government's Declaration on the Rights and Welfare of the African Child.

Have agreed what follows:

## PART ONE

### CHAPTER ONE

#### Article 1

##### *Obligation of States Parties*

1. Member States of the Organization of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake to the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.

2. Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Convention or agreement in force in that State.

3. Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.

## **Article 2**

### ***Definition of a Child***

For the purposes of this Charter, a child means every human being below the age of 18 years.

## **Article 3**

### ***Non-Discrimination***

Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.

## **Article 4**

### ***Best Interests of the Child***

1. In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.

2. In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, and opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.

## **Article 5**

### ***Survival and Development***

1. Every child has an inherent right to life. This right shall be protected by law.

2. and development of the child.

3. States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection sentence shall not be pronounced for crimes committed by children.

## **Article 6**

### ***Name and Nationality***

1. Every child shall have the right from his birth to a name.

2. Every child shall be registered immediately after birth.

3. Every child has the right to acquire a nationality.

4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

## **Article 7**

### ***Freedom of Expression***

Every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws.

## **Article 8**

### ***Freedom of Association***

Every child shall have the right to free association and freedom of peaceful assembly in conformity with the law.

## **Article 9**

### ***Freedom of Thought, Conscience and Religion***

1. Every child shall have the right to freedom of thought, conscience and religion.

2. Parents, and where applicable, legal guardians shall have a duty to provide guidance and direction in the

exercise of these rights having regard to the evolving capacities, and best interests of the child.

3. States Parties shall respect the duty of parents and where applicable, legal guardians to provide guidance and direction in the enjoyment of these rights subject to the national laws and policies.

## **Article 10**

### ***Protection of Privacy***

No child shall be subject to arbitrary or unlawful interference with his privacy, family home or correspondence, or to the attacks upon his honour or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such interference or attacks.

## **Article 11**

### ***Education***

1. Every child shall have the right to an education.

2. The education of the child shall be directed to:

a) the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential;

b) fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and conventions;

c) the preservation and strengthening of positive African morals, traditional values and cultures;

d) the preparation of the child for responsible life in a free society, in the spirit of understanding tolerance, dialogue, mutual respect and friendship among all peoples ethnic, tribal and religious groups;

e) the preservation of national independence and territorial integrity;

f) the promotion and achievements of African Unity and Solidarity;

g) the development of respect for the environment and natural resources;

h) the promotion of the child's understanding of primary health care.

3. States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular:

a) provide free and compulsory basic education;

b) encourage the development of secondary education in its different forms and to progressively make it free and accessible to all;

c) make the higher education accessible to all on the basis of capacity and ability by every appropriate means;

d) take measures to encourage regular attendance at schools and the reduction of drop-out rates;

e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.

4. States Parties to the present Charter shall respect the rights and duties of parents, and where applicable, of legal guardians to choose for their children's schools, other than those established by public authorities, which conform to such minimum standards may be approved by the State, to ensure the religious and moral education of the child in a manner with the evolving capacities of the child.

5. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter.

6. States Parties to the present Charter shall have all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.

7. No part of this Article shall be construed as to interfere with the liberty of individuals and bodies to establish and direct educational institutions subject to the observance of the principles set out in paragraph 1 of this Article and the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the States.

## **Article 12**

### ***Leisure, Recreation and Cultural Activities***

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

## **Article 13**

### ***Handicapped Children***

1. Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community.

2. States Parties to the present Charter shall ensure, subject to available resources, to a disabled child and to those responsible for his care, of assistance for which application is made and which is appropriate to the child's condition and in particular shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his cultural and moral development.

3. The States Parties to the present Charter shall use their available resources with a view to achieving progressively the full convenience of the mentally and physically disabled person to movement and access to public highway buildings and other places to which the disabled may legitimately want to have access to.

## **Article 14**

### ***Health and Health Services***

1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.

2. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in

particular shall take measures: a) to reduce infant and child mortality rate;

b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

c) to ensure the provision of adequate nutrition and safe drinking water;

d) to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;

e) to ensure appropriate health care for expectant and nursing mothers;

f) to develop preventive health care and family life education and provision of service;

g) to integrate basic health service programmes in national development plans;

h) to ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents;

i) to ensure the meaningful participation of non-governmental organizations, local communities and the beneficiary population in the planning and management of a basic service programme for children;

j) to support through technical and financial means, the mobilization of local community resources in the development of primary health care for children.

## **Article 15**

### ***Child Labour***

1. Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.

2. States Parties to the present Charter take all appropriate legislative and administrative measures to ensure the full implementation of this Article which covers both the formal and informal sectors of employment and

having regard to the relevant provisions of the International Labour Organization's instruments relating to children, States Parties shall in particular:

- a) provide through legislation, minimum wages for admission to every employment;
- b) provide for appropriate regulation of hours and conditions of employment;
- c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;
- d) promote the dissemination of information on the hazards of child labour to all sectors of the community.

## **Article 16**

### ***Protection Against Child Abuse and Torture***

1. States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.
2. Protective measures under this Article shall include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting referral investigation, treatment, and follow-up of instances of child abuse and neglect.

## **Article 17**

### ***Administration of Juvenile Justice***

1. Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.
2. States Parties to the present Charter shall in particular:
  - a) ensure that no child who is detained or imprisoned or otherwise deprived of

his/her liberty is subjected to torture, inhuman or degrading treatment or punishment;

- b) ensure that children are separated from adults in their place of detention or imprisonment;
- c) ensure that every child accused in infringing the penal law:
  - i) shall be presumed innocent until duly recognized guilty;
  - (ii) shall be informed promptly in a language that he understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used;
  - (iii) shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence;

(iv) shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;

d) prohibit the press and the public from trial.

3. The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation.

4. There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

## **Article 18**

### ***Protection of the Family***

1. The family shall be the natural unit and basis of society. It shall enjoy the protection and support of the State for its establishment and development.
2. States Parties to the present Charter shall take appropriate steps to ensure equality of rights and responsibilities of spouses with regard to children during marriage and in the event of its dissolution. In case of the dissolution, provision shall be made for the necessary protection of the child.
3. No child shall be deprived of maintenance by reference to the parents' marital status.



## **Article 19**

### ***Parent Care and Protection***

1. Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. No child shall be separated from his parents against his will, except when a judicial authority determines in accordance with the appropriate law, that such separation is in the best interest of the child.
2. Every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis.
3. Where separation results from the action of a State Party, the State Party shall provide the child, or if appropriate, another member of the family with essential information concerning the whereabouts of the absent member or members of the family. States Parties shall also ensure that the submission of such a request shall not entail any adverse consequences for the person or persons in whose respect it is made.
4. Where a child is apprehended by a State Party, his parents or guardians shall, as soon as possible, be notified of such apprehension by that State Party.

## **Article 20**

### ***Parental Responsibilities***

1. Parents or other persons responsible for the child shall have the primary responsibility of the upbringing and development the child and shall have the duty:
  - a) to ensure that the best interests of the child are their basic concern at all times-
  - b) to secure, within their abilities and financial capacities, conditions of living necessary to the child's development; and
  - c) to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.
2. States Parties to the present Charter shall in accordance with their means and national conditions the all appropriate measures;
  - a) to assist parents and other persons responsible for the child and in case of need provide material

assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing;

- b) to assist parents and others responsible for the child in the performance of child-rearing and ensure the development of institutions responsible for providing care of children; and
- c) to ensure that the children of working parents are provided with care services and facilities.

## **Article 21**

### ***Protection against Harmful Social and Cultural Practices***

1. States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:
  - a) those customs and practices prejudicial to the health or life of the child; and
  - b) those customs and practices discriminatory to the child on the grounds of sex or other status.
2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

## **Article 22**

### ***Armed Conflicts***

1. States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.
2. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.
3. States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are

affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.

## **Article 23**

### ***Refugee Children***

1. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the States are Parties.

2. States Parties shall undertake to cooperate with existing international organizations which protect and assist refugees in their efforts to protect and assist such a child and to trace the parents or other close relatives or an unaccompanied refugee child in order to obtain information necessary for reunification with the family.

3. Where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason.

4. The provisions of this Article apply *mutatis mutandis* to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused.

## **Article 24**

### ***Adoption***

States Parties which recognize the system of adoption shall ensure that the best interest of the child shall be the paramount consideration and they shall:

a) establish competent authorities to determine matters of adoption and ensure that the adoption is carried out in conformity with applicable laws and procedures and on the basis of all relevant and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and guardians and that, if necessary, the appropriate persons

concerned have given their informed consent to the adoption on the basis of appropriate counselling;

b) recognize that inter-country adoption in those States who have ratified or adhered to the International Convention on the Rights of the Child or this Charter, may, as the last resort, be considered as an alternative means of a child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

c) ensure that the child affected by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

d) take all appropriate measures to ensure that in inter-country adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child;

e) promote, where appropriate, the objectives of this Article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework to ensure that the placement of the child in another country is carried out by competent authorities or organs;

f) establish a machinery to monitor the well-being of the adopted child.

## **Article 25**

### ***Separation from Parents***

1. Any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance;

2. States Parties to the present Charter:

a) shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that environment shall be provided with alternative family care, which could include, among others, foster placement, or placement in suitable institutions for the care of children;

b) shall take all necessary measures to trace and reunite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflicts or natural disasters.

3. When considering alternative family care of the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious or linguistic background.

## **Article 26**

### ***Protection Against Apartheid and Discrimination***

1. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under Apartheid and in States subject to military destabilization by the Apartheid regime.

2. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under regimes practising racial, ethnic, religious or other forms of discrimination as well as in States subject to military destabilization.

3. States Parties shall undertake to provide whenever possible, material assistance to such children and to direct their efforts towards the elimination of all forms of discrimination and Apartheid on the African Continent.

## **Article 27**

### ***Sexual Exploitation***

1. States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:

- a) the inducement, coercion or encouragement of a child to engage in any sexual activity;
- b) the use of children in prostitution or other sexual practices;
- c) the use of children in pornographic activities, performances and materials.

## **Article 28**

### ***Drug Abuse***

States Parties to the present Charter shall take all appropriate measures to protect the child from the use

of narcotics and illicit use of psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the production and trafficking of such substances.

## **Article 29**

### ***Sale, Trafficking and Abduction***

States Parties to the present Charter shall take appropriate measures to prevent:

- a) the abduction, the sale of, or traffic of children for any purpose or in any form, by any person including parents or legal guardians of the child;
- b) the use of children in all forms of begging.

## **Article 30**

### ***Children of Imprisoned Mothers***

1. States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular:

- a) ensure that a non-custodial sentence will always be first considered when sentencing such mothers;
- b) establish and promote measures alternative to institutional confinement for the treatment of such mothers;
- c) establish special alternative institutions for holding such mothers;
- d) ensure that a mother shall not be imprisoned with her child;
- e) ensure that a death sentence shall not be imposed on such mothers;
- f) the essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.

## **Article 31**

### ***Responsibility of the Child***

Every child shall have responsibilities towards his family and society, the State and other legally recognized

communities and the international community. The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty;

- a) to work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need;
- b) to serve his national community by placing his physical and intellectual abilities at its service;
- c) to preserve and strengthen social and national solidarity;
- d) to preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute to the moral well-being of society;
- e) to preserve and strengthen the independence and the integrity of his country;
- f) to contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African Unity

## **PART TWO**

### **CHAPTER 2**

#### **Article 32**

##### ***The Committee***

An African Committee of Experts on the Rights and Welfare of the Child hereinafter called 'the Committee' shall be established within the Organization of African Unity to promote and protect the rights and welfare of the child.

#### **Article 33**

##### ***Composition***

1. The Committee shall consist of 11 members of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child.
2. The members of the Committee shall serve in their personal capacity.
3. The Committee shall not include more than one national of the same State.

#### **Article 34**

##### ***Election***

As soon as this Charter shall enter into force the members of the Committee shall be elected by secret ballot by the Assembly of Heads of State and Government from a list of persons nominated by the States Parties to the present Charter.

#### **Article 35**

##### ***Candidates***

Each State Party to the present Charter may nominate not more than two candidates. The candidates must have one of the nationalities of the States Parties to the present Charter. When two candidates are nominated by a State, one of them shall not be a national of that State.

#### **Article 36**

1. The Secretary-General of the Organization of African Unity shall invite States Parties to the present Charter to nominate candidates at least six months before the elections.
2. The Secretary-General of the Organization of African Unity shall draw up in alphabetical order, a list of persons nominated and communicate it to the Heads of State and Government at least two months before the elections.

#### **Article 37**

##### ***Term of Office***

1. The members of the Committee shall be elected for a term of five years and may not be re-elected, however. The term of four of the members elected at the first election shall expire after two years and the term of six others, after four years.
2. Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organization of African Unity shall draw lots to determine the names of those members referred to in sub-paragraph 1 of this Article.
3. The Secretary-General of the Organization of African Unity shall convene the first meeting of Committee at the Headquarters of the Organization within six months of the election of the members of the Committee, and

thereafter the Committee shall be convened by its Chairman whenever necessary, at least once a year.

## **Article 38**

### ***Bureau***

1. The Committee shall establish its own Rules of Procedure.
2. The Committee shall elect its officers for a period of two years.
3. Seven Committee members shall form the quorum.
4. In case of an equality of votes, the Chairman shall have a casting vote.
5. The working languages of the Committee shall be the official languages of the OAU.

## **Article 39**

### ***Vacancy***

If a member of the Committee vacates his office for any reason other than the normal expiration of a term, the State which nominated that member shall appoint another member from among its nationals to serve for the remainder of the term – subject to the approval of the Assembly.

## **Article 40**

### ***Secretariat***

The Secretary-General of the Organization of African Unity shall appoint a Secretary for the Committee.

## **Article 41**

### ***Privileges and Immunities***

In discharging their duties, members of the Committee shall enjoy the privileges and immunities provided for in the General Convention on the Privileges and Immunities of the Organization of African

## **CHAPTER THREE**

## **Article 42**

### ***Mandate***

The functions of the Committee shall be:

a) To promote and protect the rights enshrined in this Charter and in particular to:

i) collect and document information, commission inter-disciplinary assessment of situations on African problems in the fields of the rights and welfare of the child, organize meetings, encourage national and local institutions concerned with the rights and welfare of the child, and where necessary give its views and make recommendations to Governments;

(ii) formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa;

(iii) cooperate with other African, international and regional Institutions and organizations concerned with the promotion and protection of the rights and welfare of the child.

b) To monitor the implementation and ensure protection of the rights enshrined in this Charter.

c) To interpret the provisions of the present Charter at the request of a State Party, an Institution of the Organization of African Unity or any other person or Institution recognized by the Organization of African Unity, or any State Party.

d) Perform such other task as may be entrusted to it by the Assembly of Heads of State and Government, Secretary-General of the OAU and any other organs of the OAU or the United Nations.

## **Article 43**

### ***Reporting Procedure***

1. Every State Party to the present Charter shall undertake to submit to the Committee through the Secretary-General of the Organization of African Unity, reports on the measures they have adopted which give effect to the provisions of this Charter and on the progress made in the enjoyment of these rights:

- a) within two years of the entry into force of the Charter for the State Party concerned: and
- b) and thereafter, every three years.

2. Every report made under this Article shall:

a) contain sufficient information on the implementation of the present Charter to provide the Committee with comprehensive understanding of the implementation of the Charter in the relevant country; and

b) shall indicate factors and difficulties, if any, affecting the fulfilment of the obligations contained in the Charter.

3. A State Party which has submitted a comprehensive first report to the Committee need not, in its subsequent reports submitted in accordance with paragraph I a) of this Article, repeat the basic information previously provided.

## **Article 44**

### ***Communications***

1. The Committee may receive communication, from any person, group or nongovernmental organization recognized by the Organization of African Unity, by a Member State, or the United Nations relating to any matter covered by this Charter.

2. Every communication to the Committee shall contain the name and address of the author and shall be treated in confidence.

## **Article 45**

### ***Investigations by the Committee***

1. The Committee may, resort to any appropriate method of investigating any matter falling within the ambit of the present Charter, request from the States Parties any information relevant to the implementation of the Charter and may also resort to any appropriate method of investigating the measures the State Party has adopted to implement the Charter.

2. The Committee shall submit to each Ordinary Session of the Assembly of Heads of State and Government every two years, a report on its activities and on any communication made under Article [44] of this Charter.

3. The Committee shall publish its report after it has been considered by the Assembly of Heads of State and Government.

4. States Parties shall make the Committee's reports widely available to the public in their own countries.

## **CHAPTER FOUR**

## **Article 46**

### ***Sources of Inspiration***

The Committee shall draw inspiration from International Law on Human Rights, particularly from the provisions

of the African Charter on Human and Peoples' Rights, the Charter of the Organization of African Unity, the Universal Declaration on Human Rights, the International Convention on the Rights of the Child, and other instruments adopted by the United Nations and by African countries in the field of human rights, and from African values and traditions.

## **Article 47**

### ***Signature, Ratification or Adherence***

1. The present Charter shall be open to signature by all the Member States of the Organization of African Unity.

2. The present Charter shall be subject to ratification or adherence by Member States of the Organization of African Unity. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary-General of the Organization of African Unity.

3. The present Charter shall come into force 30 days after the reception by the Secretary-General of the Organization of African Unity of the instruments of ratification or adherence of 15 Member States of the Organization of African Unity.

## **Article 48**

### ***Amendment and Revision of the Charter***

1. The present Charter may be amended or revised if any State Party makes a written request to that effect to the Secretary-General of the Organization of African Unity, provided that the proposed amendment is not submitted to the Assembly of Heads of State and Government for consideration until all the States Parties have been duly notified of it and the Committee has given its opinion on the amendment.

2. An amendment shall be approved by a simple majority of the States Parties.

Addis Abéba, Ethiopia, July 1990





# United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines – 1990)



Adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990

## 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 demon-

strably endangered or at social risk and are in need of special care and protection;

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, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Declaration of the Rights of the Child and the Convention on the

Rights of the Child, and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 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 extracurricular 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 or who do not have s 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 less 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 disfavoured, 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. Government 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, 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 COORDINATION**

60. Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an interdisciplinary basis, interaction and co-ordination between economic, social, education 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 cooperation 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 coordination 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 cooperation 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.





# United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules, 1990)



Adopted by General Assembly resolution 45/113 of 14 December 1990

## 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). 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, and 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 therefore;
- 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, while bearing in mind 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 de-



tention 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 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 cooperation 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.





# United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules – 1990)



Adopted by General Assembly resolution 45/110 of 14 December 1990

## I. GENERAL PRINCIPLES

### 1. *Fundamental aims*

1.1 The present Standard Minimum Rules provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment.

1.2 The Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society.

1.3 The Rules shall be implemented taking into account the political, economic, social and cultural conditions of each country and the aims and objectives of its criminal justice system.

1.4 When implementing the Rules, Member States shall endeavour to ensure a proper balance between the rights of individual offenders, the rights of victims, and the concern of society for public safety and crime prevention.

1.5 Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

### 2. *The scope of non-custodial measures*

2.1 The relevant provisions of the present Rules shall be applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of the ad-

ministration of criminal justice. For the purposes of the Rules, these persons are referred to as “offenders”, irrespective of whether they are suspected, accused or sentenced.

2.2 The Rules shall be applied without any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.

2.3 In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible.

2.4 The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.

2.5 Consideration shall be given to dealing with offenders in the community avoiding as far as possible resort to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law.

2.6 Non-custodial measures should be used in accordance with the principle of minimum intervention.

2.7 The use of non-custodial measures should be part of the movement towards depenalization and decriminalization instead of interfering with or delaying efforts in that direction.

### 3. *Legal safeguards*

3.1 The introduction, definition and application of non-custodial measures shall be prescribed by law.

3.2 The selection of a non-custodial measure shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence and the personality, background of the offender, the purposes of sentencing and the rights of victims.

3.3 Discretion by the judicial or other competent independent authority shall be exercised at all stages of the proceedings by ensuring full accountability and only in accordance with the rule of law.

3.4 Non-custodial measures imposing an obligation on the offender, applied before or instead of formal proceedings or trial, shall require the offender's consent.

3.5 Decisions on the imposition of non-custodial measures shall be subject to review by a judicial or other competent independent authority, upon application by the offender.

3.6 The offender shall be entitled to make a request or complaint to a judicial or other competent independent authority on matters affecting his or her individual rights in the implementation of non-custodial measures.

3.7 Appropriate machinery shall be provided for the recourse and, if possible, redress of any grievance related to non-compliance with internationally recognized human rights.

3.8 Non-custodial measures shall not involve medical or psychological experimentation on, or undue risk of physical or mental injury to, the offender.

3.9 The dignity of the offender subject to non-custodial measures shall be protected at all times.

3.10 In the implementation of non-custodial measures, the offender's rights shall not be restricted further than was authorized by the competent authority that rendered the original decision.

3.11 In the application of non-custodial measures, the offender's right to privacy shall be respected, as shall be the right to privacy of the offender's family.

3.12 The offender's personal records 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 offender's case or to other duly authorized persons.

## ***4. Saving clause***

4.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment or any other human rights instruments and standards recognized by the international community and relating to the treatment of offenders and the protection of their basic human rights.

## **II. PRE-TRIAL STAGE**

### ***5. Pre-trial dispositions***

5.1 Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a set of established criteria shall be developed within each legal system. For minor cases the prosecutor may impose suitable non-custodial measures, as appropriate.

### ***6. Avoidance of pre-trial detention***

6.1 Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.

6.2 Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings.

6.3 The offender shall have the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.

### **III. TRIAL AND SENTENCING STAGE**

#### **7. Social inquiry reports**

7.1 If the possibility of social inquiry reports exists, the judicial authority may avail itself of a report prepared by a competent, authorized official or agency. The report should contain social information on the offender that is relevant to the person's pattern of offending and current offences. It should also contain information and recommendations that are relevant to the sentencing procedure. The report shall be factual, objective and unbiased, with any expression of opinion clearly identified.

#### **8. Sentencing dispositions**

8.1 The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.

8.2 Sentencing authorities may dispose of cases in the following ways:

- a) Verbal sanctions, such as admonition, reprimand and warning;
- b) Conditional discharge;
- c) Status penalties;
- d) Economic sanctions and monetary penalties, such as fines and day-fines;
- e) Confiscation or an expropriation order;
- f) Restitution to the victim or a compensation order;
- g) Suspended or deferred sentence;
- h) Probation and judicial supervision;
- i) A community service order;
- j) Referral to an attendance centre;
- k) House arrest;
- l) Any other mode of non-institutional treatment;
- m) Some combination of the measures listed above.

### **IV. POST-SENTENCING STAGE**

#### **9. Post-sentencing dispositions**

9.1 The competent authority shall have at its disposal a wide range of post-sentencing alternatives in order

to avoid institutionalization and to assist offenders in their early reintegration into society.

9.2 Post-sentencing dispositions may include:

- a) Furlough and half-way houses;
- b) Work or education release;
- c) Various forms of parole;
- d) Remission;
- e) Pardon.

9.3 The decision on post-sentencing dispositions, except in the case of pardon, shall be subject to review by a judicial or other competent independent authority, upon application of the offender.

9.4 Any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage.

### **V. IMPLEMENTATION OF NON-CUSTODIAL MEASURES**

#### **10. Supervision**

10.1 The purpose of supervision is to reduce re-offending and to assist the offender's integration into society in a way which minimizes the likelihood of a return to crime.

10.2 If a non-custodial measure entails supervision, the latter shall be carried out by a competent authority under the specific conditions prescribed by law.

10.3 Within the framework of a given non-custodial measure, the most suitable type of supervision and treatment should be determined for each individual case aimed at assisting the offender to work on his or her offending. Supervision and treatment should be periodically reviewed and adjusted as necessary.

10.4 Offenders should, when needed, be provided with psychological, social and material assistance and with opportunities to strengthen links with the community and facilitate their reintegration into society.

#### **11. Duration**

11.1 The duration of a non-custodial measure shall not exceed the period established by the competent authority in accordance with the law.



11.2 Provision may be made for early termination of the measure if the offender has responded favourably to it.

## **12. Conditions**

12.1 If the competent authority shall determine the conditions to be observed by the offender, it should take into account both the needs of society and the needs and rights of the offender and the victim.

12.2 The conditions to be observed shall be practical, precise and as few as possible, and be aimed at reducing the likelihood of an offender relapsing into criminal behaviour and of increasing the offender's chances of social integration, taking into account the needs of the victim.

12.3 At the beginning of the application of a non-custodial measure, the offender shall receive an explanation, orally and in writing, of the conditions governing the application of the measure, including the offender's obligations and rights.

12.4 The conditions may be modified by the competent authority under the established statutory provisions, in accordance with the progress made by the offender.

## **13. Treatment process**

13.1 Within the framework of a given non-custodial measure, in appropriate cases, various schemes, such as case-work, group therapy, residential programmes and the specialized treatment of various categories of offenders, should be developed to meet the needs of offenders more effectively.

13.2 Treatment should be conducted by professionals who have suitable training and practical experience.

13.3 When it is decided that treatment is necessary, efforts should be made to understand the offender's background, personality, aptitude, intelligence, values and, especially, the circumstances leading to the commission of the offence.

13.4 The competent authority may involve the community and social support systems in the application of non-custodial measures.

13.5 Case-load assignments shall be maintained as far as practicable at a manageable level to ensure the effective implementation of treatment programmes.

13.6 For each offender, a case record shall be established and maintained by the competent authority.

## **14. Discipline and breach of conditions**

14.1 A breach of the conditions to be observed by the offender may result in a modification or revocation of the non-custodial measure.

14.2 The modification or revocation of the non-custodial measure shall be made by the competent authority; this shall be done only after a careful examination of the facts adduced by both the supervising officer and the offender.

14.3 The failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure.

14.4 In the event of a modification or revocation of the non-custodial measure, the competent authority shall attempt to establish a suitable alternative non-custodial measure. A sentence of imprisonment may be imposed only in the absence of other suitable alternatives.

14.5 The power to arrest and detain the offender under supervision in cases where there is a breach of the conditions shall be prescribed by law.

14.6 Upon modification or revocation of the non-custodial measure, the offender shall have the right to appeal to a judicial or other competent independent authority.

## **VI. STAFF**

### **15. Recruitment**

15.1 There shall be no discrimination in the recruitment of staff on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status. The policy regarding staff recruitment should take into consideration national policies of affirmative action and reflect the diversity of the offenders to be supervised.

15.2 Persons appointed to apply non-custodial measures should be personally suitable and, whenever possible, have appropriate professional training and practical experience. Such qualifications shall be clearly specified.

15.3 To secure and retain qualified professional staff, appropriate service status, adequate salary and benefits commensurate with the nature of the work should be ensured and ample opportunities should be provided for professional growth and career development.

## **16. Staff training**

16.1 The objective of training shall be to make clear to staff their responsibilities with regard to rehabilitating the offender, ensuring the offender's rights and protecting society. Training should also give staff an understanding of the need to cooperate in and coordinate activities with the agencies concerned.

16.2 Before entering duty, staff shall be given training that includes instruction on the nature of non-custodial measures, the purposes of supervision and the various modalities of the application of non-custodial measures.

16.3 After entering duty, staff shall maintain and improve their knowledge and professional capacity by attending in-service training and refresher courses. Adequate facilities shall be made available for that purpose.

## **VII. VOLUNTEERS AND OTHER COMMUNITY RESOURCES**

### **17. Public participation**

17.1 Public participation should be encouraged as it is a major resource and one of the most important factors in improving ties between offenders undergoing non-custodial measures and the family and community. It should complement the efforts of the criminal justice administration.

17.2 Public participation should be regarded as an opportunity for members of the community to contribute to the protection of their society.

### **18. Public understanding and cooperation**

18.1 Government agencies, the private sector and the general public should be encouraged to support voluntary organizations that promote noncustodial measures.

18.2 Conferences, seminars, symposia and other activities should be regularly organized to stimulate awareness of the need for public participation in the application of non-custodial measures.

18.3 All forms of the mass media should be utilized to help to create a constructive public attitude, leading to activities conducive to a broader application of non-custodial treatment and the social integration of offenders.

18.4 Every effort should be made to inform the public of the importance of its role in the implementation of non-custodial measures.

## **19. Volunteers**

19.1 Volunteers shall be carefully screened and recruited on the basis of their aptitude for and interest in the work involved. They shall be properly trained for the specific responsibilities to be discharged by them and shall have access to support and counselling from, and the opportunity to consult with, the competent authority.

19.2 Volunteers should encourage offenders and their families to develop meaningful ties with the community and a broader sphere of contact by providing counselling and other appropriate forms of assistance according to their capacity and the offenders' needs.

19.3 Volunteers shall be insured against accident, injury and public liability when carrying out their duties. They shall be reimbursed for authorized expenditures incurred in the course of their work. Public recognition should be extended to them for the services they render for the well-being of the community.

## **VIII. RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION**

### **20. Research and planning**

20.1 As an essential aspect of the planning process, efforts should be made to involve both public and private bodies in the organization and promotion of research on the non-custodial treatment of offenders.

20.2 Research on the problems that confront clients, practitioners, the community and policy-makers should be carried out on a regular basis.

20.3 Research and information mechanisms should be built into the criminal justice system for the collection and analysis of data and statistics on the implementation of non-custodial treatment for offenders.

## ***21. Policy formulation and programme development***

21.1 Programmes for non-custodial measures should be systematically planned and implemented as an integral part of the criminal justice system within the national development process.

21.2 Regular evaluations should be carried out with a view to implementing non-custodial measures more effectively.

21.3 Periodic reviews should be concluded to assess the objectives, functioning and effectiveness of non-custodial measures.

## ***22. Linkages with relevant agencies and activities***

22.1 Suitable mechanisms should be evolved at various levels to facilitate the establishment of linkages between services responsible for non-custodial measures, other branches of the criminal justice system, social development and welfare agencies, both governmental and non-governmental, in such fields as health, housing, education and labour, and the mass media.

## ***23. International cooperation***

23.1 Efforts shall be made to promote scientific cooperation between countries in the field of non-institutional treatment. Research, training, technical assistance and the exchange of information among Member States on non-custodial measures should be strengthened, through the United Nations institutes for the prevention of crime and the treatment of offenders, in close collaboration with the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the United Nations Secretariat.

23.2 Comparative studies and the harmonization of legislative provisions should be furthered to expand the range of non-institutional options and facilitate their application across national frontiers, in accordance with the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released.





# **Guidelines for Action on Children in the Criminal Justice System (Recommended by Economic and Social Council resolution 1997/30 of 21 July 1997)**



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, Le Caire, 29 April-8 May 1995 (A/CONF.169/16/Rev.1), chap. I.

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,

*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 extra budgetary 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 extra budgetary 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.

36th plenary meeting  
21 July 1997

## **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/ herein-after 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 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 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 extra budgetary 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<sup>14</sup> 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 extra budgetary resources, in developing multidisciplinary training, education and information activities for law enforcement and other criminal justice personnel, including police officers, prosecutors, judges and magistrates.





# The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (2004)



November 22-24, 2004

*128 delegates from 26 countries including 21 African countries met between 22-24 November 2004 in Lilongwe, Malawi, to discuss legal aid services in the criminal justice systems in Africa. Ministers of State, judges, lawyers, prison commissioners, academics, international, regional, and national non-governmental organizations attended the conference. The three days of deliberations produced the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (set forth below), which was adopted by consensus at the closure of the Conference with the request that it be forwarded to national governments, the African Union Commission on Human and Peoples' Rights, the African Union Commission, and the Eleventh United Nations Congress on Crime Prevention and Criminal Justice to be held in Bangkok in April 2005, and publicized to national and regional legal aid networks.*

## Preamble

Bearing in mind that access to justice depends on the enforcement of rights to due process, to a fair hearing, and to legal representation;

Recognising that the vast majority of people affected by the criminal justice system are poor and have no resources with which to protect their rights;

Further recognising that the vast majority of ordinary people in Africa, especially in post-conflict societies where there is no functioning criminal justice system, do not have access to legal aid or to the courts and that the principle of equal legal representation and access to the resources and protections of the criminal justice system simply does not exist as it applies to the vast majority of persons affected by the criminal justice system; Noting that legal advice and assistance

in police stations and prisons are absent. Noting also that many thousands of suspects and prisoners are detained for lengthy periods of time in over crowded police cells and in inhumane conditions in over-crowded prisons;

Further noting that prolonged incarceration of suspects and prisoners without providing access to legal aid or to the courts violates basic principles of international law and human rights, and that legal aid to suspects and prisoners has the potential to reduce the length of time suspects are held in police stations, congestion in the courts, and prison populations, thereby improving conditions of confinement and reducing the costs of criminal justice administration and incarceration;

Recalling the Resolution of the African Charter of Fundamental Rights of Prisoners adopted by the African Regional Preparatory Meeting for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice held at Addis Ababa, Ethiopia in March 2004 and its recommendations for its adoption by the Eleventh United Nations Congress on Crime Prevention and Criminal Justice to be held in Bangkok, Thailand in April 2005;

Mindful that the challenge of providing legal aid and assistance to ordinary people will require the participation of a variety of legal services providers and partnerships with a range of stakeholders and require the creation of innovative legal aid mechanisms;

Noting the Kampala Declaration on Prison Conditions 1996, the Kadoma Declaration on Community Service Orders in Africa 1997, the Abuja Declaration on Alternatives to Imprisonment 2002 and the Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa 2002; and mindful that similar measures are needed with respect to the provision of legal aid to prisoners;

Noting with satisfaction the resolutions passed by the African Commission on Human and Peoples' Rights (notably: the Resolution on the Right of Recourse and Fair Trial 1992, the Resolution on the Right to a Fair Trial and Legal Assistance in Africa 1999) and, in particular, the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa 2001;

Commending the practical steps that have been taken to implement these standards through the activities of the African Commission on Human and Peoples' Rights and its Special Rapporteur on Prisons and Conditions of Detention;

Commending also the Recommendation of the African Regional Preparatory Meeting held at Addis Ababa in March 2004 that the African Region should prepare and present an African Common Position to the Eleventh United Nations Congress on Crime Prevention and Criminal Justice to be held in Bangkok, Thailand in April 2005, and that the African Union Commission has agreed to prepare and present that Common Position to the Congress;

Welcoming the practical measures that have been taken by the governments and legal aid establishments in African countries to apply these standards in their national jurisdictions; while emphasizing that notwithstanding these measures, there are still considerable shortcomings in the provision of legal aid to ordinary people, which are aggravated by shortages of personnel and resources;

Noting with satisfaction the growing openness of governments to forging partnerships with nongovernmental organizations, civil society, and the international community in developing legal aid programs for ordinary people that will enable increasing numbers of people in Africa, especially in rural areas, to have access to justice;

Commending also the recommendations of the African Regional Preparatory Meeting for the Eleventh United Nations Conference for the introduction and strengthening of restorative justice in the criminal justice system;

*The participants of the Conference on Legal Aid in Criminal Justice: the Role of Lawyers, Non-Lawyers and other Service Providers in Africa, held in Lilongwe, Malawi, between 22 and 24 November 2004, hereby declare the importance of:*

## **1. Recognising and supporting the right to legal aid in criminal justice**

All governments have the primary responsibility to recognise and support basic human rights, including the provision of and access to legal aid for persons in the criminal justice system. As part of this responsibility, governments are encouraged to adopt measures and allocate funding sufficient to ensure an effective and transparent method of delivering legal aid to the poor and vulnerable, especially women and children, and in so doing empower them to access justice.

Legal aid should be defined as broadly as possible to include legal advice, assistance, representation, education, and mechanisms for alternative dispute resolution; and to include a wide range of stakeholders, such as non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations, and academic institutions.

## **2. Sensitizing all criminal justice stakeholders**

Government officials, including police and prison administrators, judges, lawyers, and prosecutors, should be made aware of the crucial role that legal aid plays in the development and maintenance of a just and fair criminal justice system. Since those in control of government criminal justice agencies control access to detainees and to prisoners, they should ensure that the right to legal aid is fully implemented. Government officials are encouraged to allow legal aid to be provided at police stations, in pre-trial detention facilities, in courts, and in prisons. Governments should also sensitize criminal justice system administrators to the societal benefits of providing effective legal aid and the use of alternatives to imprisonment. These benefits include elimination of unnecessary detention, speedy processing of cases, fair and impartial trials, and the reduction of prison populations.

## **3. Providing legal aid at all stages of the criminal justice process**

A legal aid program should include legal assistance at all stages of the criminal process including investigation, arrest, pre-trial detention, bail hearings, trials, appeals, and other proceedings brought to ensure that human rights are protected.

Suspects, accused persons, and detainees should have access to legal assistance immediately upon arrest and/or detention wherever such arrest and/or detention occurs. A person subject to criminal proceedings should never be prevented from securing legal aid and should always be granted the right to see and consult with a lawyer, accredited para-legal or legal assistant. Governments should ensure that legal aid programs provide special attention to persons who are detained without charge, or beyond the expiration of their sentences, or who have been held in detention or in prison without access to the courts. Special attention should be given to women and other vulnerable groups, such as children, young people, the elderly, persons with disabilities, persons living with HIV/AIDS, the mentally and seriously ill, refugees, internally displaced persons, and foreign nationals.

#### **4. Recognising the right to redress for violations of human rights**

Human rights are enforced when government officials know that they will be held accountable for violations of the law and of basic human rights.

Persons who are abused or injured by law enforcement officials, or who are not afforded proper recognition of their human rights, should have access to the courts and legal representation to redress their injuries and grievances. Governments should provide legal aid to persons who seek compensation for injuries suffered as the result of misconduct by officials and employees of criminal justice systems. This does not exclude other stakeholders from providing legal aid in such cases.

#### **5. Recognising the role of non-formal means of conflict resolution**

Traditional and community-based alternatives to formal criminal processes have the potential to resolve disputes without acrimony and to restore social cohesion within the community. These mechanisms also have the potential to reduce reliance upon the police to enforce the law, to reduce congestion in the courts, and to reduce the reliance upon incarceration as a means of resolving conflict based upon alleged criminal activity. All stakeholders should recognise the significance of such diversionary measures to the

administration of a community-based, victim-oriented criminal justice system and should provide support for such mechanisms provided that they conform to human rights norms.

#### **6. Diversifying legal aid delivery systems**

Each country has different capabilities and needs when consideration is given to what kind of legal aid systems to employ. In carrying out its responsibility to provide equitable access to justice for poor and vulnerable people, there are a variety of service delivery options that can be considered.

These include government funded public defender offices, judicare programmes, justice centres, law clinics - as well as partnerships with civil society and faith-based organizations. Whatever options are chosen, they should be structured and funded in a way that preserves their independence and commitment to those populations most in need. Appropriate coordinating mechanisms should be established.

#### **7. Diversifying legal aid service providers**

It has all too often been observed that there are not enough lawyers in African countries to provide the legal aid services required by the hundreds of thousands of persons who are affected by criminal justice systems. It is also widely recognized that the only feasible way of delivering effective legal aid to the maximum number of persons is to rely on non-lawyers, including law students, paralegals, and legal assistants. These paralegals and legal assistants can provide access to the justice system for persons subjected to it, assist criminal defendants, and provide knowledge and training to those affected by the system that will enable rights to be effectively asserted. An effective legal aid system should employ complementary legal and law-related services by paralegals and legal assistants.

#### **8. Encouraging pro-bono provision of legal aid by lawyers**

It is universally recognised that lawyers are officers of the court and have a duty to see that justice systems operate fairly and equitably.

By involving a broad spectrum of the private bar in the provision of legal aid, such services will be recognised as an important duty of the legal profession. The organized bar should provide substantial moral, professional and logistical support to those providing legal aid. Where a bar association, licensing agency, or government has the option of making pro-bono provision of legal aid mandatory, this step should be taken. In countries in which a mandatory pro-bono requirement cannot be imposed, members of the legal profession should be strongly encouraged to provide pro-bono legal aid services.

## 9. Guaranteeing sustainability of legal aid

Legal aid services in many African countries are donor funded and may be terminated at any time. For this reason, there is need for sustainability.

Sustainability includes: funding, the provision of professional services, establishment of infrastructure, and the ability to satisfy the needs of the relevant community in the long term.

Appropriate government, private sector and other funding, and community ownership arrangements should be established in order to ensure sustainability of legal aid in every country.

## 10. Encouraging legal literacy

Ignorance about the law, human rights, and the criminal justice system is a major problem in many African countries. People who do not know their legal rights are unable to enforce them and are subject to abuse in the criminal justice system.

Governments should ensure that human rights education and legal literacy programmes are conducted in educational institutions and in non-formal sectors of society, particularly for vulnerable groups such as children, young people, women, and the urban and rural poor.

## Lilongwe Plan of Action for Accessing Legal Aid in the Criminal Justice System in Africa

*The participants recommend the following measures as forming part of a Plan of Action to implement the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice system in Africa.*

*The document is addressed to governments and criminal justice practitioners, criminologists, academics, development partners as well as non-governmental organizations, community based organizations and faith based groups active in this area. It is meant to be a source of inspiration for concrete actions.*

## LEGAL AID FRAMEWORK

### Institution building

Governments should introduce measures to:

- Establish a legal aid institution that is independent of government justice departments eg: legal aid board/ commission that is accountable to parliament.
- Diversify legal aid service providers, adopting an inclusive approach, and enter into agreements with the Law Society as well as with university law clinics, nongovernmental organizations (NGOs), community-based organizations (CBOs) and faith-based groups to provide legal aid services.
- Encourage lawyers to provide pro bono legal aid services as an ethical duty.
- Establish a legal aid fund to administer public defender schemes, to support university law clinics; and to sponsor clusters of NGOs/CBOs and others to provide legal aid services throughout the country, especially in the rural areas.
- Agree minimum quality standards for legal aid services and clarify the role of paralegals and other service providers by: developing standardized training programmes monitoring and evaluating the work of paralegals and other service providers requiring all paralegals operating in the criminal justice system to submit to a code of conduct establishing effective referral mechanisms to lawyers for all these service providers.

### Public awareness

Governments should introduce measures to:

- Incorporate human rights and 'Rule of Law' topics in national educational curricula in accordance with the requirements of the United Nations Decade of Human Rights Education.



- Develop a national media campaign focusing on legal literacy in consultation with civil society organizations and media groups.
- Sensitise the public and justice agencies on the broadened definition of legal aid and the role all service providers have to play (through TV, radio, the printed media, seminars and workshops).
- Institute one day a year as 'Legal Aid Day'

## Legislation

Governments should:

- Enact legislation to promote the right of everyone to basic legal advice, assistance and education, especially for victims of crime and vulnerable groups.
- Enact legislation to establish an independent national legal aid institution accountable to Parliament and protected from executive interference.
- Enact legislation to ensure the provision of legal aid at all stages of the criminal justice process.
- Enact legislation to recognize the role of non-lawyers and paralegals and to clarify their duties.
- Enact legislation to recognize customary law and the role non State justice for a can play in appropriate cases (i.e. where cases are diverted from the formal criminal justice process)

## Sustainability

Governments should introduce measures to:

- Diversify the funding-base of legal aid institutions that should be primarily funded by governments, to include endowment funds by donors, companies and communities.
- Identify fiscal mechanisms for channelling funds to the legal aid fund, such as: recovering costs in civil legal aid cases where the legal aid litigant has been awarded costs in a matter and channelling such recovered costs into the legal aid fund taxing any award made in civil legal aid cases and channelling the moneys paid into the legal aid fund fixing a percentage of the State's criminal justice budget to be allocated to legal aid services.

- Identify incentives for lawyers to work in rural areas (e.g. tax exemptions/reductions).
- Require all law students to participate in a legal aid clinic or other legal aid community service scheme as part of their professional or national service requirement.
- Request the Law Society to organize regular circuits of lawyers around the country to provide free legal advice and assistance.
- Promote partnerships with NGOs, CBOs, faith-based groups and, where appropriate, local councils.

## LEGAL AID IN ACTION

### In the police station

Governments should introduce measures to:

- Provide legal and/or paralegal services in police stations in consultation with the Police Service, the Law Society, university law clinics and NGOs. These services might include: providing general advice and assistance at the police station to victims of crime as well as accused persons visiting police cells or lock-ups (*cachots*) monitoring custody time limits in the police station after which a person must be produced before the court attending at police interview screening juveniles for possible diversion programmes contacting / tracing parents / guardians / sureties assisting with bail from the police station.
- Require the police to co-operate with service providers and advertise these services and how to access them in each police station.

### At court

Governments should introduce measures to:

- Draw up rosters for lawyers to attend court on fixed days in consultation with the Law Society and provide services free of charge.
- Encourage the judiciary to take a more pro-active role in ensuring the defendant is provided with legal aid and able to put his/her case where the person is unrepresented because of indigency.
- Promote the wider use of alternative dispute resolution and diversion of criminal cases and encourage the judiciary to consider such options as a first step in all matters.

- Encourage non-lawyers, paralegals and victim support agencies to provide basic advice and assistance and to conduct regular observations of trial proceedings.
- Conduct regular case reviews to clear case backlogs, petty cases and refer/divert appropriate cases for mediation; and convene regular meetings of all criminal justice agencies to find local solutions to local problems.

### **In prison**

Governments should introduce measures to ensure that:

- Magistrates/judges screen the remand caseload on a regular basis to make sure that people are remanded lawfully, their cases are being expedited, and that they are held appropriately.
- Prison officers, judicial officers, lawyers, paralegals and non-lawyers conduct periodic census to determine who is in prison and whether they are there as a first rather than a last resort.
- Custody time limits are enacted.
- Paralegal services are established in prisons. Services should include:
  - legal education of prisoners so as to allow them to understand the law, process and apply this learning in their own case assistance with bail and the identification of potential sureties assistance with appeals special assistance to vulnerable groups, especially to women, women with babies, young persons, refugees and foreign nationals, the aged, terminally and mentally ill etc.
  - Access to prisons for responsible NGOs, CBOs and faith-based groups is not subject to unnecessary bureaucratic obstacles.

### **In the village**

Governments should introduce measures to:

- Encourage NGOs, CBOs and faith-based groups to train local leaders on the law and constitution and in particular the rights of women and children; and in mediation and other alternative dispute resolution (ADR) procedures.

- Establish referral mechanisms between the court and village hearings. Such mechanisms might include: diversion from the court to the village for the offender to make an apology or engage in a victim-offender mediation; referral from the court to the village to make restitution and/or offer compensation appeals from the village to the court.
- Establish a Chief's Council, or similar body of traditional leaders, in order to provide greater consistency in traditional approaches to justice.
- Record traditional proceedings and provide village hearings ('courts') with the tools for documenting proceedings.
- Provide a voice for women in traditional proceedings.
- Include customary law in the training of lawyers.

### **In post-conflict societies**

Governments should introduce measures to:

- Recruit judges, prosecutors, defence lawyers, police and prison officers in peacekeeping operations and programmes of national reconstruction.
- Include the services of national NGOs, CBOs and faith-based groups in the reestablishment of the criminal justice system especially where the need for speed is paramount.
- Consult with traditional, religious and community leaders and identify common values on which peace-keeping should be based.





# Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (2005)



Adopted by the Economic  
and Social Council in its resolution  
2005/20 of 22 July 2005

## I. Objectives

1. The present Guidelines on Justice for Child Victims and Witnesses of Crime set forth good practice based on the consensus of contemporary knowledge and relevant international and regional norms, standards and principles.

2. The Guidelines should be implemented in accordance with relevant national legislation and judicial procedures as well as take into consideration legal, social, economic, cultural and geographical conditions. However, States should constantly endeavour to overcome practical difficulties in the application of the Guidelines.

3. The Guidelines provide a practical framework to achieve the following objectives:

a) To assist in the review of national and domestic laws, procedures and practices so that these ensure full respect for the rights of child victims and witnesses of crime and contribute to the implementation of the Convention on the Rights of the Child,<sup>4</sup> by parties to that Convention;

b) To assist Governments, international organizations, public agencies, non-governmental and community-based organizations and other interested parties in designing and implementing legislation, policy, programmes and practices that address key issues related to child victims and witnesses of crime;

c) To guide professionals and, where appropriate, volunteers working with child victims and witnesses of crime in their day-to-day practice in the adult and juvenile justice process at the national, regional and international levels, consistent with the Declaration

of Basic Principles of Justice for Victims of Crime and Abuse of Power;

d) To assist and support those caring for children in dealing sensitively with child victims and witnesses of crime.

4. In implementing the Guidelines, each jurisdiction should ensure that adequate training, selection and procedures are put in place to protect and meet the special needs of child victims and witnesses of crime, where the nature of the victimization affects categories of children differently, such as sexual assault of children, especially girls.

5. The Guidelines cover a field in which knowledge and practice are growing and improving. They are neither intended to be exhaustive nor to preclude further development, provided it is in harmony with their underlying objectives and principles.

6. The Guidelines could also be applied to processes in informal and customary systems of justice such as restorative justice and in non-criminal fields of law including, but not limited to, custody, divorce, adoption, child protection, mental health, citizenship, immigration and refugee law.

## II. Special consideration

7. The Guidelines were developed:

a) Cognizant that millions of children throughout the world suffer harm as a result of crime and abuse of power and that the rights of those children have not been adequately recognized and that they may suffer additional hardship when assisting in the justice process;

b) Recognizing that children are vulnerable and require special protection appropriate to their age, level of maturity and individual special needs;

- c) Recognizing that girls are particularly vulnerable and may face discrimination at all stages of the justice system;
- d) Reaffirming that every effort must be made to prevent victimization of children, including through implementation of the Guidelines for the Prevention of Crime;
- e) Cognizant that children who are victims and witnesses may suffer additional hardship if mistakenly viewed as offenders when they are in fact victims and witnesses;
- f) Recalling that the Convention on the Rights of the Child sets forth requirements and principles to secure effective recognition of the rights of children and that the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power sets forth principles to provide victims with the right to information, participation, protection, reparation and assistance;
- g) Recalling international and regional initiatives that implement the principles of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including the *Handbook on Justice for Victims* and the *Guide for Policy Makers on the Declaration of Basic Principles*, both issued by the United Nations Office for Drug Control and Crime Prevention in 1999;
- h) Recognizing the efforts of the International Bureau for Children's Rights in laying the groundwork for the development of guidelines on justice for child victims and witnesses of crime;
- i) Considering that improved responses to child victims and witnesses of crime can make children and their families more willing to disclose instances of victimization and more supportive of the justice process;
- j) Recalling that justice for child victims and witnesses of crime must be assured while safeguarding the rights of accused and convicted offenders;
- k) Bearing in mind the variety of legal systems and traditions, and noting that crime is increasingly transnational in nature and that there is a need to ensure that child victims and witnesses of crime receive equivalent protection in all countries.

### III. Principles

8. As stated in international instruments and in particular the Convention on the Rights of the Child as reflected in the work of the Committee on the Rights

of the Child, and in order to ensure justice for child victims and witnesses of crime, professionals and others responsible for the well-being of those children must respect the following cross-cutting principles:

- a) *Dignity*. 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;
- b) *Non-discrimination*. Every child has the right to be treated fairly and equally, regardless of his or her or the parent's or legal guardian's race, ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status;
- c) *Best interests of the child*. While the rights of accused and convicted offenders should be safeguarded, every child has the right to have his or her best interests given primary consideration. This includes the right to protection and to a chance for harmonious development:
  - i) *Protection*. Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse and neglect;
  - (ii) *Harmonious development*. Every child has the right to a chance for harmonious development and to a standard of living adequate for physical, mental, spiritual, moral and social growth. In the case of a child who has been traumatized, every step should be taken to enable the child to enjoy healthy development;
- d) *Right to participation*. Every child has, subject to national procedural law, the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life, including those taken in any judicial processes, and to have those views taken into consideration according to his or her abilities, age, intellectual maturity and evolving capacity.

### IV. Definitions

9. Throughout these Guidelines, the following definitions apply:

- a) "Child victims and witnesses" denotes children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in

the offence or in the prosecution of the alleged offender or groups of offenders;

b) “Professionals” refers to persons who, within the context of their work, are in contact with child victims and witnesses of crime or are responsible for addressing the needs of children in the justice system and for whom these Guidelines are applicable. This includes, but is not limited to, the following: child and victim advocates and support persons; child protection service practitioners; child welfare agency staff; prosecutors and, where appropriate, defence lawyers; diplomatic and consular staff; domestic violence programme staff; judges; court staff; law enforcement officials; medical and mental health professionals; and social workers;

c) “Justice process” encompasses detection of the crime, making of the complaint, investigation, prosecution and trial and post-trial procedures, regardless of whether the case is handled in a national, international or regional criminal justice system for adults or juveniles, or in a customary or informal system of justice;

d) “Child-sensitive” denotes an approach that balances the child’s right to protection and that takes into account the child’s individual needs and views.

## **V. The right to be treated with dignity and compassion**

10. Child victims and witnesses should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity.

11. Every child should be treated as an individual with his or her individual needs, wishes and feelings.

12. Interference in the child’s private life should be limited to the minimum needed at the same time as high standards of evidence collection are maintained in order to ensure fair and equitable outcomes of the justice process.

13. In order to avoid further hardship to the child, interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner.

14. All interactions described in these Guidelines should be conducted in a child-sensitive manner in a suitable environment that accommodates the special needs of the child, according to his or her abilities, age, intellectual maturity and evolving capacity. They should also take place in a language that the child uses and understands.

## **VI. The right to be protected from discrimination**

15. Child victims and witnesses should have access to a justice process that protects them from discrimination based on the child’s, parent’s or legal guardian’s race, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status.

16. The justice process and support services available to child victims and witnesses and their families should be sensitive to the child’s age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic and social background, caste, socio-economic condition and immigration or refugee status, as well as to the special needs of the child, including health, abilities and capacities. Professionals should be trained and educated about such differences.

17. In certain cases, special services and protection will need to be instituted to take account of gender and the different nature of specific offences against children, such as sexual assault involving children.

18. Age should not be a barrier to a child’s right to participate fully in the justice process. Every child should be treated as a capable witness, subject to examination, and his or her testimony should not be presumed invalid or untrustworthy by reason of the child’s age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance.

## **VII. The right to be informed**

19. Child victims and witnesses, their parents or guardians and legal representatives, from their first contact with the justice process and throughout that process, should be promptly and adequately informed, to the extent feasible and appropriate, of, inter alia:

- a) The availability of health, psychological, social and other relevant services as well as the means of accessing such services along with legal or other advice or representation, compensation and emergency financial support, where applicable;
- b) The procedures for the adult and juvenile criminal justice process, including the role of child victims and witnesses, the importance, timing and manner of testimony, and ways in which “questioning” will be conducted during the investigation and trial;
- c) The existing support mechanisms for the child when making a complaint and participating in the investigation and court proceedings;
- d) The specific places and times of hearings and other relevant events;
- e) The availability of protective measures;
- f) The existing mechanisms for review of decisions affecting child victims and witnesses;
- g) The relevant rights for child victims and witnesses pursuant to the Convention on the Rights of the Child and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

20. In addition, child victims, their parents or guardians and legal representatives should be promptly and adequately informed, to the extent feasible and appropriate, of:

- a) The progress and disposition of the specific case, including the apprehension, arrest and custodial status of the accused and any pending changes to that status, the prosecutorial decision and relevant post-trial developments and the outcome of the case;
- b) 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.

## **VIII. The right to be heard and to express views and concerns**

21. Professionals should make every effort to enable child victims and witnesses to express their views and concerns related to their involvement in the justice process, including by:

- a) Ensuring that child victims and where appropriate witnesses are consulted on the matters set forth in paragraph 19 above;
- b) Ensuring that child victims and witnesses are enabled to express freely and in their own manner their views and concerns regarding their involvement in the justice process, their concerns regarding safety in relation to the accused, the manner in which they prefer to provide testimony and their feelings about the conclusions of the process;
- c) Giving due regard to the child’s views and concerns and, if they are unable to accommodate them, explain the reasons to the child.

## **IX. The right to effective assistance**

22. Child victims and witnesses and, where appropriate, family members should have access to assistance provided by professionals who have received relevant training as set out in paragraphs 40 to 42 below. This may include assistance and support services such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child’s reintegration. All such assistance should address the child’s needs and enable him or her to participate effectively at all stages of the justice process.

23. In assisting child victims and witnesses, professionals should make every effort to coordinate support so that the child is not subjected to excessive interventions.

24. Child victims and witnesses should receive assistance from support persons, such as child victim/witness specialists, commencing at the initial report and continuing until such services are no longer required.

25. Professionals should develop and implement measures to make it easier for children to testify or give evidence to improve communication and understanding at the pre-trial and trial stages. These measures may include:

- a) Child victim and witness specialists to address the child’s special needs;
- b) Support persons, including specialists and appropriate family members to accompany the child during testimony;

c) Where appropriate, to appoint guardians to protect the child's legal interests.

## **X. The right to privacy**

26. Child victims and witnesses should have their privacy protected as a matter of primary importance.

27. Information relating 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 witness in the justice process.

28. Measures should be taken to protect children from undue exposure to the public by, for example, excluding the public and the media from the courtroom during the child's testimony, where permitted by national law.

## **XI. The right to be protected from hardship during the justice process**

29. Professionals should take measures to prevent hardship during the detection, investigation and prosecution process in order to ensure that the best interests and dignity of child victims and witnesses are respected.

30. Professionals should approach child victims and witnesses with sensitivity, so that they:

a) Provide support for child victims and witnesses, including accompanying the child throughout his or her involvement in the justice process, when it is in his or her best interests;

b) Provide certainty about the process, including providing child victims and witnesses with clear expectations as to what to expect in the process, with as much certainty as possible. The child's participation in hearings and trials should be planned ahead of time and every effort should be made to ensure continuity in the relationships between children and the professionals in contact with them throughout the process;

c) Ensure that trials take place as soon as practical, unless delays are in the child's best interest. Investigation of crimes involving child victims and witnesses should also be expedited and there should be procedures, laws or court rules that provide for cases involving child victims and witnesses to be expedited;

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.

31. Professionals should also implement measures:

a) To limit the number of interviews: special procedures for collection of evidence from child victims and witnesses should be implemented in order to reduce the number of interviews, statements, hearings and, specifically, unnecessary contact with the justice process, such as through use of video recording;

b) To ensure that child victims and witnesses are protected, if compatible with the legal system and with due respect for the rights of the defence, from being cross-examined by the alleged perpetrator: as necessary, child victims and witnesses should be interviewed, and examined in court, out of sight of the alleged perpetrator, and separate courthouse waiting rooms and private interview areas should be provided;

c) To ensure that child victims and witnesses are questioned in a child-sensitive manner and allow for the exercise of supervision by judges, facilitate testimony and reduce potential intimidation, for example by using testimonial aids or appointing psychological experts.

## **XII. The right to safety**

32. Where the safety of a child victim or witness may be at risk, appropriate measures should be taken to require the reporting of those safety risks to appropriate authorities and to protect the child from such risk before, during and after the justice process.

33. Professionals who come into contact with children should be required to notify appropriate authorities if they suspect that a child victim or witness has been harmed, is being harmed or is likely to be harmed.

34. Professionals should be trained in recognizing and preventing intimidation, threats and harm to child victims and witnesses. Where child victims and witnesses

may be the subject of intimidation, threats or harm, appropriate conditions should be put in place to ensure the safety of the child. Such safeguards could include:

- a) Avoiding direct contact between child victims and witnesses and the alleged perpetrators at any point in the justice process;
- b) Using court-ordered restraining orders supported by a registry system;
- c) Ordering pre-trial detention of the accused and setting special “no contact” bail conditions;
- d) Placing the accused under house arrest;
- e) Wherever possible and appropriate, giving child victims and witnesses protection by the police or other relevant agencies and safeguarding their whereabouts from disclosure.

### **XIII. The right to reparation**

35. Child victims should, wherever possible, receive reparation in order to achieve full redress, reintegration and recovery. Procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive.

36. Provided the proceedings are child-sensitive and respect these Guidelines, combined criminal and reparations proceedings should be encouraged, together with informal and community justice procedures such as restorative justice.

37. Reparation may include restitution from the offender ordered in the criminal court, aid from victim compensation programmes administered by the State and damages ordered to be paid in civil proceedings. Where possible, costs of social and educational reintegration, medical treatment, mental health care and legal services should be addressed. Procedures should be instituted to ensure enforcement of reparation orders and payment of reparation before fines.

### **XIV. The right to special preventive measures**

38. In addition to preventive measures that should be in place for all children, special strategies are required for child victims and witnesses who are particularly vulnerable to recurring victimization or offending.

39. Professionals should develop and implement comprehensive and specially tailored strategies and interventions in cases where there are risks that child victims may be victimized further. These strategies and interventions should take into account the nature of the victimization, including victimization related to abuse in the home, sexual exploitation, abuse in institutional settings and trafficking. The strategies may include those based on government, neighbourhood and citizen initiatives.

### **XV. Implementation**

40. Adequate training, education and information should be made available to professionals, working with child victims and witnesses with a view to improving and sustaining specialized methods, approaches and attitudes in order to protect and deal effectively and sensitively with child victims and witnesses.

41. Professionals should be trained to effectively protect and meet the needs of child victims and witnesses, including in specialized units and services.

42. This training should include:

- a) Relevant human rights norms, standards and principles, including the rights of the child;
- b) Principles and ethical duties of their office;
- c) Signs and symptoms that indicate crimes against children;
- d) Crisis assessment skills and techniques, especially for making referrals, with an emphasis placed on the need for confidentiality;
- e) Impact, consequences, including negative physical and psychological effects, and trauma of crimes against children;
- f) Special measures and techniques to assist child victims and witnesses in the justice process;
- g) Cross-cultural and age-related linguistic, religious, social and gender issues;
- h) Appropriate adult-child communication skills;
- i) Interviewing and assessment techniques that minimize any trauma to the child while maximizing the quality of information received from the child;



j) Skills to deal with child victims and witnesses in a sensitive, understanding, constructive and reassuring manner;

k) Methods to protect and present evidence and to question child witnesses;

l) Roles of, and methods used by, professionals working with child victims and witnesses.

43. Professionals should make every effort to adopt an interdisciplinary and cooperative approach in aiding children by familiarizing themselves with the wide array of available services, such as victim support, advocacy, economic assistance, counselling, education, health, legal and social services. This approach may include protocols for the different stages of the justice process to encourage cooperation among entities that provide services to child victims and witnesses, as well as other forms of multidisciplinary work that includes police, prosecutor, medical, social services and psychological personnel working in the same location.

44. International cooperation should be enhanced between States and all sectors of society, both at the national and international levels, including mutual assistance for the purpose of facilitating collection and exchange of information and the detection, investigation and prosecution of transnational crimes involving child victims and witnesses.

45. Professionals should consider utilizing the present Guidelines as a basis for developing laws and written policies, standards and protocols aimed at assisting child victims and witnesses involved in the justice process.

46. Professionals should be enabled to periodically review and evaluate their role, together with other agencies in the justice process, in ensuring the protection of the rights of the child and the effective implementation of the present Guidelines.





# General Comment No. 10 – Children’s Rights in Juvenile Justice (United Nations – 2007)



## 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 nongovernmental organizations (NGO’s), established by ECOSOC resolution 1997/30; CRC/C/GC/10 page 4;
- 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).

### ***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 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 pre-trial 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 pre-trial 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 pre-trial 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 bring 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 pre-trial 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 IC-CPR 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)**

### ***Pre-trial 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 IC-CPR) 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 pre-trial 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 pre-trial 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 pre-trial 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 pre-trial detention. Use of pre-trial 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 pre-trial 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 pre-trial 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 pre-trial detention as soon as possible, and if necessary under certain conditions. Decisions regarding pre-trial 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 pre-trial 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 pre-trial 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 nega-

tive 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 receives 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 pre-trial 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.





# UN Common Approach to Justice for Children (March 2008)

\* The original version of this document contains annexes which were not included in the Guiding principles.  
Original version available online at: <http://www.unrol.org/doc.aspx?d=2635>.



## PART ONE: RATIONALE AND DEFINITION OF JUSTICE FOR CHILDREN

### The need for a common UN strategic approach to justice for children

Justice has long been high on the international development agenda. The UN and other bilateral and multilateral development partners recognise the importance of rule of law<sup>2</sup> and a functioning justice system in reducing poverty as well as promoting peace, security and human rights. Rule of law approaches are thus a cornerstone of UN commitment to the Millennium Declaration and the fulfilment of the Millennium Development Goals, as well as human rights for all.

The way children are treated by national justice systems is integral to the achievement of rule of law and its related aims. This recognition translated in the 1980s and 1990s into increased attention to the treatment of children as alleged offenders, and the development of international norms and standards for juvenile justice<sup>3</sup>. More recently the situation of child victims and witnesses has also been addressed by the UN<sup>4</sup>. Transitional justice mechanisms have also included some steps

to take account of the special situation of children<sup>5</sup>. In addition, the recommendations of the UN General Assembly in response to the UN Report on Violence against Children<sup>6</sup> stress the need to ensure accountability and end impunity for crimes against children. It also recommends the establishment of comprehensive, child-centred, restorative juvenile justice systems that reflect international standards.

Despite this important progress, children are yet to be viewed as key stakeholders in rule of law initiatives. For example, work to implement child justice standards is frequently handled separately from broader justice 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 take children into account.

Ensuring that children are integrated in broader justice reform and have access to fair, transparent and child sensitive justice systems through which they can enforce and protect their rights would result in stronger, better justice systems overall as well as better fulfilment of human rights standards and UN commitments. The UN Secretary General's report<sup>7</sup> presented at the 61st session of the General Assembly in 2006 lays out a clear frame-

- 
2. Rule of law "refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency". Security Council, the Rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary General, S/2004/616, August 2004
  3. The relevant international legal instruments are listed in Annex II
  4. UN Guidelines of Matters of Justice Involving Child Victims and Witnesses. ECOSOC Resolution 2005/20. See also Optional Protocol on the sale of children, child prostitution and child pornography, article 8, and related documents in Annex II.

- 
5. See for example articles 36, 42, 54 and 68 of the Rome Statute
  6. UNICEF, OHCHR and WHO jointly supported the study, which was carried out by an independent expert appointed by the UNSG. See Report of the independent expert for the United Nations Study on violence against children (August 2006), A/61/299
  7. General Assembly, Uniting our strengths: Enhancing United Nations support for the rule of law, Report of the Secretary General, A/61/636-S/2006/980, 14 December 2006

work for the rule of law activities of UN Departments, Agencies Funds and Programmes. It defines three overall rule of law baskets, and notes that the strengthening of national justice systems and institutions is relevant to rule of law in conflict and post conflict and rule of law for long term development. Secretary General's Policy Committee Decision No. 2006/47 goes on to identify lead entities for the different components of rule of law work and to outline their responsibilities. While UNICEF is identified as the lead agency for juvenile justice, all entities have different roles to play within the overall strengthening of national systems and institutions, in both crisis/post-crisis and development contexts.

This conceptual note outlines strategies for a common UN approach towards justice for children within existing rule of law frameworks. The approach aims to ensure that relevant provisions of the UN 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, governance, security and justice sector reform in which justice for children can easily be integrated. It is also expected to bring further cost effectiveness and to maximize results of respective efforts.

The concept paper is presented in three parts. Part I provides the rationale for this concept paper and defines the term 'justice for children' and the basic elements of the approach. Part II recalls what brings UN entities together around this concept, i.e. a human rights mandate and the UN coherence agenda. Part III goes on to describe the approach in more detail, highlighting both how children can better be taken into account within existing rule of law and related development strategies and how to reinforce additional, complementary interventions in view of improving respect for children's rights.

## Definition of justice for children

The goal of the justice for children approach is to ensure that children<sup>8</sup> are better served and protected by justice systems<sup>9</sup>. It specifically aims at ensuring full

application of international norms and standards for all children who come into contact with justice systems as victims, witnesses and alleged offenders; or for other reasons where judicial intervention is needed, for example regarding their care, custody or protection<sup>10</sup>. Whatever the reasons for children being in contact with justice systems, they are usually dealt with by the same institutions and professionals.

This goal also includes ensuring **children's access to justice** to seek and obtain redress in criminal and civil matters. Access to justice can be defined as the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards (including the CRC). Lack of access to justice is a defining attribute of poverty and an impediment to poverty eradication and gender equality. Children's access to justice is therefore a vital part of the UN mandate to reduce poverty and fulfil children's rights. Proper access to justice requires legal empowerment of all children: all should be enabled to claim their rights, through legal and other services such as child rights education or advice and support from knowledgeable adults.

For the purpose of this note, a **justice**<sup>11</sup> **system** comprises both (1) state-run justice and law enforcement institutions, including the judiciary (criminal and civil), justice and interior ministries, the police, prisons, criminal investigation and prosecution services and (2) non-state justice mechanisms, i.e. the whole range of traditional, customary, religious and informal mechanisms that deal with disputes at community levels<sup>12</sup>. It also includes related entities and mechanisms such as professionals associations, parliaments, law reform commissions, law faculties, judicial/police training centres, academic centres, human rights commissions, ombudsmen, NGOs and legal aid volunteers. In certain cases, armed forces are also included, for example

8. As per article 1 of the UN Convention on the Rights of the Child a child is « [e]very human being below the age of eighteen years unless, under the law application to the child, majority is attained earlier »

9. See definition of justice systems below

10. Justice for children goes beyond juvenile justice – i.e. work with children in conflict with the law – to include all children going through justice systems, for whichever reason (victims, witnesses, care, custody, alleged offenders, etc.)

11. The above mentioned Secretary-General's report on "Rule of law and transitional justice in conflict and post-conflict societies", August 2004, defines justice as "an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the rights of the accused, for the interests of victims and for the well-being of society at large".

12. DFID, Brief on Non-state Justice and Security Systems, Policy Division, May 2004. Although state' and non-state' is the terminology used in this note, it is acknowledged that informal, non-state' resolution mechanisms are sometimes established by the State itself

when they are entrusted with policing powers under national laws or where they are to be integrated into new or reformed law enforcement bodies. Generally, the justice system is considered as part of the **security sector** in its broad terms. As per the report of the Secretary-General on the role of the UN in supporting security sector reform, – security sector is a broad term used to describe the structures, institutions and personnel responsible for the management, provision and oversight of security in a country<sup>13</sup>. In addition to the justice system as described in this paragraph, it is generally accepted that the security sector also includes defence and intelligence services, as well as other actors that play a role in managing and overseeing the design and implementation of security, such as relevant ministries, legislative bodies and civil society groups, and other non-state actors such as private security services and customary or informal authorities. **Social welfare systems** – including the set of social protection laws, regulations, services and social work professionals – also have an important role to play in justice for children issues, as further detailed Part III, point 3 below

## Some important guiding principles pertaining to justice for children

Upholding human rights principles and standards is at the heart of rule of law work, including justice for children. The following child rights principles, based on international legal standards and norms<sup>14</sup>, should guide all justice for children interventions, from policy development to direct work with children:

**1. Every child has the right to have his or her best interests 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. This principle is to be applied both when taking decisions regarding an individual child or for children as a group. This principle should guide the whole process (judicial, administrative or other) but also be a primary consideration in determining in the

first place whether the child should participate in the process or not.

**2. Every child has the right to be treated fairly and equally, 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. Special attention needs to be given to the most vulnerable groups of children including – but not limited to – children associated with armed groups, children without parental care, children with disabilities, children belonging to minority groups, migrant children, children born as a result of war-time rape and children affected by HIV/AIDS. This also means that children deprived of liberty and children involved in war time atrocities – often perceived as 'less deserving' – have the same rights as other children. A gender sensitive approach should be taken in all interventions. In particular, the specific vulnerability of girl soldiers due to the counter-cultural conduct that arms bearing represents and the ensuing social stigmatization should be acknowledged. Similarly, the specific needs of girls in (juvenile) justice systems, generally premised on male models, should be taken into account. Services offered should not be constrained by gender stereotypes and should provide a range of options for both boys and girls.

**3. Every child has the right to express his or her views freely and to be heard.** Children have a particular right to be heard in any judicial and 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 fully involve children in transitional justice processes. Children's meaningful participation in state-run and non-state justice proceedings often requires a significant change in law, legal practice and attitudes. Particular obstacles faced by girls in having their voices heard, such as a lack of confidence or experience in being listened to and taken seriously, should be accommodated for.

13. General Assembly/Security Council, Securing peace and development: the role of the United Nations in supporting security sector reform, Report of the Secretary General, A/62/659 S/2008/39, 23 January 2008

14. See list of international instruments in Annex II

**4. Every child has the right to protection from abuse, exploitation and violence.** Children in contact with the law should be protected from hardship while going through state-run and non-state justice proceedings, as well as after the process. Procedures have therefore to be adapted and appropriate protective measures put in place, noting that the risks faced by boys and girls will differ. Torture or other cruel, inhuman or degrading treatment or punishment (including corporal punishment<sup>15</sup>) must be prohibited. Also, capital punishment and life imprisonment without possibility of release shall not be imposed for offences committed by children.

**5. Every child has the right to be treated 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. Respect for legal guarantees and safeguards.** Basic procedural safeguards as set forth in relevant national and international standards and norms shall be guaranteed at all stages of proceedings in both state-run 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 type of assistance and the right to challenge any decision with a higher judicial authority.

**7. Prevention of conflict with the law as a crucial element of any juvenile justice policy<sup>16</sup>.** Within juvenile justice policies, emphasis should be placed on prevention strategies facilitating the successful socialisation and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and the world of work. In particular, prevention programmes should focus on support for particularly vulnerable children and families.

**8. Deprivation of liberty of children should only be used as a measure of last resort and for the shortest appropriate period of time.** Provisions should therefore 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.

## **PART TWO: WHAT BRINGS UN ENTITIES TOGETHER AROUND JUSTICE FOR CHILDREN**

This section describes why a common approach to justice for children among UN Departments, Agencies Funds and Programmes, including field presences, is important and relevant. In doing so, it highlights what brings UN entities together around this subject, i.e. (1) a common mandate around realising human rights & the Millennium Development Goals and (2) the UN coherence agenda.

### **Realizing human rights & the Millennium Development Goals (MDGs)**

UN entities involved in the justice for children approach are all mandated to support countries in the implementation of human rights standards including these pertaining to justice for children in line with their respective mandates<sup>17</sup>. All are obliged to uphold the principles listed in the previous section. All entities involved therefore have a common objective of fulfilling the rights of children going through justice systems. All are also guided by a human rights based approach to programming. A human rights approach seeks to

develop people's capacity to demand accountability in three main ways: (1) by defining a minimum scope of legitimate claims, i.e. human rights, (2) by enhancing the accountability mechanisms and processes through which they protect these claims, such as justice systems, and (3) by empowering people, including the poor, excluded and marginalised, to claim their rights.

The Millennium Declaration and Millennium Development Goals (MDGs) provide a framework for the entire UN system to work coherently together towards a common end<sup>18</sup>. The eight Millennium Development

15. See General Comment n° 8, UN Committee on the Rights of the Child (2006), "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment"

16. Prevention of child rights violations in general is not included in the scope of the present common UN approach on justice for children (see definition). However, restoring rule of law is generally considered as a strategy to prevent further abuse and violations, including – but not limited to – prevention of institutional violence

17. Agencies' mandates are detailed in Annex III

18. General Assembly, United Nations Millennium Declaration, fifty-fifth session, September 2000

Goals form a blueprint agreed to by all the world's countries and leading development institutions. They have galvanized unprecedented efforts to meet the needs of the world's poorest. A number of MDGs relate to children's rights, in particular goals 1 to 7, and the Millennium Declaration comprises a specific section on protecting the vulnerable, including children. In line with the concept of the indivisibility and interdependence of human rights, the realization of the Millennium Development Goals on poverty, health, education and gender cannot be achieved without proper attention to child protection. It has also been acknowledged that gender equality is central to achieving all of the Millennium Development Goals. As detailed below, justice systems can be powerful tools in breaking the cycle of poverty.

In addition to the Millennium Declaration and MDGs, in 2002, the General Assembly special session on children adopted the document *World Fit for Children*<sup>19</sup>. Most of the 10 objectives also apply to justice for children<sup>20</sup>. More recently, the report of the independent expert for the UN study on violence against children<sup>21</sup> (2006) also included recommendations directly related to justice for children. It for example requires States to establish comprehensive, child-centred, restorative juvenile justice systems that reflect international standards. The recommendations also focus on reducing the numbers of children entering justice systems and ensuring accountability and ending impunity by bringing all perpetrators of violence against children to justice.

## Reducing poverty

Adherence to the rule of law (including justice for children) and poverty reduction are strongly related. This link is increasingly acknowledged by multi and bilateral actors. Children living in poor households are the most vulnerable to contact with the law as victims, witnesses and offenders. They are more prone to see their rights denied and more vulnerable to exploitation. At

the same time, it is often harder for the poor, excluded and marginalised to seek and obtain redress. As a result, they may fall further into poverty. Failure of states to provide protection from crime and access to justice impedes development. States with poorly functioning legal and judicial systems are unattractive to investors.

Legal empowerment, access to justice and functioning justice systems all contribute to poverty reduction. Functioning and accessible justice systems are the main avenues to claim for rights and overcome deprivation, social exclusion and denial of entitlements. These systems however need to be accessible and the poor, including children, need to be legally empowered. In turn, legal empowerment will often spill over to all aspects of children's lives, resulting for example in greater life skills such as self-protection and self-esteem and therefore in enhanced harmonious development with a positive impact on the enjoyment of all rights. A functioning justice system can also work as a deterrent of further violations and therefore put an end to the spiral of violence and poverty.

The role of a functioning, accessible justice system and of people's legal empowerment in reducing poverty represents an opportunity for UN agencies to integrate justice for children into poverty reduction strategies. In countries where a Poverty Reduction Strategy (PRS) process is underway, this process and the broad consultation it implies will be the natural venue for promoting the integration of justice for children issues into poverty reduction strategies and to actively engage with partners.

## UN coherence agenda & aid effectiveness

In the context of the UN reform, UN entities are invited to increasingly work together on the implementation of programmes which are coherent within one overall framework, in the pursuit of one set of goals. The UN coherence agenda provides entities with opportunities to enhance their cooperation in various sectors, including the rule of law and justice for children. A decision of the Secretary General in November 2006<sup>22</sup> states that in order to strengthen and rationalise UN capacities in the rule of law area, one of the main objectives for UN entities should be to significantly enhance coherence and coordination across the UN system and with non-UN

19. General Assembly, *A World Fit for Children*, resolution 27/2, October 2002

20. Objective 1 calls for the best interests of the child in all actions; objective 2 calls for investment in children; objective 3 for the end of all forms of discrimination against children; objective 6 for the protection of children from harm and exploitation and objective 7 for the protection of children from war

21. General Assembly, Report of the independent expert for the United Nations study on violence against children, A/61/299, August 2006

22. Secretary-General, Decision No. 2006/47 – Rule of Law, November 2006



actors, both at the global and country level. With this objective in mind, lead entities have been designated for specific areas of rule of law. The designation of a lead entity for a particular area does not however imply an exclusive implementation role and lead entities will take into account and draw on the capacities and expertise of other entities. At country level, UNDAFs are expected to be the framework within which joint objectives and interventions as detailed below are formulated. The present paper is therefore a contribution to an enhanced UN coherence in the rule of law area.

In the same vein, UN entities are also directed by the World Summit (September 2005) to work in line with the Paris Declaration on Aid Effectiveness (March 2005) that aims at reforming the way aid is managed and delivered. The Declaration spells out principles for aid effectiveness: ownership, alignment, harmonization, mutual accountability and managing for results. This paper, therefore, contributes to increased harmonization around justice for children within the UN and offers the basis for increased harmonization with other actors.

### **PART THREE: JUSTICE FOR CHILDREN STRATEGIC INTERVENTIONS**

This part outlines how entities should work together on justice for children issues within the context of human rights, MDGs and UN coherence. The key strategies for cooperation are (1) to integrate justice for children issues within broader programmes aimed at establishing the rule of law and (2) to reinforce additional, complementary programmes to improve respect for children's rights, with a specific focus on community based efforts to promote access to justice and legal empowerment of the poor, excluded and marginalised.

#### **1. Rule of law as the overarching frame**

The justice for children approach is a contribution to an enhanced UN coherence in the rule of law area. In 2004, at the General Assembly, the Secretary General articulated a common language for the United Nations, incorporating concepts of justice, rule of law and transitional justice<sup>23</sup>. The international community

---

23. Security Council, the Rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary General, S/2004/616, August 2004

has recognized the importance of human security, the observance of human rights and rule of law strengthening in conflict and post-conflict societies. Consequently, the United Nations entities have been increasingly required to support rule of law institutions and processes to rebuild justice and bring reconciliation to affected communities. Within this context, there is growing international pressure to establish accountability mechanisms to investigate and record conflict-related human rights and humanitarian law violations committed against civilians as well as to include rule of law and justice reform efforts at the outset of post-conflict and peace building efforts. The establishment of ad hoc tribunals for post-conflict countries (e.g. former Yugoslavia, Rwanda), hybrid tribunals (e.g. Sierra Leone, Cambodia), the deployment of international magistrates in national jurisdictions (Kosovo), the International Criminal Court and numerous truth and reconciliation commissions reflect this momentum.

#### **a) Existing UN coordination structure**

A number of UN entities including UNDP, DPKO, OHCHR, DPA, UNODC, UNIFEM, UNICEF and OLA are active in rule of law activities and a growing number of initiatives are being undertaken both at the global and national levels. These initiatives relate to various areas such as governance, security sector reform<sup>24</sup> promotion of human rights or legal and judicial reform and range from legal and institutional reform to institutional capacity development, advocacy and service delivery. Entities 'respective mandates and activities in relation to rule of law and justice for children are listed in Annex III. These activities are coordinated at the global level in the following main forums:

- **Rule of Law Coordination and Resource Group:** As mentioned, in 2006, the Secretary General has defined a division of labour among key UN entities and established a Rule of Law Coordination and Resource Group in order to strengthen and

---

24. "Security sector reform (SSR) describes a process of assessment, review and implementation as well as monitoring and evaluation led by national authorities that has as its goal the enhancement of effective and accountable security for the State and its peoples without discrimination and with full respect for human rights and the rule of law". General Assembly/Security Council, Securing peace and development: the role of the United Nations in supporting security sector reform, Report of the Secretary General, A/62/659-S/2008/39, 23 January 2008

rationalise UN capacities in the rule of law area<sup>25</sup>. The objective of the Group is to ensure overall co-ordination across the three rule of law baskets<sup>26</sup>. It consists of key UN entities<sup>27</sup>, charged with specific functions as listed in Annex 1. Each agency is responsible (1) to enhance coherence and coordination across the UN and with non-UN actors at the global and country level and (2) to increase and deepen its own capacities with regards to priority areas. The Group is chaired by the Deputy Secretary-General and supported by a small secretariat, the Rule of Law Unit. Meetings are being held on the basis of needs and are attended by entities 'principals or designates. The General Assembly has reiterated support to the Group and the Rule of Law Unit in a resolution adopted on 6 December 2007<sup>28</sup>

- **Inter-agency Security Sector Reform (SSR) Task Force:** Within this overall framework, an Inter-agency Security Sector Reform Task Force has been set up in February 2007<sup>29</sup>, reflecting for the specific area of security reform – the division of labour established for the overall rule of law as described above. The functions of the Task Force include the elaboration of standards and principles to guide and inform UN activities in SSR and the facilitation of interagency consultation and coordination on SSR-related issues. It consults and liaises with the Rule of Law Coordination and Resource Group. The Task Force is co-chaired by UNDP and DPKO. It meets regularly, with a membership similar to the Rule of Law Coordination and Resource Group. A support unit will be created in 2008 to function as a strategic policy development and backstopping capacity for the UN system on SSR matters. It will be an interagency capacity located in DPKO. The Task Force has prepared the first Secretary-General report on SSR that defines and presents the scope of UN's SSR work<sup>30</sup>.

25. Secretary-General, Decision No. 2006/47 – Rule of Law, November 2006

26. See details on the three baskets below and in Annex I

27. DPKO, OLA, OHCHR, UNDP, UNHCR, UNODC, DPA and UNIFEM. While UNICEF is not part of the Group, its leadership in the area of juvenile justice and its role in issues related to DDR and MRE, among others, has been recognised

28. A/RES/62/70, 6 December 2007

29. Decision of the Secretary-General No. 2007/11, 16 February 2007

30. General Assembly/Security Council, Securing peace and development: the role of the United Nations in supporting security sector reform, Report of the Secretary General, A/62/659-S/2008/39, 23 January 2008

- **Global Protection Cluster Working Group (PCWG):** Established in September 2005 as part of the humanitarian reform, the Protection Cluster Working Group (PCWG) is the main inter-agency forum at headquarters-level for collaboration and overall coordination of activities supporting protection in humanitarian action. At the global level, the PCWG facilitates more predictable, accountable and effective response through capacity building, policy and tool development and operational support to the field. With engagement on rule of law in ongoing conflict/crisis situations within an early recovery framework, UNDP is recognized as the Rule of Law focal point agency within the PCWG. In its role as a Focal Point, UNDP aims to work closely with UNICEF and other PCWG members to support building sound justice systems in both conflict and natural disasters situations, and ensure effective linkages to the Rule of Law Coordination and Resource Group and the Rule of Law Unit.
- **The Interagency Panel on Juvenile Justice (IPJJ):** The Interagency Panel on Juvenile Justice (IPJJ) was established by ECOSOC Resolution 1997/30, and brings together the main UN agencies and NGOs working in the area of juvenile justice<sup>31</sup>. The Panel aims to facilitate and enhance country and global level coordination in juvenile justice by: identifying panel member organizations working at country level and their activities; encouraging respective field offices to work together towards a common approach at country level; promoting on-going dialogue with national partners in juvenile justice issues; identifying, developing and disseminating common tools and good practices; and bringing protection of the rights of children in conflict with the law onto the agenda of the international community.
- **At country level,** several forums are relevant to justice for children discussions, depending on the local situation. Justice for children could for example be discussed in the Protection cluster when established in response to a crisis or in human rights and child protection sector groups.

31. The Panel members currently are: Office of the United Nations High Commissioner for Human Rights (OHCHR); United Nations Children's Fund (UNICEF); United Nations Department of Peacekeeping Operations (DPKO); United Nations Development Programme (UNDP); United Nations Office on Drugs and Crime (UNODC); Committee on the Rights of the Child; Defence for Children International (DCI); Penal Reform International (PRI); Save the Children UK; Terre des hommes - aide à l'enfance (Tdh); World Organization Against Torture (OMCT); the International Association of Youth and Family Judges and Magistrates (IAYFJM) and the International Juvenile Justice Observatory (IJJO)

## b) Rule of law baskets

In a second report in 2006<sup>32</sup>, the Secretary-General has grouped rule of law activities in three main baskets<sup>33</sup>:

- Basket 1: rule of law at the international level
- Basket 2: rule of law in the context of conflict and post-conflict situations
- Basket 3: rule of law in the context of long-term development

Justice for children is a cross-cutting issue that should be addressed throughout all three baskets. Examples of how UN entities could work together in this respect are suggested below, using the main elements of each basket as the structure<sup>34</sup>. The system-related elements of baskets 2 and 3 are discussed under point 3 below (*Strengthening national systems from crisis outbreak through long-term development*). Other elements related to basket 2, such as transitional justice, are discussed under point 4 (*Additional aspects to take into account in crisis and post crisis situations*).

### 2. Rule of law at the international level<sup>35</sup>

The importance and relevance of UN entities 'commitment towards international law has already been mentioned earlier in this paper. In line with entities 'comparative advantages, practical examples of interventions in relation to justice for children within this first basket include:

- Promote the signature, ratification and implementation of multi-lateral treaties pertaining to justice for children<sup>36</sup>, as well as the use and application – at the national and regional levels – of relevant United Nations standards and norms in crime prevention

and criminal justice, and assist states in preparing the necessary implementing legislation in relation to the above mentioned legal instruments.

- Make the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child, their protocols and related justice for children documents, including relevant United Nations standards and norms in crime prevention and criminal justice, widely known and understood and promote their use in all policy making and law development processes; in particular, promote the General Comment from the UN Committee on the Rights of the Child<sup>37</sup> that defines the elements of the legal and policy framework in the area of juvenile justice.
- Promote attention to justice for children in human rights treaty bodies; in particular, support the role of the UN Committee on the Rights of the Child<sup>38</sup> in monitoring the international standards pertaining to justice for children, including through the dissemination of concluding observations and provision of technical support in their implementation.
- Promote attention to child victims and witnesses in the International Criminal Court and ad hoc or hybrid tribunals, including through the design of child friendly procedures in line with the UN Guidelines on justice in Matters involving Child Victims and Witnesses of Crime, with special attention to crimes of a particularly sensitive nature such as sexual assault experienced by children, which may expose the victim to socio-cultural repercussions such as honour crimes 'or ostracism.

### 3. Strengthening national systems from crisis and post-crisis through long-term development

Functioning state-run and non-state justice systems at the national level are obviously a pre-requisite for rule of law in the context of crisis and post-crisis situations (second basket), as well as in the context of long-term

32. General Assembly/Security Council, Uniting our strengths: Enhancing United Nations support for the rule of law, A/61/636–S/2006/980, December 2006

33. See Annex I on Rule of Law baskets and sectors

34. The Rule of Law Coordination and Resource Group is still discussing some of the content of the baskets. Current arrangements are also to be reviewed on a case by case basis. As a result, the suggestions listed in this paper will also be reviewed and fine-tuned as the Group progresses in its work

35. This basket covers international law issues at both the national and international levels

36. See list in Annex II

37. Committee on the Rights of the Child, General Comment No. 10 "Children's rights in juvenile justice", CRC/C/GC/10, 9 February 2007

38. When it comes to juvenile justice, the General Comment 10 issued by the UN Committee on the Rights of the Child in February 2007 and the ECOSOC resolution on Supporting national efforts for child justice reform (E/CN.15/2007/L.10/Rev.1, April 2007) are important guiding documents

development (third basket). Legal, judicial and law enforcement institutions, as well as non-formal mechanisms, need to be up and running and have the capacity to proceed with cases. They also need to be able to address children's specific rights and needs, which is often not the case. In parallel to strengthening the justice system, the social welfare/protection system should also enhance its ability to help ensure that child parties, victims, witnesses and offenders receive full respect for their rights. As they are inter-related, both the justice and social sectors will need to be strengthened and their interaction enhanced in order to bring lasting results for children.

So as to ensure continuity, rule of law activities in crisis, post-crisis and long-term development contexts need to closely mirror each other. The shift from the initial emergency response, to early recovery, post-crisis and mid/long term development is a continuous process where each stage builds on the previous one, without clear-cut separation in between the stages. Therefore, strategic interventions listed below need to be undertaken as soon as possible during or after the crisis.

The strategic interventions are divided into two main categories: (1) the integration of children's issues into broader rule of law efforts and (2) the strengthening of justice and social systems in order to ensure full respect for children's rights.

### **a) Integration of children's issues into broader efforts**

With this common approach, UN entities commit to fully reflect child rights as put forth in international norms and standards in all rule of law efforts, and in line with these norms, ensure that their interventions mainly promote restorative justice, diversion from the judicial system and alternatives to deprivation of liberty.

Interventions include:

- **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 legal, institutional and policy reform efforts** at national and regional levels<sup>39</sup>. The UN Convention on the Rights of the Child – the most widely-ratified human rights treaty – as well as relevant UN standards and norms in crime prevention and criminal justice may be a good entry points for broader legal, institutional and policy reform.
- **In institutional capacity development and training programmes** (in-service, initial, inclusion in curriculum) for legal and judicial institutions (prosecution, legal assistance and representation, ministries of justice, criminal law, court administration, civil law) and law enforcement, parliaments, paralegal professionals, the social sector, institutions and prison staff. Training on procedural or substantive issues could also be provided to non-state justice personnel and should include sensitization to a gender perspective.
- **In codes of conduct, standards for selection and recruitment and standards of practice** for law enforcement, judiciary, prisons management and staff, lawyers, social workers, paralegals and other professionals in touch with children in contact with the law.
- In programmes promoting **the accountability of law enforcement** such as, for example, police accountability mechanisms or citizen review boards of police conduct.
- When establishing or reforming human rights **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.
- When discussing and deciding on the allocation of **national budgets & international aid**, in order to ensure sufficient means for the reforms.

---

39. "Paralegals are laypersons, often drawn from the groups they serve, who receive specialized legal training and who provide various forms of legal education, advice and assistance to the disadvantaged". Stephen Golub, *Beyond Rule of Law Orthodoxy: the legal empowerment alternative*; Rule of Law Series, Carnegie Endowment for International Peace, Democracy and the Rule of Law Project, No. 41, October 2003; p. 33

## b) Strengthening of justice and social systems in order to ensure full respect for children's rights

In addition to the above, particular areas need to be reinforced in order to ensure full respect of children's rights, including:

- **Building the knowledge base on children in justice systems**, such as through the creation and maintenance of national databases on children in the justice system, the development of national research agendas on the nature and extent of crimes by and against children<sup>40</sup>, including victimological research, or analyses of the cost deprivation of liberty versus alternatives or of the impact of detention on creating a safe society. Research should be conducted on the use of non-state justice mechanisms by children and their respect for child rights within these mechanisms, always accounting for a gender perspective. These assessments should inform Common Country Assessments (CCA). Good justice for children practices should be documented.
- **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. The rights of particular groups of children, such as girls, minority and indigenous children, disabled children and children with HIV/AIDS, and the differential impact of justice systems on these groups is an important focus. This will be an opportunity to highlight for example that – violence against child victims, witnesses and offenders is preventable and not justifiable<sup>41</sup>, that many children in the criminal justice system do not belong there and that tough on crime' policies generally do not result in a safer society.
- **Promoting restorative justice, diversion and alternatives to deprivation of liberty**. In line with the principle of deprivation of liberty as a measure of last resort, restorative justice, diversion and constructive alternatives to deprivation of liberty that promote the child's reintegration into society should be established. Children can be considered a rela-

tively less controversial entry point to promote such alternative measures for adults as well.

- **Promoting non-state/informal justice mechanisms in line with child rights**. It is estimated that in many developing countries the vast majority of disputes are dealt with outside of the state-run system. 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.
- **Enabling the full involvement of the social sector** in justice for children issues and strengthening coordination between the social and justice sectors. The social sector has an important role to play at several levels: (1) in the prevention of conflict with the law (e.g. supporting families at risk), (2) during the judicial or extra-judicial process (e.g. preparing and/or assisting the child during the interview or conducting a social inquiry), (3) in diversion programs and the provision of alternatives to deprivation of liberty (e.g. providing orientation, supervision or probation services), (4) in the provision of support services to children victims of abuse, exploitation and violence, (5) at the reintegration stage (including preparing the family for the child's return).
- Assisting governments 'ability to prevent crimes against children 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. This includes **gender-based violence against children, including sexual violence, as well as trafficking**.

## 4. Legal empowerment & access to justice

Functioning national state-run and non-state justice systems as described above will remain irrelevant if children, including the most disadvantaged, cannot access it. Barriers to access can include economic

40. Recommendations from the Report of the independent expert for the United Nations study on violence against children, A/61/299, August 2006

41. Report of the independent expert for the United Nations study on violence against children, August 2006, A/61/299

Barriers, legal and institutional discrimination, lack of awareness, lack of capacity, insufficient outreach, lack of trust of formal institutions, inadequate protection, fear of reprisal or lack of physical access. Access to justice should as much as possible be maintained throughout emergencies, ensuring a response to usual 'legal claims as they occur in any society but also to those directly related to the crisis, such as property, guardianship or claims for assistance. Addressing these immediate issues is a necessary step in maintaining, strengthening or restoring rule of law. In line with a human rights based approach to programming, all people should have equal access to legal remedies. The principle of non-discrimination implies therefore a special focus on those groups that do not have access. Accordingly, programmes should pro-actively promote specific measures and support that favour marginalised or excluded groups, including children. Aspects of disempowerment particular to, or disproportionately experienced by, girls should be given particular attention.

Legal empowerment is a key concept in this respect. It can be defined as – the use of legal services and related development activities to increase disadvantaged populations 'control over their lives'<sup>42</sup>. Complementing the top-down, institutions-based rule of law approach, it generally strengthens civil society and the legal capacities and power of the poor, excluded and marginalized in order to address their priorities. Legal empowerment can be considered a component of access to justice but also has wider implications (in terms of increasing control over one's life). It is a necessary complement to legal and institutional reform as, in many countries; laws are not fully implemented and enforced, especially as far as the provisions for the most disadvantaged are concerned. Without proper legal empowerment, rule of law efforts also often do not give sufficient attention to the needs of those most in need, especially children, and cannot translate into significant improvements in people's lives. Legal empowerment work at the community level can in turn inform and influence legal reform at the national level.

Possible strategic interventions again include both the integration of children's issues into existing initiatives and interventions to be strengthened in order to ensure

full respect for children's rights. Regarding the former, the integration of children issues in access to justice initiatives would occur when identifying the groups whose equal access to justice are most at stake, as well as the barriers to access, and when defining the strategies to remove these. For the latter, interventions to be strengthened in order to ensure full respect for children's rights include:

- **Ensuring child rights education & legal awareness for all children** (including girls, displaced and migrant children, street children, orphans and separated children, children belonging to minority groups, children deprived of liberty, children with disabilities and other disadvantaged groups), **as well as for families and communities**. This implies that the child is informed of his or her rights and understands what to expect and not to expect from justice systems. This includes also understanding the benefits, but also the risks in seeking justice (e.g. in terms of security). As much as possible, such awareness programmes should be integrated in school curricula as well as in existing initiatives such as life-skills education, psychosocial counselling 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 but also as a way to defend the rights of the whole household. All adults working with children can actually be relevant resources for children to access justice systems, in terms of information and support.
- **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. This would also facilitate their adequate representation in restitution decision making processes.
- 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

---

42. Beyond Rule of Law Orthodoxy, the legal empowerment alternative; Stephen Golub; Carnegie Endowment for International Peace, October 2003

- Supporting **community-based legal and para-legal services for children**. This would include (1) developing the capacity of lawyers 'networks and Bar Associations, but also paralegal professionals, including women, from the concerned community. Paralegals are an important multi-faceted resource in providing basic legal information, advice, representing children in administrative processes, assisting litigation and generally promoting rights awareness. As members of the community, these people are often closer to children's concerns and less intimidating to them; (2) Support or establish NGO-run 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, along with other services (e.g. psychosocial counselling). In emergencies and post-emergencies, these services and professionals must be enabled to tackle guardianship, inheritance and other public law issues, in particular for orphaned, returning child refugees and internally displaced children.
- **Support civil society organizations in facilitating children's access to non-state justice systems**. 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. They should also assist these mechanisms to become more responsive to the needs of children.

## 5. Additional aspects to take into account in crisis and post-crisis situations

As already mentioned, the strategic interventions listed in the previous sections should be initiated as soon as possible from the outbreak of crisis, through the early recovery phase and post-crisis stages. This section describes additional possible interventions that reflect the specificities of crisis and post-crisis situations.

Crisis situations (conflicts and natural disasters) indeed often result in a partial or complete collapse of the justice and security sector – including for example damage to infrastructure and insufficient capacity and/or leadership to provide effective public

service, including administration of justice. In situations of armed conflict, continued threat of conflict and violence further compound this lack of institutional capacity. Conflict in itself can be a sign that the legal system has failed to manage disputes between groups or individuals. Also, in some cases, the police and other judicial institutions themselves might be a source of public insecurity, intimidation or violence or are mistrusted following abusive practices. In these cases, a country needs to undertake in-depth reforms to come to terms with past violations of human rights and other factors contributing to instability. In the context of conflict and post-conflict situations, the security sector is also of Particular relevance to justice for children. Security is a strong concern for populations and a particularly essential condition for recovery. It requires well-managed and competent personnel operating within an institutional framework defined by law. A badly managed security sector hampers development, discourages investment and contributes to perpetuate poverty.

Children are particularly affected by unstable situations and this specific vulnerability should be acknowledged at all times. They can be separated from their caregivers, orphaned or distressed by what they have seen and gone through.

Abuse, exploitation, violence and discrimination are generally exacerbated in times of crisis. Children are among the prime victims of gender-based violence, sexual exploitation or recruitment by armed forces. They are also often affected by increased domestic violence as external tensions in the community often permeate into homes. The proliferation of small arms and light weapons in the wake of war is a particular source of insecurity and intimidation for women and children, increasing both the frequency and severity of domestic violence. They sometimes are pushed into conflict with the law, as a survival strategy or as a direct consequence of the overall breakdown in order. Justice programming should therefore be complementary to humanitarian and relief work to prevent or mitigate situations of high risk for children during emergencies. As they eliminate impunity, fair and effective justice systems are also often a way to prevent additional violations.

In recent decades, children have been increasingly affected and targeted by warfare, including abduction,

rape, forced marriage and recruitment as soldiers. Most of these crimes are committed with impunity. A call for greater national and international accountability in this respect has led to developments in international law that have placed more importance on the prosecution of crimes against children<sup>43</sup>. Therefore, an important aspect of post-conflict Justice for Children is transitional justice. In his 2004 Report on rule of law and transitional justice in conflict and post-conflict situations, the Secretary General defined the notion as comprising – the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation<sup>44</sup>. These may include both judicial and non-judicial mechanisms, with different levels of international involvement and individual prosecutions, reparations, truth seeking, institutional reform, vetting and dismissals or a combination thereof. Accountability mechanisms may take many forms, including: the International Criminal Court (ICC), ad-hoc and hybrid tribunals, prosecution in national courts, and non-judicial mechanisms, such as Truth and Reconciliation Commissions and traditional practices.

Examples of strategic interventions in crisis and post-crisis contexts include:

- Ensuring that children's concerns and their rights are included in **peace agreements**. 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.
- Ensuring that children's concerns are included in discussion on **transitional justice** mechanisms from the outset – including in ad hoc investigations, fact finding and commissions of inquiry – and that provisions are made for their full-fledged participation in such mechanisms. 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.
- Promoting the post-crisis situation as an **opportunity to establish a juvenile justice** system adapted to the needs of the country and to develop national strategies aiming at the child's rehabilitation, including principles of restorative justice, diversion measures and alternatives to deprivation of liberty. Crisis situations indeed often provide opportunities for government restructuring and legislative overhaul and to build back better', including through a reform of the justice system. While many immediate post-crisis interventions focus on short-term capacity development, infrastructure rehabilitation and transitional justice initiatives, 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.
- In parallel, support should also be provided to **non-state justice** mechanisms as it is likely that they would have operated in some form throughout the crisis period and may play a critical role in the immediate aftermath when restoring security and rule of law is a priority. As already mentioned these mechanisms will often have to be brought in line with human rights – and more specifically women and girls' rights – for example through improved monitoring, awareness raising and capacity development.
- Ensuring that **children's concerns are included in security and justice discussions** and initiatives, including peacekeeping missions and joint UN assessments and planning missions, from the outset; advocate for their voices to be heard and promote understanding that the issues they face are likely to be key determinants in achieving peace. In terms of security sector reform, this might include for example including child rights, gender sensitization, mediation and conflict resolution in training for security forces and law enforcement and focusing on their responsibilities as duty-bearers in the protection of children. This should include training for peacekeeping missions, with a focus on military and police peacekeepers.
- (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**

43. UNICEF Innocent Centre, Expert Discussion on Transitional Justice and Children, Outcome Document, 10-12 November, 2005

44. Security Council, the Rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary General, S/2004/616, August 2004



**fulfilment of their rights.** In particular, in conflict situations, this should include supporting the establishment of a monitoring and reporting mechanism for child rights violations as per Security Council Resolution 1612<sup>45</sup>. Information collected through the mechanism should also inform transitional justice processes. Attention should also be paid to the implementation of Security Council Resolution 1325<sup>46</sup> on Women, Peace and Security that covers girls 'protection as well.

- **Developing the capacity of legal services, civil society and paralegals on legal issues** of particular relevance to children in crisis and post-crisis situations, such as guardianship, land and property rights (with due attention to the plight of girls who may not be permitted to lawfully inherit or own property), registration, national identification and citizenship, statelessness, as well as grave violations of human rights such as sexual-and-gender based violence. In doing so, specific attention should be given to possible discriminatory practices for example towards certain ethnic groups, girls, adopted or illegitimate children. Paralegal professionals should be composed of both women and men.
- **Developing the capacity of civil society to design and run programmes in relation to justice for children in emergencies**, aiming at keeping children away from conflict with the law (including information on the risks of exploitation, abduction and recruitment by armed forces), improving detention conditions or ensuring rapid disarmament, demobilization and reintegration of children who have been associated with armed forces, including as part of the overall efforts to demobilize and reintegrate militia groups and noting equal access to reinsertion packages for girls.
- **Advocating with donors** for significant resources to be invested in justice for children as part of the response to the crisis; for example, include justice for children issues in Common Humanitarian Action Plans (CHAP) and Consolidated Appeal Processes (CAP) when relevant, as well as joint programmes and funding through new mechanisms such as the Peace building Fund.

## 6. Cross-cutting areas of cooperation on justice for children

In addition to the above, a common UN approach to justice for children includes the following cross-cutting areas of cooperation, to be implemented by UN entities jointly at headquarters and country levels depending on the local context and capacities. These are generic activities that would need to be further developed in specific programming papers and adapted at country level:

- Developing common guidelines and tools:
  - Develop common guidelines and tools as informed by the needs at country levels, including possibly a handbook on programming on justice for children and monitoring indicators specific to children.
  - Document and collect existing as well as emerging good practices and lessons learned on the protection and participation of children in justice systems.
  - Create a website on justice for children (or expand an existing one) with links to each UN agency, including existing tools and good practices.
  - Develop guidelines on best interests determination in justice processes.
  - Develop ethical guidelines for all professionals working with children in contact with the law.
- Inter-Agency Advocacy:
  - Assign and maintain a dedicated focal point(s) within each UN agency involved and ensure that his/her contacts are widely shared among networks and reference groups working on justice.
  - Ensure that children's issues are systematically taken into account in UN documents on rule of law, access to justice, security sector reform and transitional justice.
  - Promote the issue of justice for children in existing UN networks and reference groups in both stable and unstable environments (such as the RoL Coordination and Resource Group and the Protection Cluster in emergencies situations).
  - Publicize the work of those networks and reference groups through the internet/intranet and publications
  - Develop specific country taskforces on justice for children within existing forums such as (child) protection networks.

45. Security Council, Resolution 1612, 26 July 2005

46. Security Council, Resolution 1325, 31 October 2000

- Fundraising:
  - Ensure that justice for children related funding requirements are reflected in funding frameworks prepared by UN agencies (such as CAP, UNDAF or bilateral).
  - Advocate with the government for justice for children to be taken into consideration in budget allocation
  - Advocate with donors for justice for children to be included into rule of law funding
  - Explore ways to allocate some of the existing rule of law funded projects to address justice for children
- Expanding partnerships:
  - Enhancing relationships with bilateral donors and international financial institutions such as the World Bank to work effectively with multi-donor trust funds implementing programmes on rule of law and justice for children
  - Explore partnerships with international and national NGOs working on justice for children issues
- Building internal capacity:
  - Organise joint training of UN staff on the issue of justice for children
  - Integrate justice for children issues in pre-deployment training and material for relevant staff in peacekeeping missions





# Guidance Note of the Secretary-General. UN Approach to Justice for Children (September 2008)



## 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 recognized 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 chil-

dren 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.
- 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 nonstarter 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;

## **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;
- 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;

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:

- 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 co-ordination 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 multidisciplinary 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, psycho-social counselling 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 sociolegal 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 fulfilment 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.





# **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)**



## **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); 3
- 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 help lines 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. 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. Child-friendly justice before judicial proceedings**

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. 10

#### ***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.





# Munyonyo Declaration on Justice for Children in Africa (24 January 2012)



On 7-8 November 2011 at Munyonyo, in Kampala, Uganda, representatives of governments, CSOs, INGOs, the African Committee of Experts on the Rights and Welfare of the Child, the UN Committee on the Rights of the Child, the African Union, UN agencies, UN experts and other experts, from all over Africa and other parts of the world, met to discuss about justice for children in Africa, taking into account the views of children, and adopted the following declaration:

## PREAMBLE

It is evident that with the advent of the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, most countries in Africa have made progress in passing new child rights laws. However, new child rights policies have not been fully integrated into the general development agenda of governments. Protection structures are largely neglected, and services are mostly ad hoc in nature, fragmented and do not achieve the desired effect on children. Definitions of child abuse have not been fully adapted to the African context and some forms of child abuse (for example, harmful traditional practices, corporal punishment and child labour) are still not totally recognised as abuse in Africa.

The implementation of children's rights in the justice system remains challenging within the informal and formal justice systems. One of the concerns is the lack of adequate legal provisions and mechanisms for the protection of victims and witnesses in most countries. They are often re-victimised during legal proceedings. Furthermore, children with disabilities and children belonging to minority groups are at higher risk of abuse when in contact with the justice system.

Despite the fact that deprivation of liberty should be a measure of last resort, many children are still kept behind bars. They are regularly incarcerated in the same

facilities as adults, frequently face horrible conditions and often endure lengthy periods of pre-trial detention. Detention facilities generally lack proper sanitary facilities, adequate food, and educational and recreational programmes. Children in detention are at high risk of violence including sexual abuse. Separating children from their families and communities causes serious damage to their physical, psychological and social development and the consequences of incarceration on children can be lifelong and denting. Far too few prevention and rehabilitation measures are in place, and although some new policies provide for diversion and alternatives to detention, the structures and resources required for implementation of these policies are normally absent or weak.

Many children in Africa are not registered at birth and cannot benefit from their rights as children because they cannot easily prove their ages when legally required. As a result, some States have instituted age verification procedures, many of which are neither child friendly nor accurate, nor unfairly place the burden of proof of age on the child. While it is pertinent that in the case of conflict or inconclusive evidence regarding the age of the child, the child must have the right to the benefit of doubt, this does not happen in practice.

Justice systems in Africa are complex. Most States have dualistic legal and governance systems that combine both informal justice system which is administered by community leaders and traditional authorities using customary laws and the formal justice system which is administered by the judiciary using written laws including colonial laws. In some countries in Africa, religious systems such as Sharia Law, also play a crucial role in the justice system. Thus, in Africa, ordinary citizens, including children, seek justice from a variety of mechanisms. These systems are sometimes disconnected, polarised and constrain children's access to justice.

Formal justice systems tend to be the least utilised by the population due to costs, limited accessibility and prolonged proceedings.

It is therefore important that cooperative and mutually supportive relationships are developed across all sectors and disciplines working in the field of justice for children.

## **CALL FOR ACTION**

### **1. To all actors:**

- Ensure that all children enjoy their rights in the justice system, whether they are in conflict with the law, or they are victims, witnesses, or subjects of judicial proceedings.
- Ensure that deprivation of liberty is used as a measure of last resort for children and promote alternative measures, such as diversion and restorative justice.

### **2. To the African Union:**

- Put the issue of justice for children on the agenda of the Heads of State Summit, and advance and adopt Guidelines on Action for Children in the Justice System in Africa, which shall guide States to take positive actions for children in the national justice systems;
- Urge States to make children's rights and welfare in justice a priority on their development agenda;
- Urge States to invest in programmes to respect and protect the rights of children in contact with the law;
- Provide the political and technical leadership and guidance to States to guarantee children's rights in the justice system in both law and practice.

### **3. To the African Committee of Experts on the Rights and Welfare of the Child:**

- Put the issue of justice for children on its agenda and support the further advancement of the Guidelines on Action for Children in the Justice System in Africa;
- Hold a consultation with CSOs and [I]NGOs and authorities and a Day of General Discussion on justice for children in Africa;

- Establish a working group on justice for children, mandated to draft a general comment covering all aspects of justice for children;
- Systematically raise the issue of justice for children, in particular when examining State Party reports and conducting investigative or fact-finding missions.

### **4. To the UN Committee on the Rights of the Child:**

- Continue the collaboration with the ACERWC and the relevant special procedures mechanisms;
- Ensure that child justice is reflected in the concluding observations to State Parties;
- Consider the possibility of drafting a General Comment on Children of incarcerated parents, as a follow-up to the 2011 Day of General Discussion.

### **5. To our Governments and Parliamentarians:**

- Increase budget allocations for children to the maximum extent of available resources in order to facilitate the development of effective systems of justice for children;
- Harmonise informal and formal justice systems by clearly defining jurisdictions, building working relationships between the two systems, and establishing procedures for their interaction;
- Strengthen the capacity of community leaders to promote and respect children's rights in the justice system;
- Define child abuse and violence against children within the national context in accordance with international and regional standards and ensure access to services and justice from the lowest to the highest level;
- Guarantee birth registration systems that are free, compulsory and accessible to all, and design child friendly guidelines for age verification to the benefit of children who cannot submit their birth certificate whenever required and that respect the rights and interests of the concerned children;
- Adopt and invest in programmes that prevent children from coming into conflict with the law and in programmes aimed at rehabilitating and reintegrating children in conflict with the law into society, with a view to minimizing recidivism;

- Establish and/or strengthen child protection systems including alternative family-based care for children in need of alternative care to enable them have a stable family environment thereby reduce the risk of them coming in conflict with the law;
- Strengthen child rights monitoring and accountability systems, and bring to justice those responsible for corruption, and child rights violations including arbitrary arrest and detention, extra-judicial killings, torture and other cruel, inhuman or degrading treatment;
- Establish specialised children's courts, Independent Human/Child Rights institutions with a mandate to consider children's rights in the justice system as a matter of priority;
- Strengthen child protection units within the police and provide institutionalised training on children's rights for all professionals in the field of justice for children, including social workers, lawyers and judges;
- Include continuous training on children's rights in schools' curricula;
- Invest in community based diversion and alternative dispute resolution initiatives;
- Develop free legal aid and paralegal programmes to facilitate children's access to justice;
- Ensure protection measures are in place for all children who come in contact with the law, giving particular attention to children with disabilities, children at risk and children belonging to minority groups;
- Increase opportunities for children to participate in decisions that affect them and their communities and foster their roles as positive social actors;
- Support the mandates and collaborate with the UN Special Representatives of the Secretary General on Violence against Children and on Children and Armed Conflict, and other relevant international and regional special procedures;
- Acknowledge the competence of, cooperate with, and respect and implement the decisions of international and regional human rights complaints mechanisms.
- Request technical advice and assistance in justice for children provided by the relevant UN agen-

cies and programmes in particular the Interagency Panel on Juvenile Justice (UNICEF, OHCHR, UNODC, DPKO, UN CRC, UNDP);

- Collaborate with the African Committee of Experts on the Rights and Welfare of the Child and other international and regional human rights bodies in submitting periodic reports and implement their Recommendations;
- Conduct research and collect and publish data and information concerning children in contact with the national justice system and make the data available to relevant stakeholders;
- Cooperate with CSOs and [I]NGOs in the implementation of joint programmes on justice for children.

## **6. To the United Nations Committee on the Rights of the Child:**

- Continue the collaboration with the African Committee of Experts on the Rights and Welfare of the Child and the relevant special procedure mechanisms;
- Ensure that justice for children is reflected in the concluding observations to States Parties;
- Consider the possibility of drafting a General Comment on Children of incarcerated parents, as a follow-up to the 2011 Day of General Discussion.

## **7. To the United Nations and other international partners:**

- Provide resources and technical assistance to key government ministries to develop and implement national policies and plans of action to set up effective justice systems for children;
- to establish data collection and management systems and to build the capacity of legal and law enforcement professionals;
- Support and provide financial assistance to CSOs and [I]NGOs to enable their active participation in national policy making;
- Make the issue of children's rights in the justice system paramount on the international agenda and organise frequent international fora to further this agenda;

- Conduct and fund ongoing research on children's rights and examine the dynamics of issues affecting children.

## **8. To [I]NGOs and CSOs:**

- Monitor the implementation of children's rights with regard to child justice and provide governments, regional and international bodies with facts and evidence including by participating in treaty body reporting procedures and submitting complaints to relevant international and regional mechanisms;
- Persistently engage government to take action to improve respect for children's rights in the justice system;
- Assist governments with relevant training on children's rights in the justice system and other capacity building initiatives for government officials and community-based actors who encounter children in their work;
- Raise public awareness of children's rights in the justice system and mobilise the public on their role in justice for children;
- Educate children on their rights in justice and increase their capacity to understand and enforce their rights;
- Help children to access justice through the legal system where their rights have been violated;
- Engage with children and ensure that their views are shared with relevant stakeholders and taken into account in the justice system.

## **9. To Community Leaders, Religious Leaders and Parents:**

- Promote and advance good traditional practices that respect and protect the rights of children, in accordance with international and regional standards such as good parenting and family based care and prohibit traditional practices that are harmful to the health, welfare and development of children;
- Strengthen mechanisms for alternative dispute resolution, and ensure children's representation and participation;

- Improve cooperation with the police and other formal justice institutions in cases of child abuse, violence against children, and other child rights violations.

## **10. To the Media:**

- Play a key role in promoting children's rights in the justice system;
- Make the issues affecting children in contact with the law visible, using accurate and balanced information without stigmatising or further victimising individual children;
- Protect the dignity, identity and privacy of children.





---

**Additional Documents:**  
**Consideration of Reports Submitted by  
States Parties under Article 44 of the  
Convention – *Concluding Observations of  
the Committee on the Rights of the Child***

---









## CONCLUDING OBSERVATIONS

# Benin

20 October 2006, CRC/C/BEN/CO/2



### Administration of Juvenile Justice

75. The Committee notes efforts made by the State party, including the development of a strategy to set up a juvenile justice system in accordance with the Convention which envisages alternative measures for juveniles in conflict with the law in order to rehabilitate children, foster reintegration into the community and prevent relapse. Nevertheless, the Committee is concerned at reports of inhumane conditions in the juvenile quarters and reports that children can be detained for a long period of time in police stations and detention centres before trial and that children in detention centres are not always separated from adults. The Committee is also concerned at the insufficient number of juvenile judges in the country and the lack of alternative measures to deprivation of liberty. Furthermore, the Committee regrets the lack of a minimum age for criminal responsibility.

76. The Committee recommends that the State party continue to strengthen its efforts to bring the administration of juvenile justice fully into line with the Convention, in particular articles 37, 40 and 39, and with other United Nations standards in the field of juvenile justice, including 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), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules) and the Vienna Guidelines for Action on Children in the Criminal Justice System and the recommendations of the Committee made at its day of general discussion on juvenile justice held on 13 November 1995 (CRC/C/46, paras. 203-238). In this regard, the Committee recommends in particular that the State party:

- a) Strictly enforce existing legislation and legal procedures with more intense and systematic training for judges, counsels for persons under 18, penitentiary staff and social workers on children's rights and special needs;
- b) Urgently establish an age for criminal responsibility at an internationally acceptable level;
- c) Ensure that children deprived of their liberty remain in regular contact with their families while in the juvenile justice system, when appropriate;

d) Implement alternative measures to deprivation of liberty, such as probation, community service or suspended sentences, in order to ensure that persons below 18 are deprived of liberty only as a last resort and for the shortest appropriate period of time;

e) Consider establishing family courts with specialized juvenile judges; and

f) Facilitate the reintegration of children in their families and communities and follow-up by social services.



## CONCLUDING OBSERVATIONS

# Burkina Faso

9 February 2010, CRC/C/BFA/CO/3-4



### Administration of Juvenile justice

76. The Committee welcomes the Act N° 28-2004/AN of 8 September 2004 on judiciary organization, the appointment of two magistrates for children, the creation of two juvenile justice courts respectively in the tribunals and Courts of Appeal of Bobo-Dioulasso and the establishment of Child Protection Brigades. The Committee is however concerned that the magistrates for children have not been adequately trained and that in the absence of procedures governing the functioning of the juvenile justice system, the juvenile justice courts do not function. The Committee is also concerned that children in conflict with the law:

- a) Continue to be judged by adults courts throughout the State party;
- b) Are rarely provided with legal assistance and can't benefit from legal assistance at the early stages of the proceedings;
- c) May be kept weeks in police custody;
- d) Are often placed in pre-trial detention for lengthy periods;
- e) Are liable to prison sentence up to 20 years;
- f) Continue to be detained together with adults in police stations and in detention facilities;

g) Loose contact with their families while in detention, especially those who are jailed very far from their home because there is not detention facility in the provinces where they live; and

h) Rarely benefit from educational measures in prison to facilitate their social reinsertion.

77. The Committee recommends that the State party continue its efforts to improve the juvenile

justice system in conformity with articles 37 b), 40 and 39 of the Convention, as well as 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 (the Havana Rules). While taking into account the Committee's General Comment No. 10 on the administration of juvenile justice (CRC/C/GC/10, 2007), the Committee also urges the State party to:

a) Promptly adopt the rules of procedure which are necessary for the functioning of the new juvenile justice system in Ouagadougou and Bobodioullasso and introduce the institution of specialized judges in all the provinces;

b) Until such time that the establishment of juvenile courts becomes possible in all provinces, take all measures to ensure that the review of criminal cases concerning children is conducted by judges trained accordingly;

c) Ensure that public prosecutors and judges actively monitor arrest practices and conditions for children in police custody;

d) Ensure that detention is applied as a measure of last resort and for the shortest possible period of time and be reviewed on a regular basis with a view of withdrawing it;

e) Promptly adopt the regulations needed to implement the 2001 Decree on legal assistance and make sure that adequate legal assistance is provided at an early stage of legal proceedings;

f) Ensure that pre-trial detention be used only for serious crimes and that alternative measures be used for others;

g) Take all the urgent necessary measures to remove children from adult detention facilities;

h) Ensure that children remain in contact with their families while in detention;

i) Ensure that all children deprived of liberty have access to education, health and recreational facilities;

j) Develop a multi-sectoral preventive response to child delinquency, such as supporting the role of families and com-

munities in order to help eliminate the social conditions leading children to come into contact with the criminal justice system, and take all possible measures to avoid stigmatization; and

k) Request further technical assistance in the area of juvenile justice and police training from the Interagency Panel on Juvenile Justice, which includes UNODC, UNICEF, OHCHR, and NGOs.



## CONCLUDING OBSERVATIONS

# Burundi

13 September, CRC/C/BDI/CO/2



## Administration of Juvenile Justice

76. The Committee notes with interest the establishment of a National Plan of Action on Juvenile Justice for the period 2009-2010 and the recent establishment of a national unit for the judicial protection of children (*cellule nationale de la protection judiciaire de l'enfant*) within the Ministry of Justice. However, the Committee is concerned that the criminal juvenile justice system is not in place in the whole country, since juvenile courts has not yet been established in all provinces, and faces serious problems of corruption and lack of capacity to effectively prosecute cases. In particular, the Committee is concerned at:

a) The fact that the Criminal Procedure Act and the national strategy for juvenile justice have not yet been adopted;

b) Reports according to which children are detained, prosecuted, tried and eventually sentenced by the same courts and following the same procedures as adults;

c) The failure to separate minors from adults in detention centres due to the lack of a specific juvenile detention centre;

d) Violations of due process rights including the right to legal assistance;

e) The fact that often children stays in pre-trial detention for long period, awaiting for trial; and

f) Reports of ill-treatment, coerced confessions, sexual violence and prostitution in incarceration.

77. The Committee urges the State party to ensure that juvenile justice standards are fully implemented, in particular, articles 37 b), 39 and 40 of the Convention, as well as 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 (the Havana Rules). In particular the Committee recommends that the State party, while taking into account the Committee's general comment No. 10 (2007) on children's rights in juvenile justice:

- a) Establish a child focused juvenile justice system which operates in all Provinces, with separate courts and fully and promptly implement international law and standards regarding children in conflict with the law;
- b) Speed up the adoption of the revised Criminal Procedure Act and the national strategy on juvenile justice;
- c) Ensure the acceleration of procedures, in order that all children accused of crimes are brought promptly to trial;
- d) Ensure that incarceration of children is used as a last resort and imposed for the minimum time possible and that children are always detained separately from adults, whether in police detention or in prisons;
- e) Investigate and if appropriate prosecute or otherwise sanction persons accused of physically or sexually abusing detained children;
- f) Guarantee free legal assistance to all children accused of crimes;
- g) Take the necessary steps to ensure that persons working with children in the justice system, juvenile judges, etc. receive appropriate training; and
- h) Ensure that community based rehabilitation alternatives are in place nationwide
- i) Make use of the technical assistance tools developed by the Interagency Panel on Juvenile Justice and by its members, which include UNODC, UNICEF, OHCHR and NGOs, and to seek technical advice in the area of juvenile justice from members of the panel.



## CONCLUDING OBSERVATIONS

# Cameroun

18 February 2010, CRC/C/CMR/2

## Administration of Juvenile justice

79. The Committee welcomes the entry into force in 2007 of the Penal Procedure Code which takes into account the relevant international standards on administration of juvenile justice. The Committee notes with interest the February 2009 Decree which calls for the establishment of the alternative detention center for minors in Douala and the completion of the minors' quarters at the New Bell Prison in Douala. Nevertheless, the Committee is deeply concerned at:

- a) The fact that children and adults are not separated in prisons despite Penal Code provisions which call for their separation;
- b) The inadequate number of judges and courts;
- c) Long periods of pre-trial detention, inadequate and insufficient health care services for children in prisons as well as the limited resources allocated;
- d) The low legal age of criminal responsibility at 10 years;
- e) The limited social services and counselling available for children in courts, in particular in cases of rape or abuse; and
- f) The fact that social workers in the courts are insufficiently trained

80. The Committee urges the State party to further improve the juvenile justice system, through the establishment of juvenile courts and the appointment of trained juvenile judges and ensure that the juvenile justice system fully integrates and implements international juvenile justice standards, in particular articles 37 b), 40 and 39 of the Convention, as well as 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), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules) and the Committee General Comment No. 10 (2007) on Children's rights in juvenile justice. In particular, the Committee recommends that the State party take the necessary steps to:

- a) Raise the minimum age of criminal responsibility to 12 years, at least;

b) Take preventive measures in order to help eliminate the social conditions leading children to enter into contact with the criminal justice system;

c) Provide sufficient specialized courts in all the regions, with trained specialized judges and staff, including prosecutors, lawyers, law enforcement officials and social workers, in particular those dealing with children victims of exploitation, rape and other abuse;

d) Develop alternatives to the deprivation of liberty, such as probation, mediation, community services orders, or suspended sentences, wherever possible;

e) Ensure that the young offenders, when in pre-trial detention have a rapid access to juvenile justice procedures;

f) Provide to children deprived of their liberty adequate and sufficient health care services;

g) Ensure that children are always separated from adults in all detention facilities, including in police stations' cells;

h) When establishing additional alternative detention mechanisms, allocate them with the necessary human, technical and financial resources; and

i) Seek technical assistance and other cooperation from the United Nations Interagency Panel on Juvenile Justice, which includes UNODC, UNICEF, OHCHR and NGOs.

81. The Committee recommends that the State party ensure, through adequate legal provisions and regulations, that all children victims (e.g. children victims of abuse, domestic violence, sexual and economic exploitation, abduction, sale, trafficking) and/or witnesses of such crimes, are provided with the protection required by the Convention and take fully into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social resolution 2005/20 of 22 July 2005).



## CONCLUDING OBSERVATIONS

# Central African Republic

18 October 2000, CRC/C/15/Add.138

## Juvenile Justice

76. While recognizing the State party's efforts in this domain, the Committee remains concerned at the limited progress achieved in establishing a functioning system of juvenile justice throughout the country. In particular, the Committee is concerned at the small number of juvenile courts, none of which is outside Bangui, the detention and imprisonment of juveniles with adults and the absence of assistance towards the rehabilitation and reintegration of juveniles following justice proceedings.

77. The Committee recommends that the State party pursue its efforts to train judges in juvenile justice and that the State party extend such training to other law enforcement officials, including police and prison personnel. The Committee also recommends that every effort be made to separate children from adults in detention and prison facilities and to establish a programme of rehabilitation and reintegration of juveniles following justice proceedings. The Committee further recommends that the State party make further efforts to implement the Convention, in particular articles 37, 40 and 39, and other United Nations standards in the field of juvenile justice, including 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. The Committee recommends that juvenile courts be established at all prefectures and that the State party seek international assistance in the area of juvenile justice from, among others, OHCHR, the Centre for International Crime Prevention, UNICEF and the International Network on Juvenile Justice, through the Coordination Panel on Technical Advice and Assistance on Juvenile Justice.







## CONCLUDING OBSERVATIONS

# Chad

12 February 2009, CRC/C/TCD/CO/2



### Juvenile Justice

85. The Committee notes with interest that legislation provides for the creation of children's divisions in the courts of first and second instance. Nevertheless, the Committee regrets that the revision of the Penal Code, begun in 2003, has not been completed. The Committee is concerned that the State party does not have an appropriate mechanism to monitor the effective application of pre-trial detention, that children may be held in custody together with adults, and that detention centres are overcrowded. The Committee is further concerned that children in conflict with the law may receive penalties of up to ten years in prison for serious crimes.

86. The Committee urges the State party to ensure that juvenile justice standards are fully implemented, in particular articles 37 b), 39 and 40 of the Convention, as well as 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 (the Havana Rules). In particular the Committee recommends that the State party, while taking into account the Committee's general comment No. 10 (2007) on the administration of juvenile justice:

- a) Take all necessary measures, including strengthening the policy of alternative sanctions for juvenile offenders, to ensure that children are held in detention only as a last resort and for as short a time as possible;
- b) Take all necessary measures to ensure that when detention is carried out, it is done so in compliance with the law and respects the rights of the child as set out under the Convention, that the ten-hour time limitation for custody and the general conditions of pre-trial detention are respected and that children are held separately from adults both in pre-trial detention and after being sentenced;
- c) Take all necessary measures to ensure that children are not ill-treated in detention, that conditions in detention facilities are not contrary to the child's development and meet

international minimum standards, and that cases involving juveniles are brought to trial as quickly as possible;

d) Take the necessary steps to ensure that persons working with children in the justice system, juvenile judges, etc. receive appropriate training;

e) Seek technical assistance and other cooperation from the United Nations Interagency Panel on Juvenile Justice, which includes UNODC, UNICEF, OHCHR and NGOs.

### Protection of witnesses and victims of crimes

87. The Committee also recommends that the State party ensure, through adequate legal provisions and regulations, that all children victims and or witnesses of crimes, e.g. children victims of abuse, domestic violence, sexual and economic exploitation, abduction, and trafficking and witnesses of such crimes, are provided with the protection required by the Convention and that it take fully into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council resolution 2005/20 of 22 July 2005).



## CONCLUDING OBSERVATIONS

# Congo

20 October 2006, CRC/C/COG/CO/1



### Juvenile Justice

86. While welcoming the study on juvenile justice undertaken by the State party with the technical assistance of UNICEF, the Committee is concerned that most officials dealing with juvenile justice are not aware of the rights of the child. It expresses further concern at the lack of juvenile judges in the country, and at the fact that children are often detained with adults.

87. The Committee recommends that the State party implement the recommendations of the study on juvenile justice.

The Committee also recommends that the State party fully bring the system of juvenile justice in line with the Convention, in particular articles 37, 40 and 39, and with other United Nations standards in the field of juvenile justice, including 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), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules), and the Vienna Guidelines for Action on Children in the Criminal Justice System; and the recommendations of the Committee made at its day of general discussion on juvenile justice held on 13 November 1995 (CRC/C/46, paras. 203-238). In this regard, the Committee recommends that the State party:

- a) Take all necessary measures to ensure that persons below 18 are only deprived of liberty as a last resort and when in custody are in any case separated from adults;
- b) Take urgent steps to substantially improve the conditions of detention of persons below 18 when deprived of their liberty in conformity with international standards;
- c) Provide that persons below 18 deprived of liberty are provided with a full programme of educational activities (including physical education);
- d) Establish an independent monitoring system with access to juvenile detention facilities;
- e) Train professionals in the area of recovery and social reintegration of children; and
- f) Seek technical assistance from the United Nations Inter-agency Panel on Juvenile Justice.

Children belonging to a minority or indigenous group

88. The Committee notes with appreciation that the Constitution prohibits discrimination and welcomes the establishment of the Inter-Ministerial Committee to coordinate actions on issues related to indigenous people. It also commends the State party for having drafted a Law on the Promotion and Protection of the Rights of Indigenous Populations in the Republic of the Congo and for having elaborated with the technical assistance of UNICEF a development programme designed for indigenous populations. However, the Committee is concerned at the alarming situation of the latter, in particular indigenous children, who are victims of economic exploitation, systematic violence, including rape, and systematic discrimination, in particular with respect to access to health services, education and birth registration. The Committee is also concerned that the draft Law on the Promotion and Protection of the Rights of Indigenous Populations does not refer explicitly the rights of indigenous children.

89. The Committee recommends that the State party:

- a) Amend the draft Law on the Promotion and Protection of the Rights of Indigenous Populations in the Republic of the Congo, so as to ensure that it explicitly covers all areas of the Convention on the Rights of the Child;
- b) Adopt a Plan of Action for Indigenous People which would address discrimination at all levels;
- c) Dedicate more attention to securing the physical integrity of indigenous children;
- d) Take affirmative measures to ensure that indigenous children gain de facto enjoyment of their rights, in particular in the area of health and education; and
- e) Take due account of the recommendations adopted by the Committee following its day of general discussion on the rights of indigenous children held in September 2003.



## CONCLUDING OBSERVATIONS

# Cote d'Ivoire

9 July 2001, CRC/C/15/Add.155



## Administration of Juvenile Justice

61. While recognizing the State party's efforts in this domain, the Committee remains concerned at the limited progress achieved in establishing a functioning system of juvenile justice throughout the country. In particular, the Committee is concerned at the small number of juvenile courts, judges and social workers. In addition, the Committee is deeply concerned about the poor conditions of detention, due notably to overcrowding, the overuse of pre-trial detention, the low minimum age of criminal responsibility (10 years), the lengthy periods before juvenile cases can be heard and, the absence of assistance towards the rehabilitation and reintegration of juveniles following judicial proceedings.

62. The Committee recommends that the State party take additional steps to reform the system of juvenile justice in the spirit of the Convention, in particular articles 37, 40 and 39, and other United Nations standards in the field of juvenile justice, including 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.

63. In addition, the Committee recommends that the State party:

- a) Undertake all necessary measures to ensure that juvenile courts are accessible to children in all regions of the State party;
- b) Consider deprivation of liberty only as a measure of last resort and for the shortest possible period of time; protect the rights of children deprived of their liberty and monitor their conditions of detention; and ensure that children remain in regular contact with their families while in the juvenile justice system;
- c) Introduce training programmes on relevant international standards for all professionals involved with the system of juvenile justice;
- d) Make every effort to establish a programme of rehabilitation and reintegration of juveniles following judicial proceedings;
- e) Request technical assistance in the area of juvenile justice and police training from, among others, OHCHR, the United Nations Centre for International Crime Prevention, the International Network on Juvenile Justice and UNICEF, through the United Nations Coordination Panel on Technical Advice and Assistance on Juvenile Justice.



## CONCLUDING OBSERVATIONS

# Ethiopia

1st November 2006, CRC/C/ETH/CO/3



## Juvenile Justice

77. The Committee recognizes the efforts undertaken, for example through the Juvenile Justice Project Office, however notes that its impact has been hampered by limited

resources. Furthermore the Committee regrets the absence of a child-friendly juvenile justice system in most of the country and the lack of legal aid representatives for child victims of offences as well as accused children. The Committee is concerned that deprivation of liberty is not used as a measure of last resort and at the lack of separation of children from adults in pre-trial detention, as well as, the practice of long-term detention and institutionalization. Furthermore the Committee is concerned at the very low minimum age of criminal responsibility (set at age 9).

78. The Committee urges the State party to ensure that juvenile justice standards are fully implemented, in particular articles 37 b), 40 and 39 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules), and in the light of the Committee's day of general discussion on the administration of juvenile justice held on 13 November 1995 (CRC/C/46, paras.203-238). In particular, the Committee recommends that the State party:

- a) Raise the minimum age for criminal responsibility to an internationally acceptable level;
- b) Continue to increase the availability and quality of specialized juvenile courts and judges, police officers and prosecutors through systematic training of professionals;
- c) Provide adequate financial, human and technical resources to the juvenile courts at sub-county level;
- d) Strengthen the role of local authorities, especially with regard to minor offences;
- e) Provide children, both victims and accused, with adequate legal assistance at an early stage of legal proceedings;
- f) Be guided in this respect by the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (resolution 2005/20 of the Economic and Social Council);
- g) Improve training programmes on relevant international standards for all professionals involved with the system of juvenile justice;
- h) Ensure that detention and institutionalization of child offenders is only resorted to as a last resort;
- i) Seek technical assistance and other cooperation from the United Nations Interagency Panel on Juvenile Justice.





## CONCLUDING OBSERVATIONS

# Gabon

3 April 2002, CRC/C/15/Add.171



### Administration of Juvenile Justice

66. The Committee is concerned at the absence of juvenile courts and juvenile judges, and the limited number of social workers and teachers working in this field. In addition, the Committee is deeply concerned at the failure to separate children from adults in jails (with the exception of the central jail in the capital); the poor conditions of detention, mainly due to the overcrowding in detention and prison facilities; the frequent recourse to and excessive length of pre-trial detention; the long length of time before juvenile cases are heard; the very limited possibilities for the rehabilitation and reintegration of juveniles following judicial proceedings; and the sporadic training of judges, prosecutors and prison staff.

67. The Committee recommends that the State party take additional steps to reform the legislation concerning the system of juvenile justice in line with the Convention, in particular articles 37, 40 and 39, and other United Nations standards in the field of juvenile justice, including 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), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, and the Vienna Guidelines for Action on Children in the Criminal Justice System.

68. As part of this reform, the Committee particularly recommends that the State party:

- a) Undertake all necessary measures to ensure the establishment of juvenile courts and the appointment of trained juvenile judges in all regions of the State party;
- b) Consider deprivation of liberty only as a measure of last resort and for the shortest possible period of time, limit by law the length of pre-trial detention, and ensure that the lawfulness of this detention is reviewed by a judge without delay and then regularly;
- c) Provide children with legal and other assistance at an early stage of the procedure;

d) Provide children with basic services (e.g. schooling);

e) Protect the rights of children deprived of their liberty and improve their conditions of detention and imprisonment, notably by establishing special prisons for children with conditions suitable to their age and needs and by ensuring the presence of social services in all detention centres in the country; and in the meantime by guaranteeing separation from adults in all prisons and in pre-trial detention places all over the country;

f) Ensure that children remain in regular contact with their families while in the juvenile justice system;

g) Introduce regular medical examination of children by independent medical staff;

h) Establish an independent child-sensitive and accessible system for complaints for children;

i) Introduce training programmes on relevant international standards for all professionals involved with the system of juvenile justice;

j) Make every effort to establish a programme of rehabilitation and reintegration of juveniles following judicial proceedings;

k) Take into consideration the recommendations of the Committee made at its day of general discussion on juvenile justice (CRC/C/46, paras. 203-238);

l) Request technical assistance in the area of juvenile justice and police training from, among others, the Office of the High Commissioner for Human rights, the United Nations Centre for International Crime Prevention, the International Network on Juvenile Justice and UNICEF, through the United Nations Coordination Panel on Technical Advice and Assistance on Juvenile Justice.







## CONCLUDING OBSERVATIONS

# Guinea

10 May 1999, CRC/C/15/Add.100



### Administration for Juvenile Justice

36. While welcoming the cooperation of the State party with non-governmental organizations and UNICEF in its efforts to monitor the situation of children deprived of liberty and to establish a juvenile justice system, the Committee expresses its concern at the insufficient number of facilities for the detention of juveniles and at the fact that juveniles are detained with adults. The Committee is also concerned at the insufficiency of facilities and programmes for the physical and psychological recovery and social reintegration of juveniles. The Committee is further concerned that the deprivation of liberty of a child is not being used as a measure of last resort, as established by the Convention. The Committee recommends that the State party take all measures to integrate fully the provisions of the Convention, in particular articles 37, 40 and 39, as well as other relevant international standards in this area, such as the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, in its legislation, policies and programmes. Furthermore, the Committee recommends that the State party consider seeking international assistance from, *inter alia*, the Office of the United Nations High Commissioner for Human Rights, the Centre for International Crime Prevention, the International Network on Juvenile Justice and UNICEF, through the Coordination Panel on Juvenile Justice.



## CONCLUDING OBSERVATIONS

# Haiti

18 March 2003, CRC/C/15/Add. 202



### Children in conflict with the law

62. The Committee notes that the administration of juvenile justice is governed by the Act of 7 September 1961 and the Decree of 20 November 1961, but the Committee remains concerned that a juvenile justice system does exist only in Cap Haitien and Port-au-Prince. The Committee is also concerned that children may stay a long time in pre-trial detention, at the failure to separate children from adults in places of detention (with the exception of the Fort National, in Port-au-Prince), about allegations of ill-treatment by law enforcement officers, and about the conditions of detention of minors. The Committee is further concerned at the very limited possibilities for the rehabilitation and reintegration of juveniles following judicial proceedings and at the sporadic training of judges, prosecutors and prison staff.

63. The Committee recommends that the State party take the necessary steps to reform the legislation concerning the system of juvenile justice, in line with the Convention, in particular articles 37, 40 and 39, and other United Nations standards in the field of juvenile justice, including 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), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, and the Vienna Guidelines for Action on Children in the Criminal Justice System.

64. As part of this reform, the Committee particularly recommends that the State party:

- a) Undertake all necessary measures to ensure that juvenile courts are established and trained juvenile judges appointed in all regions of the State party;
- b) Consider deprivation of liberty as a measure of last resort and for the shortest possible period of time, limit by law the length of pre-trial detention, and ensure that the lawfulness of this detention is reviewed by a judge without delay and regularly thereafter;
- c) Provide children with legal and other assistance at an early stage of the procedure;
- d) Provide children with basic services (e.g. schooling);

e) Protect the rights of children deprived of their liberty and improve the conditions of detention and imprisonment, notably by establishing special prisons for children with conditions suitable to their age and their needs and by ensuring the availability of social services in all detention centres in the country, and in the meantime by ensuring that children are separated from adults in all prisons and pre-trial detention places throughout the country;

f) Request technical assistance in the area of juvenile justice and police training from, among others, OHCHR and members of the United Nations Coordination Panel on Technical Advice and Assistance on Juvenile Justice.



## CONCLUDING OBSERVATIONS

### Iraq

26 October 1998, CRC/C/15/Add.94



29. The Committee is concerned at the situation with respect to the administration of juvenile justice and in particular its incompatibility with the Convention, as well as other relevant United Nations standards. The Committee recommends that the State party consider taking additional steps to reform the system of juvenile justice in the spirit of the Convention, in particular articles 37, 40 and 39, and of other United Nations standards in this field, such as 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. Particular attention should be paid to considering deprivation of liberty only as a measure of last resort and for the shortest possible period of time, to the protection of the rights of children deprived of their liberty, to due process of law and to the full independence and impartiality of the judiciary. Training programmes on relevant international standards should be organized for professionals involved with the system of juvenile justice. The Committee suggests that the State party consider seeking technical assistance from, inter alia, the Office of the United Nations High Commissioner for Human Rights, the Centre for International Crime Prevention, the International Network on Juvenile Justice and UNICEF, through the Coordination Panel on Technical Advice and Assistance in Juvenile Justice.

30. Finally, the Committee recommends that, in the light of article 44, paragraph 6, of the Convention, the initial report and written replies presented by the State party be made widely available to the public at large and that the publication of the report be considered, along with the relevant summary records and the present concluding observations of the Committee. Such a document should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within the Government and the general public, including non-governmental organizations.



## CONCLUDING OBSERVATIONS

### Jordan

29 September 2006, CRC/C/JOR/CO/3



## Administration for Juvenile Justice

94. The Committee welcomes the Juvenile Justice Reform Programme in Jordan and the State party's close collaboration with the United Nations Office on Drugs and Crime (UNODC), UNICEF and others to improve coordination and collaboration amongst partners working in the field of juvenile justice. While acknowledging the State party's efforts to protect the rights and the best interests of juveniles deprived of their liberty, for example, by implementing the Law No. 11 and the Law No. 52, both of 2002, amending the Juveniles Act, it notes with concern that:

- a) Despite the information from the State party that efforts are being made to raise the age of criminal responsibility to 10 years, the minimum age of criminal responsibility is still too low (7 years);
- b) Due to the lack of alternative sentences, deprivation of liberty is not used as a last resort;
- c) The lack of resources impedes the establishment of a special juvenile court;
- d) Not all children in conflict with the law are provided with free legal assistance; And

e) Children in conflict with the law, particularly girls, are not provided with adequate recovery and social reintegration services.

95. The Committee recommends that the State party continue and strengthen its efforts to ensure the full implementation of juvenile justice standards, in particular articles 37, 40 and 39 of the Convention and other relevant international standards in this area, such as 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 (the Havana Rules), taking into account the recommendations adopted by the Committee on its day of general discussion on juvenile justice held on 13 November 1995 (CRC/C/46, paras. 203-238). It recommends that the State party:

- a) Urgently raise the minimum age of criminal responsibility to an internationally acceptable level;
- b) Strengthen its efforts to implement the Juvenile Justice Reform Programme and to ensure that it conforms fully with the principles and provisions of the Convention; and develop and implement a comprehensive system of alternative measures such as community service orders and interventions of restorative justice in order to ensure that deprivation of liberty is used only as a measure of last resort;
- c) Establish juvenile courts with appropriately trained staff throughout the country;
- d) Expand access to free legal aid and independent and effective complaints mechanisms to all persons below 18 years of age;
- e) Ensure that both sentenced and released persons below 18 years of age are provided with educational opportunities, including vocational and life-skills training, and recovery and social reintegration services, in order to support their full development; and
- f) Seek technical assistance from the United Nations Inter-agency Panel on Juvenile Justice.

96. As regards the protection of child victims and witnesses at all stages of the criminal justice process, the Committee draws the State party's attention the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (Resolution 2005/20 of the Economic and Social Council).



## CONCLUDING OBSERVATIONS

# Kenya

19 June 2007 – CRC/C/KEN/CO/2

## Administration of juvenile justice

67. The Committee welcomes the piloting of a diversion programme for children in conflict with the law and the construction of facilities to house children in conflict with the law, as well as plans to make child-friendly transportation available to child offenders. While recognizing the efforts made, the Committee reiterates its previous concern that the minimum age of criminal responsibility, still set at 8 years of age, is too low. The Committee is further concerned that in certain instances children are treated as adults and that only limited progress has been achieved in establishing a functioning juvenile justice system outside the capital. The Committee is particularly concerned over information that although the death penalty is outlawed for children, according to some reports children are still being sentenced to death. The Committee regrets the lack of data on the number of children in conflict with the law. The Committee is concerned that children in need of care are kept in the same institutions as children in conflict with the law and that detention facilities are overcrowded. The Committee also regrets that free legal aid for children is not systematized and that assistance for child victims is inadequate. Finally, the Committee is concerned that street children are detained on the basis on their social condition.

68. The Committee recommends that the State party bring the system of juvenile justice fully into line with the Convention, in particular articles 37, 40 and 39, and with other United Nations standards in the field of juvenile justice, including 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"); the United Nations Rules

for the Protection of Juveniles Deprived of Their Liberty; (the "Havana Rules"), and the Guidelines for Action on Children in the Criminal Justice System (the "Vienna Guidelines"); and the recommendations of the Committee's General Comment No. 10 (CRC/C/GC/10) on children's rights in juvenile justice. In this regard, the Committee recommends that the State party:

- a) Raise the age of criminal responsibility at least to the age of 12 years, and consider increasing it;
- b) Ensure that all minors, including those who have committed serious offences, are treated under the rules of juvenile justice and not in adult criminal courts;
- c) Establish children's courts in different places throughout the country, drawing on the experience in Nairobi;
- d) Guarantee that no children are sentenced to the death penalty;
- e) Collect data on the number of children in conflict with the law and ensure that this information is taken into account in policy design and reform;
- f) Take all necessary measures to ensure that persons under the age of 18 are only deprived of liberty as a last resort and that, if detained, children remain separated from adults;
- g) Ensure that children in need of care are separated from children in conflict with the law;
- h) Implement alternative measures to deprivation of liberty, such as diversion, probation, counselling and community services;
- i) Ensure that persons under 18 years of age in conflict with the law have access to free legal aid as well as to independent and effective complaints mechanisms;
- j) Make sure that street children are not systematically treated as children in conflict with the law;
- k) Ensure that both sentenced and released persons under the age of 18 are provided with educational opportunities, including vocational and life-skills training, and recovery and social reintegration services, in order to support their full development;
- l) Continue to seek technical assistance and cooperation from, inter alia, the United Nations Inter-Agency

Panel on Juvenile Justice which is composed of representatives of OHCHR, the United Nations Office on Drugs and Crime (UNODC), UNICEF and NGOs.



## CONCLUDING OBSERVATIONS

# Lebanon

8 June 2006, CRC/C/LBN/CO/3



## Administration for Juvenile Justice

84. The Committee welcomes the juvenile justice reform in Lebanon and the State party's close collaboration with the United Nations Office on Drugs and Crime (UNODC) in this respect. It notes with appreciation that the State party has, for example, established a new residential institution, at Dahr el-Bashek in 2004, for girls in conflict with the law, and a special police unit, the Minors Brigade, responsible for questioning delinquent minors and taking statements from young victims. While acknowledging the State party's efforts to protect the rights and the best interests of juveniles deprived of their liberty by implementing the Law No. 422 on the protection of juveniles in conflict with the law or at risk (2002), the Committee notes with concern that some articles of this law are not in full conformity with the provisions of the Convention. In particular, it notes with concern that:

- a) The minimum age of criminal responsibility, which is set at 7 years, is still much too low;
- b) Juveniles can still undergo same penal trial procedures as adults;
- c) A well-organized and well-trained juvenile probation service needed for an efficient development and implementation of alternative measures, such as community service orders, restorative measures and family conferencing is lacking;
- d) Prison facilities and detention conditions are overcrowded and fall short of the international standards; and
- e) Disaggregated statistical and other information on the implementation in practice of the Law No.



422 (2002), on the protection of juveniles in conflict with the law, is very limited.

85. The Committee recommends that the State party continue and strengthen its efforts to ensure the full implementation of juvenile justice standards, in particular articles 37, 40 and 39 of the Convention and other relevant international standards in this area, such as 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, taking into account the recommendations adopted by the Committee on its Day of General Discussion on juvenile justice (CRC/C/46, paras. 203-238). It recommends that the State party:

- a) Raise, as a matter of priority, the minimum age of criminal responsibility to 12 years, as intended in the campaign of the Higher Council for Childhood;
- b) Continue to develop and implement a comprehensive system of alternative measures, such as community service orders and interventions of restorative justice, in order to ensure that deprivation of liberty is used only as a measure of last resort;
- c) Take the necessary measures, for example suspended sentencing and early release, to ensure that deprivation of liberty is limited to the shortest time possible;
- d) Take effective measures to improve the condition of detention and prison facilities for children in conflict with the law;
- e) Continue to strengthen the quality and availability of specialized juvenile courts and judges, police officers, and prosecutors, inter alia through systematic training of professionals, and consider the establishment of a specialized probation service for children in conflict with the law;
- f) Ensure that persons under 18 years of age have access to legal aid and independent and effective complaints mechanisms; and
- g) Continue to seek technical assistance from the United Nations Interagency Panel on Juvenile Justice.



## CONCLUDING OBSERVATIONS

# Mali

3 May 2007, CRC/C/MLI/CO/2

## Juvenile Justice

70. The Committee welcomes the fact that legal reforms are under way and that the ones carried out in the justice sector have integrated the provisions of the “Riyadh Guidelines” and the “Beijing Rules”. However, the Committee remains concerned at the limited progress achieved in establishing a functioning juvenile justice system throughout the country. In particular, the Committee is concerned at the lack of systematic use of alternative measures (e.g. diversion and restorative justice), the detention of juveniles within the same facilities as adults, the absence of juvenile courts in most of the regions, the limited number of specialized and trained juvenile judges and the insufficiency of facilities and programmes for the physical and psychological recovery and social reintegration of children.

71. The Committee recommends that the State party bring the system of juvenile justice fully into line with the Convention, in particular articles 37 b), 40 and 39, as well as into line with other United Nations standards in the field of juvenile justice, including 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”), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the “Havana Rules”), the Guidelines for Action on

Children in the Criminal Justice System (the “Vienna Guidelines”) and the recommendations of the Committee made at its day of general discussion on juvenile justice (CRC/C/46, paras. 203-238). In this regard, the Committee recommends that the State party:

- a) Speed-up the process of legal reforms;
- b) Develop and implement alternative measures such as diversion and restorative justice in order to strengthen the possibilities of dealing with children in conflict with the law without resorting to judicial proceedings;
- c) Ensure that deprivation of liberty is used only as a measure of last resort and for the shortest appropriate period of time;

d) In cases where deprivation of liberty is unavoidable and used as a last resort, improve conditions of detention and ensure that children in detention are placed in separate facilities from adults, paying special attention in this regard to girls;

e) Ensure that persons under 18 have access to appropriate legal aid and defence and an independent, child-sensitive and effective complaint mechanism;

f) Provide training on relevant international standards to those responsible for administration of the juvenile justice system, including judges, magistrates and law-enforcement officials;

g) Ensure that both sentenced and released persons under 18 are provided with educational opportunities, including vocational and life-skills training, recovery and social reintegration services;

h) Establish specialized juvenile courts in various regions of the country and appoint further specialized juvenile judges;

i) Accelerate the appointment of the probation officers (*"Délégués à la liberté surveillée"*) and provide them with adequate resources to carry out their mandate;

j) Seek technical assistance from the United Nations Interagency Panel on Juvenile Justice, which includes the United Nations Office on Drugs and Crime (UNODC), UNICEF, OHCHR and NGOs.



## CONCLUDING OBSERVATIONS

# Mauritania

17 June 2009, CRC/C/MRT/CO/2



## Juvenile Justice

81. The Committee welcomes that the State party has adopted a Juvenile Justice Code in 2005 (Order No. 2005-015) and that certain training activities for professionals have been carried out as well as the construction of new detention facilities, however is concerned that the age of criminal responsibility is too low (7 years old). The Committee notes the current construction of a detention facility for juvenile

offenders; however, it is concerned over the lack of adequate facilities for the detention of juveniles and the fact that children are detained together with adults.

82. The Committee urges the State party to ensure that juvenile justice standards are fully implemented, in particular articles 37 b), 40 and 39 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules). The State party is encouraged to take into account the Committee's general comment No. 10 (2007) on children's rights in juvenile justice. In particular, the Committee recommends that the State party:

a) Apply a juvenile justice system, with specialized juvenile courts, which ensures that all children are tried as such;

b) Raise the age of criminal responsibility to a minimum of 12 years old, with a view to raising the age further in accordance with the Committee's general comment No. 10;

c) Improve training programmes on relevant international standards for all professionals involved with the system of juvenile justice such as judges, police officers, defence lawyers and prosecutors;

d) Provide children, both victims and accused, with adequate legal assistance throughout the legal proceedings;

e) Ensure that detention and institutionalization of child offenders is only resorted to as a last resort and that children remain separated from adults;

f) Seek technical assistance and other cooperation from the Interagency Panel on Juvenile Justice, which includes UNODC, UNICEF, OHCHR and NGOs.

## Protection of witnesses and victims of crimes

83. The Committee recommends that the State party ensure, through adequate legal provisions and regulations, that all children victims and/or witnesses of crimes, e.g. children victims of abuse, domestic violence, sexual and economic exploitation, abduction, and trafficking and witnesses of such crimes, are provided with the protection required by the Convention and that it take fully into account the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council resolution 2005/20).





## CONCLUDING OBSERVATIONS

# Namibia

7 February, CRC/C/15/Add.14



### Juvenile Justice

20. The Committee is of the opinion that the system of the administration of juvenile justice in the State party must be guided by the provisions of articles 37 and 40 of the Convention on the Rights of the Child as well as relevant international standards in this field, including the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. Moreover, it is suggested that measures be taken to train law enforcement officials, judges, personnel working in detention centres and counsellors of young offenders about international standards for the administration of juvenile justice. The Committee underlines the need for technical assistance programmes in the light of these recommendations and encourages the State party to continue its cooperation with the Centre for Human Rights, the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat and UNICEF in this regard.



## CONCLUDING OBSERVATIONS

# Niger

18 June 2009, CRC/C/NER/CO/2



### Juvenile Justice

80. The Committee notes with satisfaction the creation of additional educative, preventive and judiciary services (*Services Éducatifs, Préventifs et Judiciaires* (SEJUP)) as well as the creation of a central service for the protection of minors wit-

hin the national police. The Committee is, however, concerned at the lack of human and financial resources allocated to the specialized juvenile courts, the quasi-absence of specialized child educators and institutions for the placement of children in conflict with the law, and the lack of child-sensitive spaces available at police stations. The Committee is also concerned that Ordinance 99-11 on the creation of juvenile courts does not cover all cases involving minors and that children aged 16 to 18 who commit crimes together with adults are brought before adult courts and may face the death penalty. The Committee reiterates its deep concern that children continue to be detained together with adults.

81. The Committee urges the State party to ensure that juvenile justice standards are fully implemented, in particular articles 37b), 40 and 39 of the Convention, as well as 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 (the "Havana Rules"). In particular, the Committee recommends that the State party, while taking into account the Committee's general comment No. 10(2007) on children's rights in juvenile justice:

- a) Take immediate steps to halt and abolish, by law, the imposition of the death penalty and life sentence for crimes committed by persons under 18 years of age;
- b) Bring cases involving children to trial as quickly as possible;
- c) Urgently ensure that, in all detention facilities, children are no longer detained with adults;
- d) Takes all necessary measures, including strengthening the policy of alternative sanctions for juvenile offenders, to ensure that children are held in detention only as a last resort and for as short a time as possible, that when detention is carried out, it is done in compliance with the law and respects the rights of the child, including the 10-hour time limitation for custody of children, that children are not ill-treated in detention, and that conditions in detention facilities meet international minimum standards;
- e) Envisage a vast capacity-building programme for stakeholders, including specific training for police brigades, judges and social workers, to strengthen technical capacity and knowledge on juvenile justice systems and alternatives to detention;
- f) Seek technical assistance and other cooperation from the Interagency Panel on Juvenile Justice, which includes UNODC, UNICEF, OHCHR and NGOs.





## CONCLUDING OBSERVATIONS

# Nigeria

21 June 2010, CRC/C/NGA/CO/3-4



### Administration for Juvenile Justice

90. The Committee appreciates the introduction in the new Child Rights Act of a chapter dedicated to children in conflict with the law and welcomes the establishment of family courts to deal with juvenile offenders, while noting with regret that these have only been established in eight states to date. It also notes the increased training for judges, magistrates and law enforcement officers concerned with juvenile justice and the establishment of specialized police units in charge of children. However, the Committee recalls its serious concern at the existence of the death penalty to persons below 18 under sharia law (CRC/C/15/Add.257, par. 32) and expresses great concern over information indicating that there is not a minimum age for criminal responsibility and that children younger than 18 years of age can be tried and deprived of their liberty in rehabilitation centres or even in detention facilities. The Committee is also concerned at the remaining number of children in adult jails and ill-treatment of children in custody by police, including in pre-trial detention, and the absence of penal procedural rules during their trial before the family courts.

91. The Committee reiterates its previous recommendation that the State party bring the system of juvenile justice fully in line with the Convention, in particular articles 37, 39 and 40, and with other relevant standards including the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), the Vienna Guidelines for Action on Children in the Criminal Justice System; and the Committee's general comment No. 10 (2007) on the rights of the child in juvenile justice. In this regard, the Committee recommends that the State party, inter alia:

- a) Ensure with immediate effect that neither the death penalty nor life sentence are imposed for offences committed by persons under 18 years of age;
- b) Consider setting the minimum age of criminal responsibility as at least 12 years with a view to raising it further as recommended in the Committee's general comment No. 10 (2007) on the rights of the child in juvenile justice;

c) Consider the establishment of specialized procedural rules to ensure that all guarantees are respected in proceedings before the family courts;

d) Limit by law the length of pre-trial detention of children;

e) Continue efforts to ensure that children deprived of liberty in rehabilitation centres or in detention facilities are never kept with adults, that they have a safe, child-sensitive environment, and that they maintain regular contact with their families;

f) Ensure that children are held in detention only as a measure of last resort and for the shortest period possible and that detention is subject to regular review;

g) Establish an independent body for the monitoring of placement conditions and receiving and processing complaints by children in facilities;

h) Adopt a national policy in prevention and promotion of alternative measures to detention such as diversion, probation, counselling, community service or suspended sentences, wherever possible, in line with the provisions of the Child Rights Act;

i) Provide children, both victims and accused, with adequate legal and other assistance at an early stage of the procedure and throughout the legal proceedings;

j) Establish special police units dealing with children in all states of the federation and ensure that they receive training on the Child Rights Act and Convention;

k) Expedite the establishment of family courts in all states and ensure that they are provided with adequate human and financial resources;

l) Request further technical assistance in the area of juvenile justice and police training from the Interagency Panel on Juvenile Justice, which includes UNODC, UNICEF, OHCHR, and NGOs.







## CONCLUDING OBSERVATIONS

# Rwanda

1st July 2004, CRC/C/15/Add.234



### Children in conflict with the law

#### *Children arrested for alleged war crimes*

70. The Committee is extremely concerned that persons below the age of 18 at the time of their alleged war crime have not yet been tried, have been detained in very poor conditions, some for a very long time, and are not provided with appropriate services to promote their rehabilitation. The Committee notes the establishment of gacaca courts but is deeply concerned that no specific procedure has been established for those who were under 18 at the time of their alleged crime, as required by article 40, paragraph 3, of the Convention, and are still in what could be considered as pre-trial detention.

71. In the light of articles 37, 40 and 39 of the Convention and other relevant international standards, the Committee recommends that the State party take all necessary measures to complete within six months all pending legal proceedings against persons who were below the age of 18 at the time they allegedly committed war crimes.

#### *Other alleged children in conflict with the law*

72. While recognizing the State party's efforts in this domain, including through adopting legislation, decrees and ministerial circulars, the Committee is concerned at the limited progress achieved in establishing a functioning juvenile justice system throughout the country. In particular, the Committee is concerned at the lack of juvenile courts, juvenile judges and social workers in this field. In addition, it is deeply concerned at the very poor conditions of detention, due notably to overcrowding in detention and prison facilities, overuse and extremely long periods of pre-trial detention, the length of time before the hearing of juvenile cases, the lack of assistance towards the rehabilitation and reintegration of juveniles following judicial proceedings and the lack of systematic training of judges, prosecutors and prison staff.

73. The Committee recommends that the State party take additional steps to reform the system of juvenile justice in the spirit of the Convention, in particular articles 37, 40 and 39, and other United Nations standards in the field of juvenile justice, including 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), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System.

74. In addition, the Committee recommends that the State party:

- a) Undertake all necessary measures to ensure that juvenile courts are established and trained juvenile judges appointed in all regions of the country;
- b) Consider deprivation of liberty only as a measure of last resort and for the shortest possible period and limit by law the length of pre-trial detention;
- c) Provide persons under 18 with legal assistance at an early stage of legal proceedings;
- d) Protect the rights of children deprived of their liberty and improve their conditions of detention and imprisonment, including by addressing the problem of overcrowding in prisons and establishing special prisons for children with conditions suited to their age and needs, and in the meantime guarantee that all persons under 18 are separated from adults in prisons and places of pre-trial detention throughout the country;
- e) Ensure that all persons under 18 in conflict with the law do not receive the same sanctions as adults;
- f) Ensure that persons under 18 remain in regular contact with their families while in the juvenile justice system;
- g) Introduce regular medical examination of inmates by independent medical staff;
- h) Establish an independent child-sensitive and accessible system for individual complaints for persons under 18;
- i) Introduce training programmes on relevant international standards for all professionals involved with the system of juvenile justice;
- j) Make every effort to establish a programme of rehabilitation and reintegration of juveniles following judicial proceedings; and
- k) Request technical assistance in the area of juvenile justice and police training from, among others, OHCHR, the United Nations Centre for International Crime Prevention, the International Network on Juvenile Justice and UNICEF.





## CONCLUDING OBSERVATIONS

# Senegal

20 October 2006, CRC/C/SEN/CO/2



### Juvenile Justice

68. The Committee welcomes the efforts made in the domain of juvenile justice, especially the project “*Renforcement de la Protection Juridique des Mineurs au Sénégal*”. However, the Committee remains concerned by the lack of specialized juvenile judges, by the insufficient number of relevant juvenile courts and by the limited number of adequately trained social educators. It is also concerned by the fact that deprivation of liberty is not used as a last resort and by the fact that girls were detained in adult prisons.

69. The Committee urges the State party to ensure, in the context of legal reform, juvenile justice standards are fully implemented, in particular article 37 b), articles 40 and 39 of the Convention, as well as 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), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules) and the Vienna Guidelines for Action on Children in the Criminal Justice System in the light of the Committee’s day of general discussion on the administration of juvenile justice held on 13 November 1995 (CRC/C/46, paras. 203-238). In particular the Committee recommends that the State party:

- a) Continue to provide training on relevant international standards to those responsible for administrating the juvenile justice system;
- b) Ensure that deprivation of liberty is used only as a measure of last resort and for the shortest appropriate period of time;
- c) In cases where deprivation of liberty is unavoidable and used as a last resort improve conditions of detention and ensure that persons below 18 years of age are detained in separate facilities from those of adults;
- d) Ensure that persons below 18 years of age have access to appropriate legal aid and defence and an independent, child-sensitive and effective complaint mechanism;
- e) Ensure both sentenced and released persons below 18 years of age are provided with educational opportunities, in-

cluding vocational and life-skills training, recovery and social reintegration services;

f) Establish specialized juvenile courts throughout the country; and

g) Continue to seek technical assistance from the United Nations Inter-agency Panel on Juvenile Justice.



## CONCLUDING OBSERVATIONS

# Sierra Leone

20 June 2008, CRC/C/SLE/CO/2



### Juvenile Justice

76. The Committee notes that efforts at reviewing and upgrading current laws on juvenile justice have intensified and are near completion and that the Child Rights Act contains extensive provisions on alternative approaches to the issue of juvenile justice. The Committee welcomes the various measures taken by the State party to improve the situation of children in conflict with the law, including training programmes, awareness-raising and sensitization campaigns, monitoring of Remand and Bail Homes, and the establishment of a task force on juvenile justice to review policy and law and develop best practice for the general administration of juvenile justice. The Committee also notes that the Child Rights Act increases the minimum age of criminal responsibility from 10 years to 14 years. The Committee expresses concern that the State party does not provide legal aid for children within the justice system and that there is only one juvenile court in the country. The Committee is further concerned that the country’s Remand Homes and Approved School are understaffed and ill-equipped, with little or no security, poor learning facilities, little recreation and limited food supplies. The Committee also notes with concern that children suspected of crimes are either incarcer-

ated with adult offenders in deplorable conditions or sent to overcrowded facilities in Freetown.

77. The Committee urges the State party to ensure that juvenile justice standards are fully implemented, in particular in line with articles 37 b), 40 and 39 of the Convention, as well as 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 (the Havana Rules). In particular the Committee recommends that the State party, while taking into account the Committee's general comment No. 10 (2007) on children's rights in juvenile justice:

- a) Take the necessary steps to ensure full implementation of the Child Rights Act, which raises the age of criminal responsibility to 14 years;
- b) Take all necessary measures, including adopting a permanent policy of alternative sanctions for juvenile offenders, to ensure that children are held in detention only as a last resort and for as short a time as possible and that detention sentences are reviewed periodically;
- c) Take all necessary measures to ensure that when detention is carried out, it is done so in compliance with the law and respects the rights of the child as set out under the Convention and that children are held separately from adults both in pre-trial detention and after being sentenced;
- d) Take all necessary measures to ensure that children are not ill-treated in detention, that conditions in detention facilities are not contrary to the child's development, that such facilities are regularly and independently monitored and that children's rights, including visitation rights, are not violated, and that cases involving juveniles are brought to trial as quickly as possible;
- e) Request further technical assistance in the area of juvenile justice and police training from the United Nations Interagency Panel on Juvenile Justice.

### **Protection of witnesses and victims of crimes**

The Committee recommends that the State party ensure, through adequate legal provisions and regulations, that all children victims and or witnesses of crimes, e.g. children

victims of abuse, domestic violence, sexual and economic exploitation, abduction, and trafficking and witnesses of such crimes, are provided with the protection required by the Convention and that it take fully into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council resolution 2005/20 of 22 July 2005).



## **CONCLUDING OBSERVATIONS**

### **Swaziland**

16 October 2006, CRC/C/SWZ/CO1



### **Juvenile justice**

67. While welcoming the establishment of a Children's Court in 2005, the Committee is nevertheless concerned at the lack of a functioning juvenile justice system throughout the country. In particular, the Committee is concerned at:

- a) The low minimum age for criminal responsibility (7 years);
- b) The fact that children, in particular girls, are detained together with adults;
- c) The lack of rehabilitation and reintegration programmes for juvenile offenders;
- d) The lack of training programmes for professionals working in the juvenile system; and
- e) The use of corporal punishment as a sanction for juveniles.

68. The Committee urges the State party to ensure that juvenile justice standards are fully implemented, in particular articles 37 b), 40 and 39 of the Convention, as well as 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 (the Havana Rules), and in the light of the Committee's day of general discussion on the administration of juvenile justice. In particular the Committee recommends that the State party:

- a) Raise the age of criminal responsibility as a matter of urgency and ensure that it complies with acceptable international standards;
- b) Improve training programmes on relevant international standards for all professionals involved with the system of juvenile justice;
- c) Strengthen the Children's Court by providing it with adequate human and financial resources and ensure that, particularly in rural areas, well-trained judges deal with children in conflict with the law;
- d) Ensure that the deprivation of liberty of a juvenile is a matter of last resort and takes place for as short a time as possible and that detained girls are separated from adult women;
- e) Provide children with legal assistance at an early stage of legal proceedings;
- f) Abolish, as a matter of urgency, the use of corporal punishment as a sanction in the juvenile justice system;
- g) Ensure that children are provided with an effective complaints mechanism; and
- h) Seek technical assistance from the United Nations Inter-Agency Panel on Juvenile Justice.



## CONCLUDING OBSERVATIONS

# Tanzania

21 June 2006, CRC/C/TZA/CO/2



### Juvenile justice

69. While recognizing the efforts made in this domain, including the introduction of human rights education in the police and prison college's curricula, so as to increase awareness on human rights, including child rights, the Committee remains concerned at the limited progress achieved in establishing a functioning juvenile justice system throughout the country. Children are in some instances detained in the same cells as adults, and those between the ages of 16 and 18 may not be afforded the same protection as younger children under the juvenile justice system.

70. The Committee urges the State party to ensure the full implementation of juvenile justice standards, in particular articles 37, paragraph b), 40 and 39 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), and in the light of the Committee's day of general discussion on the administration of juvenile justice. In this regard, the Committee recommends that the State party:

- a) Extend to the rest of the country the experience of the juvenile justice court in Dar-es-Salam;
- b) Clearly establish the age of criminal responsibility at 12 years, or at an older age that is an internationally accepted standard, and ensure that children between the ages of 16 and 18 are not considered as adults and are afforded the same protection as younger children under the juvenile justice system;
- c) Prohibit all forms of corporal punishment for persons under the age of 18 years in penal institutions;



- d) Take all necessary measures to ensure that persons under the age of 18 are only deprived of liberty as a last resort, and that children, if detained, remain separated from adults;
- e) Implement alternative measures to deprivation of liberty, such as diversion, probation, counselling and community services;
- f) Ensure that persons under 18 years of age in conflict with the law have access to legal aid as well as to independent and effective complaints mechanisms;
- g) Improve child-sensitive court procedure in accordance with the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council resolution 2005/20 of 22 July 2005);
- h) Ensure that both sentenced and released persons under the age of 18 are provided with educational opportunities, including vocational and life-skills training, and recovery and social reintegration services, in order to support their full development; and
- i) Continue to seek technical assistance and cooperation from, inter alia, the United Nations Inter-Agency Panel on Juvenile Justice.



## CONCLUDING OBSERVATIONS

### Togo

8 March 2012, CRC/C/TGO/CO/3-4



#### Juvenile Justice

75. The Committee welcomes articles 300 to 346 of the 2007 Children's Code which provide for the creation of a juvenile justice system in the State party. However, the Committee is concerned that:

- a) Children in conflict with the law, and in some cases, children in need of social care, have been and continue to be detained in conditions amounting to inhuman and degrading treatment and are often kept with adults in police stations and detention facilities;
- b) Only one juvenile court exists in the State party;
- c) The juvenile liaison bureau (brigade des mineurs), which only exists in the capital, has no budget for its functioning;
- d) Juvenile justice judges have not been provided with adequate specialized training;
- e) Children are rarely provided with legal assistance;
- f) Children in prisons live in extremely poor sanitary conditions amounting to inhuman and degrading treatment, which is prohibited under article 37a) of the Convention.

76. The Committee recommends that the State party bring its juvenile justice system fully in line with the Convention, in particular articles 37, 39 and 40, and with other relevant standards and norms, including the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), the Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines); and the Committee's general comment No. 10 (2007) on the rights of the child in juvenile justice. In particular, the Committee urges the State party to:

- a) Take all necessary measures to ensure that no child is subjected to abuse and torture when in contact or in conflict with the law, especially during the stage of arrest and investigation;
- b) Ensure immediate removal of children from adult detention facilities and place them in a safe, child-sensitive environment where they are treated humanely and with respect for their inherent dignity, and can maintain regular contact with their families, and are provided with food, education and vocational training;
- c) Strengthen efforts to establish specialized courts throughout the country and ensure that the review of criminal cases concerning children is conducted by judges trained accordingly, until juvenile courts are established in all provinces;

d) Establish juvenile liaison bureaux throughout the State party and ensure that they are provided with the necessary human, financial and technical resources. While waiting for these liaison bureaux to be fully operational, designate in each police and gendarmerie unit, at least one police officer specialized in children's rights and juvenile justice;

e) Ensure capacity-building and specialization of justice actors, including judges, prison officers and lawyers, on the provisions of the Convention and of the Children's Code;

f) Provide the children, both victims and accused, with adequate legal and other assistance at an early stage of the procedure and throughout the legal proceedings;

g) Ensure that detention is a measure of last resort and for the shortest possible period of time, and that it is reviewed on a regular basis with a view to withdrawing it;

h) Promote alternative measures to detention, such as diversion, probation, counselling, community service or suspended sentences, wherever possible;

i) Develop social reintegration programmes for children in conflict with the law; and

j) Seek assistance in the area of juvenile justice from the United Nations Interagency Panel on Juvenile Justice and its members, including UNODC, UNICEF, OHCHR and NGOs, and make use of the technical assistance tools developed by the Panel.

77. The Committee also recommends that the State party ensure, through adequate legal provisions and regulations, that all children victims and/or witnesses of crimes, e.g. children victims of abuse, domestic violence, sexual and economic exploitation, abduction and trafficking, and witnesses of such crimes, including those perpetrated by State and non-State actors since the March 2011 protests, are given the protection provided for in the Convention, and that it take fully into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex).



## CONCLUDING OBSERVATIONS

# Yemen

21 September 2005, CRC/C/15/Add.267

## Administration of Juvenile Justice

75. The Committee welcomes the Supreme Council Decree establishing a number of juvenile courts and centres in the State party. However, the Committee is concerned at the very low minimum age of criminal responsibility (7 years) and other shortcomings in the juvenile justice systems.

76. The Committee recommends that the State party ensure the full implementation of juvenile justice standards and in particular articles 37, 40 and 39 of the Convention, and other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the Vienna Guidelines for Action on Children in the Criminal Justice System, and that due regard be taken of the Committee's 1995 discussion day on the administration of juvenile justice.

77. In this regard, the Committee recommends that the State party:

a) Raise the minimum age of criminal responsibility to an internationally acceptable level;

b) Develop an effective system of alternative sentencing for persons below who are in conflict with the law, such as community service and restorative justice, with the view inter alia, to ensuring that deprivation of liberty is a measure of last resort;

c) Guarantee that all children have right to appropriate legal assistance and defence;

d) Take necessary measures to make the deprivation of liberty as short as appropriate, inter alia by using suspended sentencing and conditional release;

- e) Ensure that persons below 18 in detention are separated from adults;
- f) Ensure that persons below 18 remain in regular contact with their families while in the juvenile justice system;
- g) Provide ongoing training for judges and law-enforcement officials; and
- h) Seek assistance from, inter alia, OHCHR, the Centre for International Crime Prevention, and UNICEF













## OTHER RECENT IBCR PUBLICATIONS



- Country Profiles – Child’s Rights Best Practices (English and Arabic – 2012) in: Algeria, Egypt, Iraq, Jordan, Lebanon, Morocco, Occupied Palestinian Territory, Tunisia, Yemen
- Quick Assessment of the Commercial Sexual Exploitation of Boys and Girls in Burundi (French – 2012)
- Combatting Child Sex Tourism by Involving the Canadian Private Sector of Travel and Tourism and the Canadian Public (2009-2012), (French and English – 2012)
- Regional Validation Workshop for those Responsible for the Training of Security Forces, Niamey, Niger, from October 31 to November 4, 2011 (French – 2011)
- Expert Group Report on Child Protection Training for Security Forces in French-speaking Africa, Dakar, Senegal, from the September 19 to 23, 2011 (French – 2011)
- Justice in Matters Involving Child Victims and Witnesses of Crime– A Study on the Implementation of the Guidelines on Justice for Child Victims and Witnesses of Crime in Quebec (French – 2011)
- Violence against Children in Schools: A Regional Analysis of Lebanon, Morocco and Yemen (English – 2011).
- Country Profiles in the Middle East and North Africa (English 2011): Country Profiles of the Occupied Palestinian Territory, of Yemen, of Jordan, of Morocco, of Iraq, of Lebanon, of Tunisia, of Algeria and of Egypt
- Children and Armed Conflict: A New Guide to International Humanitarian and Human Rights Law (French and English – 2010)
- Working Group Proceedings on West African Training Forces for the Application of International Standards in Juvenile Justice, Cotonou, Benin – December 13, 14 and 15, 2010 (French - 2010)
- Proceedings from the Symposium Organised by the Ouagadougou National Police Academy on Training and Police Practices Related to Child Rights, Ouagadougou, Burkina Faso – November 10 and 11, 2009 (French – 2010)
- Country Profiles in the African Great Lakes Region: Making Children’s Rights Work: Country Profiles on Burundi, Republic of Congo, Democratic Republic of Congo and Rwanda (French – 2009)
- Toolkit for the Protection of Child Trafficking Victims or those at Risk of Being Victims (French – 2008)
- Country Profiles in North Africa: Making Children’s Rights Work in North Africa; Country Profiles on Algeria, Egypt, Libya, Morocco and Tunisia (English and Arabic – 2007)
- Country Profiles in South East Asia: Making Children’s Rights Work: Country Profiles on Cambodia, Indonesia, Sri Lanka, Timor Leste and Viet Nam (English – 2006)

**We invite you to consult the International Bureau of Children’s Rights’ website for accessing its publications and reports at this address:**  
**[http://www.ibcr.org/eng/thematic\\_reports.html](http://www.ibcr.org/eng/thematic_reports.html)**



BUREAU  
INTERNATIONAL  
DES DROITS DES ENFANTS

INTERNATIONAL  
BUREAU  
FOR CHILDREN'S RIGHTS

OFICINA  
INTERNACIONAL DE  
LOS DERECHOS DEL NIÑO

## SECURITY FORCES TRAINING IN WESTERN AND CENTRAL AFRICA

Initiated by the International Bureau of the Children's Rights (IBCR), the programme aims to integrate permanent, mandatory and quality courses on the rights of the child in the initial and specialised training of security forces.

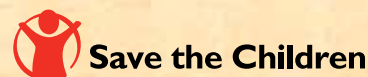
Following a series of consultations and meetings with over 30 security force training institutions, the Bureau and its many partners adopted a set of six key skills that all members of the national police force or gendarmerie, regardless of their position, must master in order to integrate children's rights into their work. Through this consensus, and its respectful and participatory approach, the Bureau is currently working in six countries (Cameroon, Guinea, Côte d'Ivoire, Niger, Senegal and Togo) to integrate this skills-based approach to the teaching of children's rights into the heart of the training curricula of security forces. To achieve this, the Bureau:

1. Conducts an assessment on the training needs of security forces on children's rights, and a mapping of their schools and the system supporting their work
2. Supports schools in the development of comprehensive training programmes
3. Offers extensive training for instructors on the pedagogy and content of the material
4. Supports all participating schools in delivering the first courses

### SIX CORE COMPETENCES ADOPTED IN NIAMEY (2011) FOR INTEGRATING CHILDREN'S RIGHTS INTO THE PRACTICE OF SECURITY FORCES

1. Knowledge, endorsement and implementation of children's rights
2. Knowledge and application of ethical and deontological standards
3. Knowledge of children
4. Interaction and communication with children and the relevant family or community members
5. Collaboration with all formal and informal stakeholders for a better coordinated intervention
6. Efficient use of working tools adapted to children

In partnership with:



#### International Bureau for Children's Rights (IBCR)

2715 chemin Côte-Sainte-Catherine, Montréal (Québec) H3T 1B6  
Tel.: + 1 514 932-7656, extension 222 – Fax: + 1 514 932-9453  
info@ibcr.org – www.ibcr.org

ISBN: 978-0-9865647-6-5