

**MODULE TWO      THE INTERNATIONAL INSTRUMENTS  
RELEVANT TO JUVENILE JUSTICE  
ADMINISTRATION**

**FACILITATOR'S GUIDE**

## OBJECTIVES

At the end of this module participants will:

- Understand the juvenile justice values and provisions of the Convention on the Rights of the Child.
- Understand the other international and regional instruments and the provisions of the international rules and guidelines relevant to juvenile justice.
- Exchange ideas on how they can be put into practice at national level.

**TIME** [ 3 Hours 30 minutes ]

## CONTENT

- 2.1 International Instruments Summary.
- 2.2 The Convention on the Rights of the Child.
- 2.3 The other UN Conventions and Rules on Juvenile Justice.
- 2.4 Implementation Issues.

## MODULE OUTLINE

Sessions	Method	Resources	Time
2.1 International Instruments Summary	Brainstorming in Plenary	Handout 1, Summary of International Instruments Relevant to Juvenile Justice Administration; Facilitator's Note 1, Summary of International Instruments Relevant to Juvenile Justice Administration.	40 mins
2.2 The Convention on the Rights of the Child	Jigsaw game	Handout 2, Table Showing Relevant Articles from the Convention on the Rights of the Child.	45 mins
	Discussion question	Handout 3, The Convention on the Rights of the Child.	
2.3 The other UN Conventions and Rules on Juvenile Justice	Group work	Handout 4, The United Nations Rules and Guidelines on Juvenile Justice; Handout 5, The Regional Instruments.  OPTIONAL Relevant slides from nos. 2-22, 'Module two, International & Regional Instruments'.	45 mins
2.4 Implementation Issues	Presentation	Slides no 1-7; Handout 6, Implementation Issues	1 hour 20 mins
	Group work		

### SESSION 2.1 INTERNATIONAL INSTRUMENTS SUMMARY

**Purpose** Through this session participants should be able to identify the international and regional instruments for juvenile justice and distinguish between those that are child-specific and those that are not.

**Preparation** a) Write objectives on flip chart, photocopy handouts.  
b) Label one pin board 'Child-Specific Instruments' and the other 'Non-child Specific Instruments'. Put a pile of cards on each table.

**Materials** Handout 1, Summary of International Instruments Relevant to Juvenile Justice Administration; Facilitators Note 1, Summary of International Instruments Relevant to Juvenile Justice Administration.

**Equipment** Flip chart and marker pens, 4 pin boards, cards, pens and sticky dots.

#### Activities

#### Time Estimate (minutes)

- Introduce the module objective on flip chart.
- Introduce the session purpose.
- Brainstorm the international instruments of juvenile justice systems and identify those that are child-specific and justice-specific.

5

#### Steps:

1. Ask participants the question "What are the International instruments of juvenile justice?" e.g CRC. As the participants give their responses, ask them to write them down on a card (remind them to write clearly and to use a marker pen).
2. Collect the cards and post each suggestion on one of the pin boards, asking the group which board they would put it on – the one labeled 'Child-specific' or the one labelled 'Non-child Specific'.
3. Stand back, ask participants to look at the boards and encourage them to identify any obvious missing instruments. (You should refer to Facilitator's Note 1 for a summary of international instruments relevant to juvenile justice).
4. Give all participants a sticky dot<sup>1</sup> and ask them to come up to the board and stick them on the cards that are juvenile justice-specific (refer to Facilitator's Note 1 for the key points to highlight on each instrument as you debrief). Encourage the plenary to review the responses and correct any incorrectly placed stickies.

20

<sup>1</sup> Or if these are not available participants can make a mark with a pen

5. Keep the boards up explain that you are now going to look at each of these instruments in more depth and the implementation issues surrounding them. 15
- Refer the participants to Handout 1, Summary of International Instruments Relevant to Juvenile Justice Administration, in the participant's manual.

**SESSION 2.2 THE CONVENTION ON THE RIGHTS OF THE CHILD**

**Purpose** This session reviews the specific principles of the CRC pertaining to Juvenile Justice values.

**Preparation** a) Write objectives on flip chart, photocopy handouts.  
 b) Take Exercise 1 and make a copy for each table. Cut out cells of the table and stick each one onto a separate card. The principles are stuck onto blue cards and the Explanation and CRC article number on yellow cards.

**Materials** Exercise 1 and Handout 2, Table Showing Relevant Articles from the Convention on the Rights of the Child; Handout 3, The Convention on the Rights of the Child.

**Equipment** Flip chart, flip chart pens, cards, pin board, push pins.

<b>Activities</b>	<b>Time Estimate (minutes)</b>
<ul style="list-style-type: none"> <li>• Introduce session purpose.</li> <li>• Match the cards showing the principles and rights, related to children in conflict with the law, to their explanation and related article number.</li> </ul>	15
<p><u>Steps:</u></p> <ol style="list-style-type: none"> <li>1. Distribute exercise one, the jigsaw pieces of the CRC principles and explanation to each table</li> </ol>	10
<ol style="list-style-type: none"> <li>2. Ask each group to match the principle to the correct explanation and article number.</li> </ol>	20
<ol style="list-style-type: none"> <li>3. Ask each group to post their responses on the pin board. Once the groups have completed the exercise request participants to stand around one pin board and ask that group to present their answer.</li> </ol>	20
<ol style="list-style-type: none"> <li>4. During the debriefing encourage the plenary to comment on whether they agree with their conclusions before you add your comments and correct any misplaced cards. The other groups don't need to present their outputs but are encouraged to look at their boards and compare them to the correct answer. Distribute Handout 2, containing the correct response.</li> </ol>	

5. To debrief the exercise<sup>2</sup> ask the plenary the following questions:
- a) 'What are the general principles of the CRC?'  
(Answer; best interest of the child, non-discrimination, child participation, the right to survival and development).
  - b) 'Which general principle is missing?'  
(answer; right to survival)
  - c) 'What are the CRC provisions applicable to a juvenile justice system?' (answer; 37 – protection from torture and from deprivation of liberty, 39 – rehabilitation and social reintegration of children, 40 – administration of juvenile justice. Most of the CRC is relevant to juvenile justice, any meaningful attempt to prevent juvenile crime must involve promoting and protecting all rights for children).
  - d) 'What does article 37 say about arrest or detention of the child?' (answer; i) protection from torture; cruel, inhuman, degrading treatment or punishment, prohibition of capital punishment and life imprisonment without possibility of release, ii) arrest and detention shall only be a measure of last resort and for the shortest appropriate period of time, iii) protection of children deprived of liberty).
  - e) 'What does article 40 say about due process rights and diversion?' (answer; i) in the fundamental principles it promotes child's sense of dignity and worth, reinforces child's respect for human rights and fundamental freedoms, takes child's age into account, promotes reintegration into community and a constructive role in society. ii) on due process rights it includes; the right to be presumed innocent, right to be notified of charges, right to remain silent, right to assistance of parents or guardians, right to legal or other appropriate assistance, right to fair determination of case without delay, right to call witnesses, right to appeal, right to an interpreter, right to privacy. iii) on diversion it says; judicial proceedings should be avoided whenever possible, human rights and legal safeguards respected).
- Refer participants to Handout 3, The Convention on the Rights of the Child in the participant's manual.

---

<sup>2</sup> If the group has less experience of the CRC you may want to refer them to Handout 3.

**SESSION 2.3 THE OTHER UN CONVENTIONS AND RULES ON JUVENILE JUSTICE**

**Purpose** Participants should be able to describe the purpose of the international instruments of juvenile justice.

**Preparation** Write objectives on flip chart, review slides, photocopy handouts.

**Materials** Handout 4, The United Nations Rules and Guidelines on Juvenile Justice; Handout 5, The Regional Instruments; Additional reading, Handout 4a CEDAW and Tokyo Rules; OPTIONAL Relevant slides from nos. 2-22, ‘additional materials international and regional instruments’.

**Equipment** Flip chart, flip chart pens, projector and laptop.

**Activities** **Time Estimate (minutes)**

- Introduce session purpose.
- Group discussion of the instruments and how they relate to the rights of the child.

Steps:

1. Explain that there are three important United Nations Rules and Guidelines on Juvenile Justice: i) the UN Guidelines for the Prevention of Juvenile Delinquency: the ‘Riyadh Guidelines’. ii) The UN Standards Minimum Rules for the Administration of Juvenile Justice: the ‘Beijing Rules’, and iii) the UN Rules for the Protection of Juveniles Deprived of their Liberty.
2. Divide participants into three groups.<sup>3</sup> Take the UN Conventions and Rules cards (Riyadh, Beijing and UN rules for Protection of Juveniles Deprived of their Liberty) off the board from Session 2.1 and give one to each group.
3. Refer participants to Handout 4 from the participant’s manual. Explain that using the handout and drawing from their own experience they should respond to the following questions:
  - a) What is the key goal of your instrument?
  - b) What does your instrument say about the rights of the child in the administration of juvenile justice?

20

<sup>3</sup> You could also split into four groups and give the fourth group any appropriate regional instruments that you wish to discuss in more depth.

4. Ask them to select a spokesperson who will give a two-minute feedback to plenary on their findings.
  5. Each group presents in turn and the plenary is encouraged to ask questions of clarification. In the debrief you should refer to Facilitator's Note 2 and add some of the points that are not mentioned in the group's presentations. 25
- Depending on the level of experience of the group you may wish instead to show **selected** slides from nos. 2 - 22 (available on the accompanying CD-ROM) to debrief this exercise. If you have not included a discussion topic on regional instruments in this exercise you may want show the slides on the appropriate instrument e.g. African Charter on the Rights and Welfare of the Child (also available on the accompanying CD-ROM) and refer participants to related Handout 5, The Regional Instruments.



**SESSION 2.4 IMPLEMENTATION ISSUES**

**Purpose** To share experiences on how the instruments can be practiced at national level and how those experiences may be used to develop a checklist of actions that encourage adoption of the instruments at national level.

**Preparation**

- a) Write objectives on flip chart, review slides, photocopy handouts.
- b) Write the question for the groups on flip chart; “Describe the way in which your country of work implements international standards. Specifically, who is involved? What is done, when and where? What is not done?”
- c) Write the prompt for the plenary on flip chart; ‘checklist to encourage implementation of international standards on juvenile justice through national actions’.

**Materials** Slides nos. 1- 7; Handout 6, Implementation Issues.

**Equipment** Flip chart, flip chart pens, projector and laptop.

<b>Activities</b>	<b>Time Estimate (minutes)</b>
<ul style="list-style-type: none"> <li>• Introduce session purpose.</li> <li>• Show slides nos. 1-7 on implementation issues.</li> <li>• Group work discussing issue of implementation of international standards in national order law system and development of a checklist.</li> </ul>	10
<p><u>Steps:</u></p> <ol style="list-style-type: none"> <li>1. In the same groups (or use country groupings if a regional workshop) ask participants to respond to the following;               <ul style="list-style-type: none"> <li>a) Describe the way in which your country of work implements international standards. b) Specifically, who is involved? c) What is done, When and Where? What is not done?</li> </ul> </li> </ol>	30
<ol style="list-style-type: none"> <li>2. Ask one group to present to plenary. Ask the other groups to present their findings without duplicating any points already mentioned.</li> </ol>	20
<ol style="list-style-type: none"> <li>3. Ask the plenary to respond to the following: “What points would you include in a checklist to encourage implementation of international standards on juvenile justice through national actions?”</li> </ol>	20

4. Note participants' responses on flip chart and ask the group to ensure that all points are practical and realistic. You may wish to type out plenary output and distribute.
- Refer participants to Handout 6, Implementation Issues, in the participant's manual.

**Facilitator’s Note 1: Summary of International Instruments Relevant to Juvenile Justice Administration.**

Child-Specific Instruments	Non-child Specific Instruments
UN Convention on the Rights of the Child*	UN International Covenant on Civil and Political Rights (ICCPR)
UN Guidelines for the Prevention of Juvenile Delinquency (the ‘Riyadh Guidelines’)*	UN International Covenant on Economic, Social and Cultural Rights
UN Standard Minimum Rules for the Administration of Juvenile Justice (the ‘Beijing Rules’)*	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UN Rules for the Protection of Juveniles Deprived of their Liberty (JDL)*	UN Convention on the Elimination of Racial Discrimination
	UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*
	UN Minimum Rules for Non-Custodial Measures: the ‘Tokyo Rules’ (1990)*
	UN Standard Minimum Rules for the Treatment of Prisoners
African Charter on the Rights and Welfare of the Child*	African Charter on Human and People’s Rights*
European Convention on the Exercise of Children’s Rights* <b>(Relates to the participation of children but only in family affairs).</b>	European Convention for the Protection of Human Rights and Fundamental Freedoms (and Protocols)* <b>Gives clear indication on prohibition of death penalty and due process for children.</b>
	American Convention on Human Rights and additional Protocol in the Area of Economic, Social and Cultural Rights

\* Justice-specific instruments

When you debrief the exercise you might want to highlight some of the following Points about the CEDAW<sup>4</sup>, Covenant on Civil and Political Rights, Convention against Torture, The UN Minimum Rules for Non-Custodial Measures: the 'Tokyo Rules' (1990), Standard Minimum Rules for the Treatment of Prisoners.

The CRC, 'Riyadh Guidelines', 'Beijing Rules' and JDL are covered in more depth in session 2.1 and 2.2. All the instruments are covered in depth in; Handouts 4 'The United Nations Rules and Guidelines on Juvenile Justice', in Handout 5 'The Regional Instruments' and in the additional reading for facilitators Handout 4a. You may wish to say more about some of the regional instruments depending on the target audience. Some pointers on each are also included below.

### **The Convention on the Elimination of Discrimination against Women**

- Discrimination against women in the civil, political, social, cultural and family life spheres.
- Not specific to juvenile justice, but CEDAW Committee highlights the fact that young girls are held in adult prisons.

### **The International Covenant on Civil and Political Rights**

- Due process rights.
- Prohibition of death penalty for those under 18 years.
- Separation from adults and treatment according to child's age.

### **The Convention against Torture**

- Prohibition and prevention of torture and other cruel, inhuman or degrading treatment.
- Not specific to children and juvenile justice but refers to rights contained in the CRC.

### **The UN Minimum Rules for Non-Custodial Measures: the 'Tokyo Rules' (1990)**

Encourage the development of non-custodial measures at pre-trial, trial and sentencing stages for all, including children and cover post-trial issues such as:

- Verbal sanctions including admonition, reprimand and warning.
- Conditional discharge.
- Status penalties.
- Economic sanctions and monetary penalties, including fines and day-fines.
- Confiscation or expropriation orders.
- Suspended or deferred sentence.
- Probation and judicial supervision.
- Community service orders.
- Referral to an attendance centre.
- House arrest.
- Any other mode of non-institutional treatment
- Some combination of the measures listed above.

---

<sup>4</sup> More information on CEDAW and the 'Tokyo Rules' is available on the accompanying CD-ROM.

**Standard Minimum Rules for the Treatment of Prisoners**

- Principle of separation of 'child prisoners' from adults in custodial facilities and the separation of convicted detainees from prisoners awaiting trial.
- Guidance on the treatment of prisoners and the management of institutions.

**The African Charter on the Rights and Welfare of the Child**

- Places 'rights' within the context of collective and individual 'responsibilities'.
- Emphasizes the responsibilities of parents and communities for the well-being, growth and development of the child.

**Specific Juvenile Justice Provisions Include:**

- 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.
- No child who is detained or deprived of his/her liberty shall be subject to torture, inhuman or degrading treatment or punishment.
- Children are separated from adults in their place of detention.
- Every child shall be presumed innocent until proven guilty.
- Every child shall be afforded legal assistance in the preparation of his/her defence.
- The essential aim of treatment during the trial and if found guilty shall be his/her reformation, reintegration into his/her family, and social rehabilitation.

**The European Conventions (Convention for the Protection of Human Rights and Fundamental Freedoms and the Convention on the Exercise of Children's Rights)**

- A human rights treaty with enforceable mechanisms.
- Deals mainly with civil and political rights including lawful deprivation of liberty and right to a due process.

**The European Convention on the Exercise of Children's Rights**

- Provides a number of procedural measures to allow children to exercise their rights, in particular in family proceedings before judicial authorities. Its Standing Committee keeps problems relating to this Convention under review.
- Children should be allowed to exercise their rights (for example, the right to be informed and the right to express their views) either themselves or through other persons or bodies.

**American Conventions on Human Rights**

- The Organization of American States (OAS) has adopted several declarations and treaties relating to human rights.
- The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ('Protocol of San Salvador'-1988) focuses on the State's obligation to promote social, economic, and cultural human rights, such as those related to labor laws, health issues, education rights, economic rights, rights relating to the family, and rights of children, the elderly, and the handicapped.

- States may fulfill these obligations through enacting legislation, enforcing measures of protection, and refraining from discrimination.

### Power Point Slides 1 - 7

#### Slide No

#### Speaking Points

Place of international standards in domestic order

- International conventions may be **binding** on the contracting States.
- Standard rules or general guidelines lack legal obligatory force and are referred to **non-binding** rules but embody some form of pre-legal, moral or political obligation and can play a significant role in the interpretation, application and further development of existing law.

© 2010 UNICEF International Instruments, Mod Two 1

1

#### BEFORE SHOWING THE SLIDE

Ask participants if they know what International Law is?

a) It regulates the legal relationship between states or between states and individuals b) it grants specific rights to individuals and c) it imposes duties and obligations on States, individuals and groups.

Ask participants if they understand what we mean by 'binding' and 'non binding'?

International conventions may be binding on the contracting States. Standard rules or general guidelines lack legal obligatory force and are referred to as 'soft law' or non-binding rules. However, such documents embody some form of pre-legal, moral or political obligation and can play a significant role in the interpretation, application and further development of existing law.

Reservations

Reservations are defined in international instruments as unilateral statements made by a State, whereby its purpose is to exclude or modify the legal effects of certain provisions of a treaty in their application to that State.

© 2010 UNICEF International Instruments, Mod Two 2

2

Give the participants a few minutes to read the text through.

When a State ratifies or accedes to a treaty, it may make reservations to one or more articles of the treaty.

Reservations are defined in international instruments as 'a unilateral statement however phrased or named made by a State, whereby its purpose is to exclude or modify the legal effects of certain provisions of a treaty in their application to that State'.

Where such reservations are expressed in broad terms, they can effectively undermine key aspects of a State's commitment to the Convention.

However, a reservation will not be effective to relieve a State of its obligations under a treaty where it is incompatible with the object and purpose of the treaty.

**Domestic implementation of international treaties**

- International human rights treaties may be automatically incorporated into domestic law upon ratification (‘civil law jurisdictions’)
- International conventions require domestic implementation in order to create enforceable rights and liabilities (‘common law jurisdictions’)
- International human rights treaties may nonetheless indirectly influence the interpretation and application of the domestic law
- All States that have ratified or acceded to an international treaty must issue decrees, amend existing laws or introduce new legislation in order for the treaty to be fully effective in the national territory

© 2016 Justice Manual, Module Two, 3

3

International human rights treaties may be automatically incorporated into domestic law upon ratification (‘civil law jurisdictions’).

International conventions require domestic implementation in order to create enforceable rights and liabilities (‘common law jurisdiction’). However, international human rights treaties may nonetheless indirectly influence the interpretation and application of the domestic law.

All states that have ratified or acceded to an international treaty must issue decrees, amend existing laws or introduce new legislation in order for the treaty to be fully effective in the national territory.

**Obligations of States under the CRC**

The CRC is a framework treaty that works by stimulating the development of laws and policies for the benefit of children:

- It points out a direction in which States are obliged to move
- It sets out guidelines or principles for States to follow
- It establishes mechanisms that will serve as catalysts to the evolutionary process

© 2016 Justice Manual, Module Two, 4

4

The CRC is the most widely ratified treaty in international human rights law. It is a framework treaty that works by stimulating the development of laws and policies for the benefit of children. It points out a direction in which States are obliged to move. It sets out guidelines or principles for States to follow. It establishes mechanisms that will serve as catalysts to the evolutionary process.

Ask participants which two States have signed but not ratified the CRC (US and Somalia).

**The Convention provides guidance for action**

- The Conventions’ obligations might be concrete rules
- Obligations might be generalized statements that point the direction that the States must move in.
- Most of the rights fall in between these two extremes.

© 2016 Justice Manual, Module Two, 5

5

The Conventions’ obligations might be concrete rules: *Examples: Prohibition of torture and the ban against the use of capital punishment against children.*

Obligations might be generalized statements that point the direction that the States must move in: *Examples: Right to an adequate standard of living, right to education.* Most of the rights fall between these two extremes:

Not concrete rules because they require State to make balancing decisions that will translate the statements into entitlement.



The Convention sets a socio-political dynamic into motion

- To encourage States to create institutions
- To encourage States to reform their laws
- To encourage jurisdictions to use the CRC rights as interpretative aids in the implementation of law

© 2016 International Institute for Law & Justice

6

The Convention will be successful to the extent that it is able to stimulate a strong socio-political dynamic. The Convention stimulates this dynamic by, for example, encouraging States to create institutions or change their laws or jurisdictions to use the CRC rights as interpretative aids in the application of national laws.

The Convention establishes a "mechanism" (the Committee on the Rights of the child)

- States have the obligation to make implementation report to the Committee on the Rights of the Child
- Committee's conclusions assessing the situation and containing recommendations about how a State can improve the CRC implementation carry significant political weight and are important tools to encourage change.

12/28/2011

International Instruments: Model 1700

8

7

Like other human rights treaties, the CRC requires States to make implementation reports to a monitoring committee, which then conducts a dialogue with each State and issues recommendations. This mechanism drives the evolutionary process forward.

### ADDITIONAL READING

Implementation handbook for the Convention on the Rights of the Child prepared by Rachel Hodgkin and Peter Newell, UNICEF, 1998; fully revised in 2002.

'Juvenile Justice Information Pack', PRI, [www.penalreform.org](http://www.penalreform.org)  
International standards concerning the rights of the child, Defense for Children

International (DCI) [WWW.DCI-IS.ORG](http://WWW.DCI-IS.ORG)

The international instruments are described in detail on [www.unhchr.org](http://www.unhchr.org)

### CHECKLIST FOR FACILITATORS

<b>Key Message/ Reflective Questions</b>
Remember that the international instruments are large and you need to work within the framework.
You need to identify what is within your sphere of influence and use instruments strategically to focus on diversion within the juvenile justice area.

**ENERGIZERS**

Energizers or Icebreakers are a great way to start any session. They are not just for fun, but contribute to promoting a conducive learning atmosphere. Used before sessions they help create a comfortable participatory atmosphere. Used during or between sessions they can help pick up flagging energy levels, re-focus concentration and stimulate creative thinking.

Energizers don't need to be related to the content of the course, but they do need to energize the group and their objective should be clear at the end of the exercise even if it is just to have fun.

There are lots of books and websites with good ideas (see additional reading for tips). It's a good idea to have a couple of different types of quick energizers ready for your session if needed. Remember to choose one that is appropriate for the group and if some participants are uncomfortable encourage but don't force them to participate.

Energizers are a good way to encourage participants to contribute to the workshop. You should lead the group through the first couple but then ask for volunteers to do one when you indicate it's needed. Remember to check how long the energizer will take before they start.

A good one to encourage the participants to come quickly back after breaks is to ask the last participant back from break to lead the group in a quick song or dance. This usually ensures that participants respect time!

**USING PIN BOARDS**

The pin board and cards are versatile tools for a facilitator, they can be used to brainstorm ideas and make presentations. Unlike a flip chart, participants can use them to contribute ideas anonymously, and they allow for easy sorting, clustering and prioritizing of ideas. There are many exercises that use pin boards and you should consult the VIPP manual for ideas (see CD-ROM).

The basic rules that should be presented to the participants at the beginning of the workshop (and held in a place where they can be referred to throughout the event) are:

- Think before you write!
- Write only one idea per card so that clustering of ideas is possible.
- Write three lines maximum on each card and form blocks of words.
- Use key words instead of full sentences.
- Write large letters in both upper and lower case, if possible, so that your words can be read from the back of the room.
- Learn to write legibly and use the broad side of the marker, not the point.
- Use different sizes, shapes and colours of cards to creatively structure the results of discussions.

**MODULE TWO**

**THE INTERNATIONAL INSTRUMENTS  
RELEVANT TO JUVENILE JUSTICE  
ADMINISTRATION**

**PARTICIPANT'S MATERIALS**

### OBJECTIVES

At the end of this module participants will:

- Understand the juvenile justice values and provisions of the Convention on the Rights of the Child.
- Understand the other international and regional instruments and the provisions of the international rules and guidelines relevant to juvenile justice.
- Exchange ideas on how they can be put into practice at national level.

**TIME** [3 Hours 30 minutes]

### CONTENT

- 2.1 International Instruments Summary
- 2.2 The Convention of the Rights of the Child
- 2.3 The other United Nations Conventions and Rules on Juvenile Justice.
- 2.4 Implementation Issues

**Summary of International Instruments Relevant to Juvenile Justice Administration**

<b>Child-specific instruments</b>	<b>Non-child specific instruments</b>
UN Convention on the Rights of the Child	UN International Covenant on Civil and Political Rights (ICCPR)
UN Guidelines for the Prevention of Juvenile Delinquency (the ‘Riyadh Guidelines’)	UN International Covenant on Economic, Social and Cultural Rights
UN Standard Minimum Rules for the Administration of Juvenile Justice (the ‘Beijing Rules’)	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UN Rules for the Protection of Juveniles Deprived of their Liberty (JDL),	UN Convention on the Elimination of Racial Discrimination
	UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
	UN Minimum Rules for Non-Custodial Measures: the ‘Tokyo Rules’ (1990)*
	UN Standard Minimum Rules for the Treatment of Prisoners
African Charter on the Rights and Welfare of the Child	African Charter on Human and People’s Rights
European Convention on the Exercise of Children’s Rights	European Convention for the Protection of Human Rights and Fundamental Freedoms (and Protocols)
	American Convention on Human Rights and additional Protocol in the Area of Economic, Social and Cultural Rights

## Table Showing Relevant Articles from the Convention on the Rights of the Child

The table shows some of the principles and rights which need to underpin the interventions relating to children in conflict with the law<sup>5</sup>. However, some of the principles and articles (the article is indicated by the number in parentheses) are **incorrectly** matched. Rearrange the cards to match the correct pairs.

Principle	Explanation Supported by CRC article:
Diversion	(3) In all matters concerning a child, the child's best interest should be a primary concern.
Empowerment	(2) All children should have equal access to services regardless of race, sex language or other status.
Cultural Appropriateness	(8) Consideration should be given to dealing with children in a manner consistent with their culture.
Best Interests of the Child	(37) Alternative solutions should be sought before arresting or detaining a child.
Deprivation of Liberty a Last Resort	(40) Efforts should be made to avoid children going through the formal justice system where possible.
Non-discrimination	(40) The resourcefulness of each child and their family should be promoted.
Restorative Justice	(12) Children should have a say in all matters that affect them.
System Accountability	(5) A child's family should be involved in the making of decisions affecting a child and wherever possible regard should be given for the views of the family.
Child's Participation	(40) Efforts should be made to restore the damage caused to all parties affected by the crime.
Family Participation	(All) Everyone intervening with children and their families should be held accountable to/for them.
Re-integration	(40) Efforts should be made to re-integrate children into their communities and to assist them to play a positive role in the community.

<sup>5</sup> Note: Adapted from Training Manual on Child Rights, Protection and Juvenile Justice, UNICEF East Timor. The list is not exhaustive



**Table Showing Relevant Articles from the Convention on the Rights of the Child<sup>6</sup>:**

<b>Principle</b>	<b>Explanation Supported by CRC article:</b>
Best interests of the child	(3) In all matters concerning a child, the child’s best interest should be a primary concern.
Non-discrimination	(2) All children should have equal access to services regardless of race, sex language or other status.
Cultural Appropriateness	(8) Consideration should be given to dealing with children in a manner consistent with their culture.
Deprivation of Liberty a Last Resort	(37) Alternative solutions should be sought before arresting or detaining a child.
Diversion	(40) Efforts should be made to avoid children going through the formal justice system where possible.
Empowerment	(40) The resourcefulness of each child and their family should be promoted.
Child’s Participation	(12) Children should have a say in all matters that affect them.
Family Participation	(5) A child’s family should be involved in the making of decisions affecting a child and wherever possible regard should be given for the views of the family.
Restorative Justice	(40) Efforts should be made to restore the damage caused to all parties affected by the crime.
System Accountability	(All) Everyone intervening with children and their families should be held accountable to/for them.
Re-integration	(40) Efforts should be made to re-integrate children child into their communities and to assist them to play a positive role in the community.

<sup>6</sup> Note: Adapted from Training Manual on Child Rights, Protection and Juvenile Justice, UNICEF East Timor. The list is not exhaustive

## **The Convention on the Rights of the Child**

Juvenile justice administration is the subject of detailed international standards. These standards cover a vast and complex range of issues from prevention through early intervention, judicial process, conditions of detention and social reintegration, involving a wide range of actors.

The primary instrument guiding the development of juvenile justice is the United Nations Convention on the Rights of the Child (1989). This instrument is seen as the overarching framework for a child rights approach. It contains an elaborate set of guidelines for maintaining human rights standards in juvenile justice systems and for the administration of juvenile justice itself.

Countries are obliged to give effect to its provisions by means of laws, policies and practices designed to further the Convention's goals. The implementation of the Convention is overseen by the Committee on the Rights of the Child, a body of 18 international experts chosen in such a way as to represent a variety of geographical, linguistic and religious communities.

### **General Principles**

To ensure a common approach to the spectrum areas addressed by the Convention, the Committee on the Rights of the Child identified four general principles that are a guiding reference for the implementation of the Convention. They are:

#### **BEST INTEREST**

The UN Convention is premised on the 'best interests of the child' principle as a primary consideration in all matters concerning children. This principle guides the application of all other principles of the Convention, including those relevant to juvenile justice. Its application is not limited to decisions made by courts of law: the best interests of the child must be broadly applied to administrative decisions, policy formulation and diversion measures.

#### **NON - DISCRIMINATION**

According to this principle, children should not be discriminated against on a wide variety of grounds, including gender, ethnic or social origin, race, disability or any other status, including their parents' status.

#### **CHILD PARTICIPATION**

Children's right to participate in matters affecting their interests is regarded as an innovative way of recognizing that children are individual bearers of human rights and not mere objects of concern or recipients of welfare. The relevant provision (article 12)

has obvious links to juvenile justice in that, insofar as judicial proceedings are concerned, children must be given the chance to participate in all decisions and, when in court, should preferably enjoy competent legal representation.

### **THE RIGHT TO SURVIVAL AND DEVELOPMENT**

This principle concerns a child's well-being, including his/her rights to health, welfare and social services, recreation and leisure, protection from violence and harm. It is a principle with broad application in the juvenile justice sphere, especially where children have been deprived of their liberty, as they are notoriously vulnerable to threats to their physical and psychological well-being.

### **Provisions Applicable to Juvenile Justice Administration**

Most of the Convention on the Rights of the Child is relevant to juvenile justice in the sense that respect for rights such as the right to education, to protection against abuse and exploitation, the right to an adequate information, the right to an adequate standard of living and appropriate moral guidance helps keep children from becoming involved in crime. It leads to the conclusion that any meaningful attempt to prevent juvenile crime must involve promoting and protecting all rights for children. Therefore, the most relevant provisions of the Convention on the administration of juvenile justice are included in articles 37, 40 and 39.

**ARTICLE 37** prohibits torture, cruel, inhuman, degrading treatment or punishment, capital punishment and life imprisonment without possibility of release and protects children deprived of their liberty.

Arrest and detention shall only be used as a measure of last resort and for the shortest appropriate period of time. Children deprived of their liberty have the right to be treated with humanity, respect and dignity in a manner that takes into account their age, to be separated from adults, to maintain family contact, to have prompt access to legal and other assistance, to challenge the legality of their detention and to expect a prompt decision in relation to any resulting action. In contrast with article 40, article 37 is not limited to children accused or convicted of an offence.

**ARTICLE 40** more specifically covers the rights of all children accused of infringing the penal law. Thus, it covers treatment of the child from the moment an allegation is made, through investigation, arrest, charge, the pre-trial period, trial and sentence. The article requires States Parties to promote a distinctive system of juvenile justice with specific positive rather than punitive aims. It details a list of minimum guarantees for the child ('due process rights') and it requires States Parties to set a minimum age of criminal responsibility and to provide measures for dealing with children who may have infringed the penal law without resorting to judicial proceedings as well as alternative dispositions to institutional care.

**ARTICLE 39** recognizes the right to rehabilitation and social reintegration of children victims of neglect, exploitation and abuse.

## The United Nations Rules and Guidelines on Juvenile Justice

These are principles and standards that many States have agreed and are articulated in declarations, principles, standard rules and guidelines. While they have no binding legal effect on States they nevertheless are derived from international law and represent a broad consensus on the part of the international community, and as such, have a strong moral force. They also have a guidance value.

In relation to children's rights and juvenile justice, the most relevant instruments include the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990), the UN Guidelines for the Prevention of Juvenile Delinquency (the 'Riyadh Guidelines') (1990), and the UN Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules') (1985).

### **The UN Guidelines for the Prevention of Juvenile Delinquency: The 'Riyadh Guidelines' (1990)**

The Riyadh Guidelines represent a comprehensive and proactive approach to prevention and social reintegration, detailing social and economic strategies that involve almost every social area: family, school and community, the media, social policy, legislation and juvenile justice administration. Prevention is seen not merely as a matter of tackling negative situations, but rather as a means of positively promoting general welfare and well-being in partnership with society and community-based programmes. The Guidelines are based on the assumption that the "prevention of juvenile delinquency is an essential part of crime prevention in society." The Guidelines thus adopt a child-centred orientation and favour preventative programmes that focus on the well-being of children and their development.

More particularly, countries are recommended to develop community-based interventions to assist in preventing children coming into conflict with the law, and to recognise that 'formal agencies of social control' should be utilised only as a means of last resort.

The Riyadh Guidelines also call for the decriminalization of status offences and recommend that prevention programmes should give priority to children who are at risk of being abandoned, neglected, exploited and abused.

### **The UN Standards Minimum Rules for the Administration of Juvenile Justice: The 'Beijing Rules' (1985)**

The Rules, adopted in 1985 and reflected in Article 40 of the CRC, provide guidance to States on protecting children's rights and respecting their needs when developing separate and specialised systems of juvenile justice.

The Rules encourage:

- The use of diversion from formal hearings to appropriate community programmes.
- Proceedings before any authority to be conducted in the best interests of the child.
- Specialised training for all personnel dealing with juvenile cases.
- The use of deprivation of liberty as a measure of last resort and for the shortest possible period of time.
- The organisation and promotion of research as a basis for effective planning and policy formation.

According to these Rules, a juvenile justice system should be fair and humane, emphasize the well-being of the child and ensure that the reaction of the authorities is proportionate to the circumstances of the offender as well as the offence. The importance of rehabilitation is also stressed, requiring necessary assistance in the form of education, employment or accommodation to be given to the child and calling upon volunteers, voluntary organisations, local institutions and other community resources to assist in that process

These Rules are divided into six parts covering general principles, investigation and prosecution, adjudication and disposition, non-institutional treatment, institutional treatment and research, policy formulation and evaluation.

**Investigation and Prosecution** are subject to the following considerations (Rules 10 and 11):

- Notification of parents or guardians without undue delay in the case of the apprehension of a child.
- Judicial consideration of release without undue delay.
- Respect for the legal status of the child at all times.
- Consideration of disposal of the case without recourse to formal hearings.
- Referral to the community or other services requires consent of the child or of parents or guardians.
- Provision for temporary supervision and guidance, restitution and compensation of victims.

### **Diversion**

The Rules (11.2 and 11.3) stress that diversion may be used at any time of the decision making process - by the police, prosecution or other agencies such as the courts, tribunals, boards or councils.

They emphasise the importance of obtaining the consent of the child or his or her parent or guardian to the recommended diversionary process. These considerations serve to avoid the stigma of a formal conviction and sentence and to provide for alternatives at any stage of criminal proceedings, especially where the offence is of a non-serious

nature and some form of social control and rehabilitation by alternative institutions is deemed appropriate and constructive.

**Deprivation of Liberty**

The Rules also deal comprehensively with situations where a child is deprived of her or his liberty (Rule 13) as follows:

- Detention pending trial should be used only as a measure of last resort and for the shortest possible period of time.
- Detention pending trial should wherever possible be replaced by alternative measures such as close supervision, intensive care or placement within a family or in an educational setting or home.
- Children in detention pending trial shall be kept separate from adults and shall be detained in a separate institution or a separate part of an institution also holding adults.
- While in custody, children shall receive care, protection and all necessary individual assistance - social, legal, educational, vocational, psychological, medical and physical - that they may require in view of their age, sex and personality.

The Rules on adjudication and disposition of cases (Rules 14 - 18) promote proceedings according to the principles of a fair and just trial (including the right to have legal aid) and which take into account the best interests of the child.

The Rules further stress the importance of finding a solution that will reflect the proportionality between the offence, the interests of the child and of the society. They require (Rule 16) that before a competent authority renders sentence, the background and circumstances in which the child 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. The need for professional education, in-service training and refresher courses is also advocated.

**The UN Rules for the Protection of Juveniles Deprived of their Liberty (1991)**

The principles of these Rules, concerned with the treatment of juveniles in detention, have been incorporated into the CRC. The Rules set out standards applicable when a child (any person under the age of 18) is confined to any institution or facility (whether this be penal, correctional, educational or protective and whether the detention be on the grounds of conviction of, or suspicion of, having committed an offence, or simply because the child is deemed 'at risk') by order of any judicial, administrative or other public authority. In addition, they include principles that define the specific circumstances under which children can be deprived of their liberty, emphasizing that deprivation of liberty must be a last resort measure, for the shortest possible period of time and limited to exceptional cases.

Where deprivation of liberty is unavoidable, the following conditions should be fulfilled:

- Priority should be given to a speedy trial to avoid unnecessarily lengthy detention periods.
- Children should not be detained without a valid commitment order.
- Small, open facilities should be established with minimal security measures.
- Deprivation of liberty should only be in facilities which guarantee meaningful activities and programmes promoting the health, self-respect and responsibility of juveniles. Food should be suitably prepared, clean drinking water must be available, bedding should be clean and sanitary installations sufficient, clothing should be suitable for the climate, and preventive and remedial medical care should be adequate.
- Detention facilities should be decentralized to facilitate contact with family members and children should be permitted to leave the facilities for visits to their family homes.
- Education should take place in the community and children should have the opportunity to work within the community.
- Juvenile justice personnel should receive appropriate training. They should respect the child's right to privacy and protect children from any form of abuse or exploitation.
- Qualified independent inspectors should conduct regular inspections.

## The Regional Instruments

The Convention on the Rights of the Child is supplemented at regional level by other instruments. The most relevant are:

### The African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child, adopted in 1990 after the adoption of African Charter on Human and People's Rights (1981), is different from the CRC in that the former includes a section on the responsibilities of children, which is absent from the latter. The African Charter places 'rights' within the context of collective and individual 'responsibilities'. Responsibilities refers to the explicit duties to which every child is automatically subject, such as the duty to "work for the cohesion of the family... and to assist them in case of need". Opinions have been expressed that children's rights cannot be viewed in isolation and that emphasis should not be placed solely on children's rights to the exclusion of the rights of their parents and the community at large. Further, the Charter emphasises the responsibilities of parents and communities for the well-being, growth and development of the child.

The Charter contains the specific juvenile justice provisions under article 17, "the Administration of Juvenile Justice", which provides that:

- 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.
- No child who is detained or deprived of his/her liberty shall be subject to torture, inhuman or degrading treatment or punishment.
- Children are separated from adults in their place of detention.
- Every child shall be presumed innocent until proven guilty.
- Every child shall be afforded legal assistance in the preparation of his/her defence.
- The essential aim of treatment during the trial and if the child is found guilty shall be his/her reformation, reintegration into his/her family, and social rehabilitation.

Article 30 of the Charter introduces a special provision that aims to protect the infants and young children of imprisoned mothers by encouraging recourse to non-custodial sentence and alternative to imprisonment. This is a unique feature of the Charter that does not have a counterpart in the CRC.

An African Committee of Experts on the Rights and Welfare of the Child has recently been established. This Committee will be empowered to receive state reports as well as communications from individuals, groups or non-governmental organizations recognized by the African Union, a member state or from the United Nations.



**The European Conventions (Convention for the Protection of Human Rights and Fundamental Freedoms and Convention on the Exercise of Children's Rights)**

The European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in 1950, was the first human rights treaty with enforceable mechanisms. The treaty deals mainly with civil and political rights, which are found in articles 1-18 (lawful deprivation of liberty, right to a due process...). Articles 19-51 list the working mechanisms of the European Court and Commission, while Protocols 1, 4, 6 (prohibition of death penalty), 7 and 12 include additional rights.

The European Convention on the Exercise of Children's Rights, adopted in 1996, provides a number of procedural measures to allow children to exercise their rights, in particular in family proceedings before judicial authorities. It sets up a Standing Committee, which shall keep under review problems relating to this Convention.

The judicial authority, or person appointed to act before a judicial authority on behalf of a child, has a number of duties designed to facilitate the exercise of rights by children. Children should be allowed to exercise their rights (for example, the right to be informed and the right to express their views) either themselves or through other persons or bodies. Among the types of family proceedings of special interest for children are those concerning custody, residence, access, questions of parentage, legitimacy, adoption, legal guardianship, administration of property of children, care procedures, removal or restriction of parental responsibilities, protection from cruel or degrading treatment and medical treatment.

**American Conventions on Human Rights**

The Organization of American States (OAS) is a regional institution, which includes several structures for protecting human rights. The Charter of the Organization of American States focuses on several areas promoting human rights: democracy, economic rights, the right to education, and equality. The Charter also establishes two main institutions designed specifically for human rights protection and promotion: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. It protects rights via the creation of substantive norms and maintains these standards through the petition process.

The OAS has adopted several declarations and treaties relating to human rights such as the American Declaration of the Rights and Duties of Man, the Convention on Human Rights (adopted in 1969 and entered into force in 1978), the Protocol to the American Convention on Human Rights to Abolish the Death Penalty (1990), the Inter-American Convention to Prevent and Punish Torture (1985), the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (1994). The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ('Protocol of San Salvador'-1988) focuses on the state's obligation to promote social, economic, and cultural human rights, such as those

related to labour laws, health issues, education rights, economic rights, rights relating to the family, and rights of children, the elderly, and the handicapped. It demonstrates that states may fulfil these obligations through enacting legislation, enforcing measures of protection, and refraining from discrimination.

**Examples: The European Court of Human Rights – the Right to a Fair Trial**

The case of T & V vs. UK concerned the application to the European Court of two boys convicted of murder of a young child. The two boys complained that the process of public trial with the media attention, which followed, was unfair and amounted to inhuman and degrading treatment contrary to Article 3 of the European Convention on Human Rights, that they were not able to participate effectively in the proceedings and could not understand because of their young age i.e. they were denied the right to a fair trial under article 6 of the European Convention on Human Rights and raised complaints about the role of the Home Secretary in the fixing of sentencing tariffs and the unavailability of procedures to review the continuation of their detention.

The case was found admissible by the European Commission, which expressed the opinion that the criminal procedures, in particular their public and formal nature and the fact that the children were placed in a raised dock, prevented the boys from participating effectively in their trial in violation of article 6 and that the involvement of the Home Secretary was a further violation as this was not an impartial and independent tribunal.

The European Court in a judgment dated 16 December 1999 rejected the United Kingdom Government's primary objection to the case, which was that domestic remedies had not been exhausted and found as follows:

i) There had been no violation of Article 3 (inhuman and degrading treatment) in relation to the trial.

ii) There had been a violation of Article 6 (the right to a fair trial) .The Court in its judgement was particularly concerned about the lack of participation and understanding of the children, about the use of a raised dock, the length of the trial, the formality of the venue (the Crown Court) and the publicity surrounding the case.

iii) There had not been a breach of Article 5(1) and detention at Her Majesty's pleasure was clearly lawful.

iv) There was a breach of Article 6(1) in that the fixing of the tariff amounted to a sentencing exercise and as the Home Secretary who was not independent of the

executive had set these tariffs there was a breach in that Article 6(1) required a hearing before an independent and impartial tribunal to determine any criminal charge.

v) There was a breach of Article 5(4) which required children detained during Her Majesty's Pleasure a review by a judicial body such as the Parole Board.

The European Court stated in its judgment that what is essential for children charged with an offence is that the case is dealt with in a manner which takes full account of the

child's age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his/her ability to understand and participate in the proceedings.

The Lord Chief Justice in Northern Ireland has now issued a Practice Direction about the trial of children in the Crown Court. The overriding principle is stated to be that the trial process itself should not expose a child defendant to avoidable intimidation, humiliation and distress. Every effort should be made to assist the child defendant in understanding and participating in proceedings. There are a number of directions including holding the hearing in a courtroom in which all parties can sit at the same level, allowing the child to sit with family, restricting attendance at trial, having frequent and regular breaks and not wearing wigs and gowns unless the child asks for this.

## Implementation Issues

### Obligations of States under the Convention on the Rights of the Child

The CRC is a framework treaty that works by stimulating the development of laws and policies for the benefit of children. It points out a direction in which States are obliged to move. It sets out guidelines or principles for States to follow and it establishes mechanisms that will serve as catalysts to the evolutionary process.

### The Convention Provides Guidance for Action

While some of the Convention's obligations might be concrete rules, most of them will be generalized statements which point the direction that the States must move in.

In the Convention on the Rights of the Child, several of the rights are concrete rules. The prohibition of torture and the ban against the use of capital punishment against children are two such concrete rules (article 37(a)). At the other end of the spectrum are the rights that are 'idealized goals' to work towards such as the progressive right to an adequate standard of living (article 27), or the progressive right to a free education that is aimed to ensure that all individuals will realize their fullest potential (articles 28 and 29).

Most of the other rights in the CRC fall in between these two extremes. These other rights are not concrete rules because they require the State to make balancing decisions that will translate the abstract statements in the articles into what the children are actually entitled to enjoy; but on the other hand, they have more tangible substance than the idealized goals.

### The Convention sets a Socio-Political Dynamic into Motion

The Convention will be successful to the extent that it is able to stimulate a strong socio-political dynamic. The CRC stimulates this dynamic by extending the rhetoric of rights to children: they are not to be treated with mere charity, but as holders of human rights, just as adults are rights-holders. The CRC also stimulates the dynamic by requiring the State to teach children their rights (article 42), which, over the course of time, will dramatically change societal attitudes about them. Moreover, the CRC Committee encourages States to create institutions to stimulate the process. Setting up an ombudsman's office for children's rights along with an independent human rights monitoring agency, and enacting laws that require child impact assessments before government agencies take action are examples of new state structures that help to translate the CRC into national laws and policies.

Another powerful component of the process is the extensive networking and coalition-building that is going on amongst children's rights non-governmental organisations. This is happening at the local, national, and international levels, and the result is the changing of attitudes and the influencing of policies. For example, States are reforming their national laws and they are starting to allocate more of their annual budgets to children.

There is also a trend in using the CRC in national and international courts. Even if judges do not use the CRC rights as a direct source of law, they are starting to use them as interpretive aids in the application of national and regional laws. In short, the CRC is a source of inspiration for a wide range of initiatives that are having important impacts on the lives of children.

### **The Convention Establishes 'Mechanisms'**

Like other UN human rights treaties, the CRC requires States to make implementation reports to a monitoring committee, the Committee on the Rights of the Child. States party to the Convention are required to submit an initial report detailing their measures of implementation within two years of ratifying the Convention and subsequent reports every five years (article 44). The treaty-monitoring body encourages the State to consult with civil society in the preparation of its reports.

On the basis of a discussion ('dialogue') with representatives of the Government concerned, the Committee prepares a set of concluding observations assessing the situation and containing recommendations about how a State can improve its implementation of the Convention. Although the Committee's recommendations cannot be enforced, they carry significant political weight. The Committee is also developing specific guidelines on juvenile justice.

However, unlike international treaties such as the ICCPR, CEDAW, CERD and CAT and regional instruments, there is no mechanism for children or their representatives to bring an action alleging a violation of their rights under the Convention. This does not mean that individual States cannot provide a domestic mechanism for children to enforce their rights.

### **Place of International Standards in Domestic Order**

International legal instruments take the form of a treaty (also called agreement, convention, protocol), which may be binding on the contracting States. There are various means by which a State expresses its consent to be bound by a treaty. The most common are ratification or accession. A new treaty is 'ratified' by those States who have negotiated the instrument. A State, which has not participated in the negotiations, may at a later stage 'accede' to the treaty. The treaty enters into force when a pre-determined number of States have ratified or acceded to the treaty.

When a State ratifies or accedes to a treaty, that State may make reservations to one or more articles of the treaty. Reservations are defined in international instruments as 'unilateral statements however phrased or named made by a State, whereby its purpose is to exclude or modify the legal effects of certain provisions of a treaty in their application to that State'. Reservations may normally be withdrawn at any time.

Where such reservations are expressed in broad terms, they can effectively undermine key aspects of a State's commitment to the Convention. However, it is a rule of international law that a reservation will not be effective to relieve a State of its obligations under a treaty where it is incompatible with the object and purpose of the treaty.

While in some 'civil law' jurisdictions, international human rights treaties are automatically incorporated into domestic law upon ratification, in most of the 'common law' jurisdictions, international conventions require domestic implementation in order to create enforceable rights and liabilities. In these non self-executing jurisdictions, international human rights treaties may nonetheless indirectly influence the interpretation and application of domestic law. Courts invoke international human rights treaties, such as CRC, as aids to interpretation when there is an absence or ambiguity in domestic law or when international human rights principles influenced the drafting of domestic legislation or constitutions.

Practically, all states that have ratified or acceded to an international treaty must issue decrees, amend existing laws or introduce new legislation in order for the treaty to be fully effective on the national territory.

The international instruments read together with national constitution and laws are useful in two respects. Firstly, they may be incorporated into legislation to guide interpretation and action within its scope. Secondly, they can offer guidance in the legislative process by providing standards that new child legislation should meet.

On the other hand, standard rules or general guidelines lack legal obligatory force and are referred to as 'soft law' or non-binding rules. There is, however, a growing body of consensus that such documents embody some form of pre-legal, moral or political obligation and can play a significant role in the interpretation, application and further development of existing law. Quite often, they become more directly relevant through incorporation in binding international instruments, domestic laws and court judgements. It is clear then that it is necessary to enact in domestic law those principles from the international instruments on which a new system of child justice should be based.

**Example: Inter-American Court on Human Rights, case of Antraum Villagran Morales et al. (also known as the 'Bosques case').**

Antraum Aman Villagrán Morales (age 17), Henry Giovanni Contreras (age 18), Julio Roberto Caal Sandoval (age 15), Federico Clemente Figueroa Tunchez (age 20), and Jovito Josué Juárez Cifuentes (age 17), five street children, were killed in 1990 by

members of the Guatemalan National Civilian Police. On June 17, 1990, the severely burned and mutilated bodies of four of the victims were found in the woods, with their



eyes and ears burned and their tongues severed. On June 25, 1990, the fifth victim was abducted and suffered the same fate as his friends.

As a result of these crimes, and in reaction to unprecedented numbers of human rights violations committed against street children, Casa Alianza presented the case to a Guatemalan court, charging that two national police officers had tortured and killed the five street children. The court found insufficient evidence to convict the accused officers, and this decision was affirmed by the Court of Appeals in May 1992.

Casa Alianza and the Center for Justice and International Law (CEJIL) then presented the case to the Inter-American Commission on Human Rights (Commission) within the Organization of American States (OAS) on September 15, 1994. Pursuant to the American Convention, the parties petitioned the Commission under article 44, allowing non-governmental entities to lodge petitions containing denunciations of Convention violations by a State Party, and under article 46(a), granting admissibility to petitions once domestic remedies have been exhausted.

The Commission recognized several violations of the American Convention: article 1 (obligation to respect rights); article 4 (right to life); article 5 (right to humane treatment); article 7 (right to personal liberty); article 8 (right to a fair trial); article 19 (rights of the child); and article 25 (right to judicial protection). The Commission also identified violations of articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. Despite the Commission's attempts to negotiate a friendly settlement, the Guatemalan government refused.

After three years of negotiations with the Guatemalan government, the Commission completed its report in October 1996, calling on Guatemala to undertake the following measures: investigate the case promptly and establish the facts effectively; adopt necessary measures to bring the perpetrators of the crime to justice; grant financial reparations to the families of the victims; implement protective measures to prevent human rights abuses in the future; and offer ongoing training for police officers. The Commission allowed Guatemala two months to comply with its recommendations before publishing the report. The state's failure to respond led to the decision to transfer the case to the Inter-American Court of Human Rights on January 7, 1997.

The Court decided the Bosques case on November 19, 1999, condemning the Guatemalan government for violating seven articles (1, 4, 5, 7, 8, 19, 25) of the

American Convention and three articles (1, 6, 8) of the Inter-American Convention to Prevent and Punish Torture. The reparation phase of the judgment concluded on May 26, 2001, after Court hearings with the families of the victims and international experts. In a unanimous decision, the Court called for U.S.\$ 508,865.91 in monetary compensation for the victims' families and for Casa Alianza's and CEJIL's legal expenses. Guatemala was required to establish a school for street children in the name of the five victims and to exhume the body of Henri Contreras and bury it in the cemetery of Vieja Sacatepequez, as requested by his family. Lastly, the reparations sentence ordered Guatemala to bring its internal laws regarding children into

accordance with Article 19 (Rights of the Child) of the American Convention. The Court gave the Guatemalan government six months to comply with the order.

The Bosques case established an important precedent in the Inter-American legal system for children's rights jurisprudence. Article 63 of the American Convention makes the Court judgments legally binding on States Parties, and a study of the Inter-American jurisprudence shows that Court decisions serve as valuable authority for future cases.