CHAPTER - II
JUVENILE DELINQUENCY:
INTERNATIONAL INITIATIVES

The erstwhile League of Nations (1924) and the United Nations (1959) had adopted Declarations on the Rights of Children - significant but non-binding. The seeds for the right-based approach were sown in the ICCPR 1966. The eloquent evolution of the juvenile justice system has culminated in the Convention on the Rights of the Child (CRC) 1989, a legally binding instrument. It brings those less than 18 years of age under the ambit of the term ‘children’. Articles 37 and 40 specifically and when read with the General Comment No.10, Children’s Rights in Juvenile Justice, lay down a comprehensive mechanism that States must comply with, taking note of the overall framework of the CRC and its main ‘umbrella rights’. The aforesaid provisions must be read with the following international guidelines:

• Beijing Rules 1985;
• Riyadh Guidelines 1990;
• JDL Rules 1990;
• Tokyo Rules 1990;


2.1 THE BACKGROUND TO THE BEIJING RULES

The Beijing Rules, adopted by the United Nations in 1985, provide guidance to States for the protection of children's rights and respect for their needs in the development of separate and specialised
systems of juvenile justice. Limited provisions concerning juvenile justice may be located in regional human rights treaties and in the International Covenant on Civil and Political Rights 1966. Similarly, the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted in 1955, set out certain basic requirements for all prisoners but do not address specific issues in relation to young offenders. The Beijing Rules were the first international legal instrument to comprehensively detail norms for the administration of juvenile justice with a child rights and development oriented approach. They were a direct response to a call made by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders which convened in 1980.

The Rules operate within the framework of two other sets of rules governing juvenile justice, both adopted in 1990: 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 JDL Rules). These three sets of rules can be seen as guidance for a three stage process: firstly, social policies to be applied to prevent and protect young people from offending (the Riyadh Guidelines); secondly, establishing a progressive justice system for young persons in conflict with the law (the Beijing Rules); and finally, safeguarding fundamental rights and establishing measures for social re-integration of young people once deprived of their liberty, whether in prison or other institutions (the JDL Rules).

Although the Beijing Rules predate the UN Convention on the Rights of the Child 1989, several of the fundamental principles have been incorporated into that Convention and they are expressly referred to in its Preamble.
2.2 STATUS OF THE RULES IN INTERNATIONAL LAW

The Rules are recommendatory and non-binding per se. Certain of the principles enunciated within the Rules, however, have been encompassed in provisions of the Convention on the Rights of the Child, a global treaty which is binding on all States Parties. The Beijing Rules do not prevent the application of the United Nations Standard Minimum Rules for the Treatment of Prisoners adopted in 1955. Those rules should be extended to juveniles in detention pending adjudication and in institutions and applied in such a way as to meet the particular needs of juveniles.

The commentary specifically states that the Rules should also be interpreted and implemented in the light of other existing and emerging human rights texts, without prejudice to any provision of wider application which may be contained therein.

The Rules are divided into six parts and are accompanied by a commentary expanding upon and explaining each individual rule. These six parts are:

1. General Principles;
2. Investigation and Prosecution;
3. Adjudication and Disposition;
4. Non-Institutional Treatment;
5. Institutional Treatment; and

2.2.1 Definitions Used in the Rules

Juvenile

A juvenile is defined as 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. Thus the Rules look to the nature of the punishment of the offence rather than the offender in determining who is a juvenile. The later JDL Rules amend the definition of juvenile to any person under the age of 18, which is consistent with the definition of a child given at Article 1 of the Convention on the Rights of the Child.

**Offence**

An offence is any behaviour that is punishable by law under the States respective legal systems.

**Juvenile Offender**

This is a child or young person who is alleged to have committed or has been found to have committed an offence.

**Application of the Rules**

The Rules also apply to juveniles who may be punished for any specific behaviour not punishable if committed by an adult, "status offences", (e.g. truancy), juveniles in welfare and care proceedings and young adult offenders.

**2.2.2 Fundamental Principles**

1. The fair and humane treatment of juveniles in conflict with the law. In particular, the aims of juvenile justice should be two-fold: the promotion of the well-being of the juvenile and a proportionate reaction by the authorities to the nature of the offender as well as to the offence.

2. The use of diversion from formal hearings to appropriate community programmes where the consent of the juvenile is encouraged.
3. Where diversion is not appropriate, detention of the juvenile should be used as a measure of last resort, for the shortest period of time possible and separate from adult detention.

4. Proceedings before any authority should be conducted in the best interests of the juvenile and in the manner which allows him/her to participate and to express himself/herself freely.

5. Deprivation of liberty should only be imposed after careful consideration for a minimum period and only for serious offences.

6. Capital and corporal punishment should be abolished for any crime.

7. Institutionalisation of juveniles should only be resorted to after consideration of alternative disposition measures.

8. Both personnel and police officers dealing with juvenile cases should benefit from continued specialised training.

9. Whilst undergoing institutional treatment, appropriate educational services and care should be made available to assist juveniles in their return to society.

10. Release should be considered both on apprehension and at the earliest possible occasion thereafter.

2.2.3 Age of Criminal Responsibility

Where States set the age at which criminal responsibility commences, that age should not be set at too low a level and should reflect emotional, mental and intellectual maturity.

The commentary encourages States to agree on a reasonable lowest age limit which would be applicable internationally.
2.2.4 Aims of Juvenile Justice

The juvenile justice system should emphasise the well-being of the juvenile and ensure that the reaction of the authorities is proportionate to the circumstances of the offender as well as the offence.

2.2.5 Scope of Discretion

In view of the varying special needs of juveniles, discretion may be exercised at all stages of proceedings by persons specially qualified and trained to do so. Those exercising discretion should be accountable for their decisions.

2.2.6 Rights of Juveniles

The presumption of innocence is applicable to all juveniles. Further procedural safeguards should be guaranteed: the right to be notified of the charges, the right to remain silent, the right to legal representation, the right to the presence of a parent or guardian, the right to call and cross-examine witnesses and the right of appeal. These provisions represent the minimum elements for a fair and just trial and should be read in conjunction with the provisions governing penal proceedings in both the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights.

2.3 UNITED NATIONS GUIDELINES FOR THE PREVENTION OF JUVENILE DELINQUENCY (RIYADH GUIDELINES)

The Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders\(^4\) gave birth to two important

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\(^4\) Havana 1990.
resolutions related to the phenomenon of juvenile delinquency:

1. Guidelines for the Prevention of Juvenile Delinquency\(^5\)

2. Rules for the protection of Youngsters Deprived of their Liberty\(^6\)

Both resolutions complement the previously adopted (1985) Standard Minimum Rules for the Administration of juvenile Justice (Resolution 40/33). In this respect, it is very interesting and important to link these different instruments, as mentioned in point 8 of the Preamble of the Guidelines where the Secretary General is requested to issue a compendium on the different UN Juvenile justice standards.

The United Nations Guidelines for the Prevention of Juvenile Delinquency, also called the Riyadh Guidelines, refer to an important international experts' meeting on the draft texts held in the Saudi Arabian capital (1988), are also interesting for many other reasons. They reveal for example a rather positive, pro-active approach to prevention and are, perhaps for that reason, very comprehensive. In the meantime, the Guidelines certainly express a growing awareness that children are fully-fledged human beings, an attitude which was far from dominant in Western (orientated) countries in the 19th century, but which is rather obvious in other very recent regulations as the United Nations Convention on the Rights of the Child (1989).

2.3.1 The origins

Since 1955, the United Nations have organised a congress on Crime Prevention and Treatment of Offenders every five years, bringing together representatives of the world's national Governments, specialists in crime prevention and criminal justice, scholars of

\(^5\) Resolution 45/112
\(^6\) Resolution 45/113
international repute and members of the NGOs concerned. The aim of these meetings has been to discuss problems, share professional experiences and seek viable solutions to crime. Their recommendations are intended to have an impact on the legislative bodies of the United Nations and on national and local Governments.

Juvenile delinquency and its prevention have been items on the agenda of nearly all United Nations Congresses on Crime Prevention and Treatment of Offenders.

The discussion on juvenile crime prevention even attracted the largest number of participants at the first congress\(^7\). Juvenile delinquency was treated as a broad category, comprising problems relating to youthful offenders but also to abandoned, orphaned and maladjusted minors. The second congress\(^8\) already recommended limiting the concept of juvenile delinquency to violations of criminal law, excluding vaguely anti-social behaviour or rebellious attitudes which are widely associated with the process of growing up.

This restricted approach again can be found in the Riyadh Guidelines. Article 56, for instance, states "Any conduct not considered an offence or penalized if committed by an adult should not be considered an offence or penalized if committed by a young person".

The sixth congress\(^9\) debated the theme of Crime prevention and quality of life'. This congress was important not only because of its pro-active approach of prevention but also because of the impetus it gave towards more "binding" engagements in dealing with juvenile crime.

\(^7\) Geneva, 1955
\(^8\) London, 1960
\(^9\) Caracas, 1980
The provision of social justice for all children was strongly emphasised as a factor of prevention.

Indeed, prevention was considered to be more than just tackling negative situations, but to be rather the promotion of welfare and well-being. The Riyadh Guidelines will be a concrete step in this direction. Article 2 for instance says: "Prevention of juvenile delinquency requires efforts by the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from their early childhood".

Although the topic of juvenile delinquency had been discussed throughout the UN Congresses on Crime Prevention and Treatment of Offenders, only in 1980 (Caracas) came the decision to materialise this attention in concrete recommendations. In 1985 (Milano) the so-called Beijing Rules were adopted: the Standard Minimum Rules for the Administration of Juvenile Justice. In 1990 (Havana) two complementary instruments were accepted.

The fact that the interest in the legal protection of children has begun to increase only recently, can certainly help explain why the UN recommendations in this field too are of recent date.

2.3.2 The Content of the Guidelines

The United Nations Guidelines for the Prevention of Juvenile Delinquency have three main characteristics:

1. they are very comprehensive;

2. they promote a pro-active approach of prevention;

3. they consider children to be fully-fledged participants in society.

In analysing these guiding principles, the contents of the
Guidelines themselves will be explained. We discuss these principles separately, though their interdependence is evident.

2.3.3 Comprehensiveness

The Guidelines deal with almost every social area: the three main environments in the socialization process (family, school and community); the mass media; social policy; legislation and Juvenile Justice administration.

General prevention (Art. 9) has to consist of "comprehensive prevention plans at every governmental level" and should include among others mechanisms for the coordination of efforts between governmental and non-governmental agencies; continuous monitoring and evaluation; community involvement through a wide range of services and programmes; interdisciplinary cooperation; youth participation in prevention policies and processes.

On several occasions, it has been stressed that prevention policies should be primarily general policies for all young people: "educational and other opportunities to serve as a supportive framework for the personal development of all young persons".

The chapter on the "socialization processes" is introduced in article 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".

The comprehensive character of the Riyadh Guidelines is also interesting because of the link it suggests with the purpose of the UN Convention on the Rights of the Child (1989). Comprehensiveness is,
there again, one of the main features. The common aim is to improve the overall situation of children. Moreover, the Guidelines also stress the importance of such policies in crime prevention.

2.3.4 Pro-active approach

Prevention, as expressed in the Guidelines, has to focus on upgrading the quality of life, the overall well-being, and not merely on the immediate restriction of well-defined but partial problems.

The aim should thus be not just the prevention of 'negative' situations (a defensive approach) but rather the promotion of the social potential (an offensive approach).

The comprehensive character is of course an important expression of that pro-active approach of prevention. More concrete examples can be found in article 6: "Community-based services should be developed Formal agencies of social control should be utilized only as a last resort". As juvenile justice systems are mostly part of the formal social control system, prevention cannot be limited to efforts within that juvenile justice system as such. Prevention is much more than re-acting to juvenile delinquency! Article 2 reflects the same approach: "Prevention of juvenile delinquency requires efforts by the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood". It should be mentioned that, although there was a certain discussion on the topic, the Guidelines do not specify what the terms child, adolescents, youth, etc. stand for. Perhaps, in accordance with the UN Convention on the Rights of the Child, human beings huntill 18 years of age can be considered to be the first target group of the Guidelines.
The pro-active approach is also present in the different topics the educational systems should devote attention to (art. 21): e.g. "teaching basic values and developing respect for the child's own culture, 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".

Promotion of human rights is the best tool for "peace" keeping; it was already stated in the first paragraphs of the United Nations Charter (1945). "Young persons and their families should be informed about the law and their rights and responsibilities, as well as the universal value system, including United Nations instruments" (art. 23).

And what about the mass media? "The mass media should ensure that young persons have access to information from a diversity of national and international sources" (art. 40). "The mass media should portray the positive contributions of young people to society" (art. 41). "Information on services, facilities and opportunities for young persons should be disseminated" (art. 42).

Articles 52 and 57 should be mentioned in particular. Article 52: "Specific laws and procedures should be enacted and applied to promote and to protect the rights of all young persons". Article 57: "Consideration should be given to establishing an office of ombudsman or similar independent organ, to ensure that the status, rights and interests of young persons are upheld". Here again the link with the UN Convention on the Rights of the Child is very clear. At the same time these articles summarize, through the (human) rights concept, the structural approach on which pro-active handling and thinking is based.
A structural approach of social reality tends to emphasise the parallelism between values, standards and patterns as the basis of a society on the one hand, and their expression in social structures, in the institutions of society and in inter-human behaviour and relationships, on the other. Here, the analyses of social problems (problems related to inter-human behaviour and relationships) are not aimed at specification; they can emphasise the existence of a common denominator; they are aimed at generalisation. Within this context, prevention is said to modify the structure of a society and the values of a culture. As a result of the structural approach of social reality, the promotion of the legal status of children (i.e. the recognition of their legal capacity Cfr. children's rights) and the multiplication of their chances of self-determination and of participation in democratic decision-making have become main centres of attention.

The issue of participation will lead us to the third guiding principle of the Riyadh Guidelines.

However, it is important to remark that the Guidelines also deal with special' situations and special' groups of people. Yet, only after having stressed the general approach first, and only if this would not be successful or satisfactory, a special approach should still remain possible.

Even delinquents are in the first place human beings, citizens.

For example, after having explained the challenges of the educational system in general, article 24 states: "Particular attention should be extended to young persons who are at social risk, utilizing specialized programmes and educational materials". Article 30 provides: "Special assistance should be given to students who find it
difficult to comply with attendance codes and to drop-outs".

Article 38 states: "Government agencies should take special responsibility and provide necessary services for homeless children or street-children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons". Other particular situations considered in the Guidelines are, for example, child abuse (art. 53, art. 49); demeaning and degrading presentations in the mass media (art. 43); drug abuse (art. 44, art. 45, art. 59). Article 58 deals with the important issue of training. It stresses that "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".

2.3.5 Participation

Western history shows that children have not always been considered in the same way. Cross-cultural research can teach us a lot about different images of the child,. The present prevalent opinion, especially in Western countries, is that children belong to a 'separate social category', the 'not-yet-beings'.

Over the last decades, however, this image of the child has been turned into a topic of real discussion for a variety of reasons. However, despite the Children rights' movement for saving children, itself as a result of the currently dominant child image, the situation of the world's children has not improved that much. On the positive side, people stress among others the ontological principle that the child is in the first place a human being and not an object.
This discussion takes place in almost all social and legal areas where the child is involved. One of the trends expresses an increased respect for the fully-fledged social and legal position of the child: the child as a fully-fledged participant in society. The Riyadh Guidelines are very good examples of how this particular trend can be reflected in rules.

Article 3 (Fundamental Principles) starts with the statement that "A child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered mere objects of socialization or control".

It is impossible to mention all stipulations which go in the same direction. We limit ourselves to the most challenging examples, such as article 10, which is essential for all areas of socialisation: "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".

Or article 31 which states: "School policies should be fair and equitable, and students should be represented in school policy, including policy on discipline and decision-making".

A last example is taken from the chapter on social policy: "young persons should be involved in formulation and implementation of prevention programmes".

Perhaps these different examples appear to be very evident. However, considerations about children as fully-fledged participants are rather new in the legislation process, especially within the context of prevention of juvenile delinquency.
2.3.6 The impact of the Guidelines

It might be interesting to recall once again the role of the UN Congresses on Crime Prevention and their decisions: on the one hand they are a forum for an in-depth debate on a universal level about the challenges experienced in the entire world, and on the other hand the adopted resolutions should have an impact on international, national and local legislative bodies.

2.3.7 The "moral" impact

The UN Guidelines for the Prevention of Juvenile Delinquency are certainly challenging for everybody who is concerned with juvenile justice, and for several reasons.

It is clear that in many countries the present systems for coping with juvenile crime are discussed. Juvenile delinquency has been questioned as long as people live together.

The efforts of the United Nations Criminal Justice Branch to establish universal standards in the field of juvenile justice (prevention, "punishment", "imprisonment") are in this respect very important. They can be very helpful as starting points for discussions 'on the spot'. Promotion and distribution of the different texts as a whole (Cfr. compendium) are therefore very welcome.

The Riyadh Guidelines are, within the framework of criminological science, probably one of the most advanced proposals.

The concept to separate, at least partially, the prevention efforts from the illicit behaviour and to link them to a general (social) policy, is quite new. In this way, the prevention of juvenile delinquency becomes a (side) effect of a general policy, aimed at promoting overall welfare and well-being.
Juvenile delinquency is not the only, and not even a minor reason for initiating such a policy. In a just society, respect for the human rights of every individual, are all the more decisive. Not just delinquents should be focused, but all citizens, and in that way also delinquents.

Respect for the UN Guidelines for the Prevention of Juvenile Delinquency could mean a small step towards a fair, equitable, respectful society, also because of the challenging attitude towards children. To consider children as a fully-fledged part of society responds to the aims of the Children's Rights Movement.

Taking into consideration the enthusiastic reactions on the UN Convention on the Rights of the Child (168 ratifications in less than 5 years), these Guidelines, adopted one year after the Convention, might share this success and bring about a certain social change.

2.3.8 The legal impact

The Guidelines, as the two other UN instruments on juvenile justice, are soft law, thus not directly binding for international, national and local legislative bodies.

However, the importance of these different texts should not necessarily be limited to their "moral" impact. Article 7 of the Guidelines says indeed that "These Guidelines should be interpreted and implemented within the framework of all United Nations instruments and norms relating to rights, interests and well-being of all children and young persons, and implemented in the context of the economic, social and cultural conditions in each Member State".

All other more binding Human Rights Conventions, for instance, can thus be helpful in implementing the Riyadh Guidelines. The link
with the UN Convention on the Rights of the Child should be studied in particular, also in this respect.

It might help to surmount a very important obstacle in the realisation of the Guidelines: "the economic, social and cultural conditions in each Member State", (art. 8) are often an excuse to do nothing.

Article 4 of the UN Convention therefore introduces the supportive framework of international co-operation.

As the Convention itself is more binding for Member States and as many of the Guidelines are in their content, in their inspirations and in their ambitions comparable to many stipulations of that Convention, their realization can be much more compulsory. The fact that the link with the prevention of juvenile delinquency is not at all obvious in the Convention is, of course, of minor importance, as this is also in the Guidelines "rather an excuse" for promoting a general (social) policy aiming at the biggest possible well-being of each citizen.

2.3.9 Implementation

We already mentioned point 8 of the preamble of the Riyadh Guidelines in our introduction: "The General Assembly requests the Secretary-General to issue a composite manual on juvenile justice standards" which would contain the provisions of the three resolutions and a set of full commentaries. Such a compendium will be very important in the process of informing policy-makers, juvenile justice professionals and young people themselves throughout the world about the necessary conditions and quality requirements for a humane and constructive approach of (problem-) children. In each resolution, the Member States are called upon to bring the juvenile justice standards to
the attention of all relevant authorities. Here again, a link with the (implementation of) the UN Convention on the Rights of the Child might be obvious. Article 42 of the Convention states: "States Parties undertake action' to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike."

Another important step towards a compulsory implementation can be realised through the establishment of an Ombudsman for Children. Article 57 of the Guidelines says: "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 reference to available services is made. The ombudsman or other organ designated would also have to 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 instruments. Child advocacy services should also be established."

Establishing an Ombudsman for Children, as a part of child advocacy, is an important strategy for improving the social position of children. Other strategies which can already be observed within the 'Children's Rights Movement' are child study, i.e. the studies of childhood as a social phenomenon; the development of networks of people and organisations who aim, mostly for better (legal) protection of children and not least the self-organisation of children. The Riyadh Guidelines and each of these strategies are encouraging. We thoroughly
discussed the attention to children's participation

Article 60 tends to promote interdisciplinary and multidisciplinary interaction and co-ordination (Cfr. the idea of network development).

Article 57 on the establishment of an office of ombudsman contains important information on the scope, the possible assignments of such an office but also on some of the necessary quality requirements which should be met in order not to devalue the initiative.

Since a children's ombudsman is concerned with the status, the rights and the interests of the child, he or she will also have to deal with (but not exclusively) juvenile justice matters.

A children's ombudsman has to defend the rights and interests of the child; to refer children to appropriate (social) services; to supervise the legal protection of children, as defined in many national and international (human rights) instruments. The ombudsman, as well as the Member States, should also report on (the difficulties encountered in) the implementation of these instruments. In its articles 44 and 45, the UN Convention on the Rights of the Child compels each State Party to report on the measures they have adopted and which give effect to the rights recognized in the Convention, and on the progress made on the enjoyment of those rights. The reports will indicate factors and difficulties affecting the degree of fulfilment of the obligations under the Convention.

There is however an important difference between the reporting by an ombudsman and the reporting by a State Party. A difference which has to do with one of the major characteristics of the office of an ombudsman: its independency. In Norway, for instance, the Children's
Ombudsman is independent of the legislative power, the judiciary system and the executive power. An Ombudsman, under these conditions, can give essential (complementary) information or corrections on the report of the State Party.

Other quality requirements for an ombudsman-office, not mentioned however in article 57, are: free access to all public and private institutions; those institutions have the duty to provide the ombudsman with all relevant information; the ombudsman has the competence to relieve others of their professional oath of confidentiality, combined with his/her own extended right to protect sources; the ombudsman can act on his own initiative or at the request of other people; the office is easily accessible, also for children.

As mentioned, the United Nations Guidelines for the Prevention of Juvenile Delinquency are important for several reasons. The efforts of the United Nations in the field of juvenile justice are remarkable and challenging. This certainly goes for the so-called Riyadh Guidelines too.

Indeed, the Guidelines are an expression of recent developments in the social and judicial approach to children. Children are seen less as objects, rather as fully-fledged human beings with their own capacities which should be valued and protected. The claim for the recognition of the human rights of children is complementing, step by step, child protection.

The human rights issue is as challenging a concept in criminology. Prevention of crime is no longer restricted to the reactions towards "dangerous" behaviour or situations; prevention goes as much with the promotion and respect of human rights (civil,
political, social, cultural and economic rights) in every individual. Here again the Guidelines are showing the way how such a fundamental starting point can be translated in policy and in practice.

The Riyadh Guidelines are part of a recent but very strong movement for human rights (of children); their aim goes far beyond prevention of juvenile delinquency. A fair and just society is, with out any doubt, the best ground and the first soil for crime.

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)\(^{10}\)

2.4 GENERAL PRINCIPLES

2.4.1 Fundamental aims

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.

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.

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.

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.

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.

2.4.2 The scope of non-custodial measures

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 administration 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.

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.

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.

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

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

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.

2.4.3 Legal Safeguards

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

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.

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.

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

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. 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.

Appropriate machinery shall be provided for the recourse and, if possible, redress of any grievance related to non-compliance with internationally recognized human rights. Non-custodial measures shall not involve medical or psychological experimentation on, or undue risk of physical or mental injury to, the offender.

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

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.

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.

2.4.4 Saving Clause

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.

2.5 PRE-TRIAL STAGE

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 noncustodial measures, as appropriate.

2.5.1 Avoidance of pre-trial detention

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.

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.

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

2.6 TRIAL AND SENTENCING STAGE

2.6.1 Social inquiry reports

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.

2.6.2 Sentencing dispositions

The judicial authority, having at its disposal a range of noncustodial 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.

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.

2.7 POST-SENTENCING STAGE

2.7.1 Post-sentencing dispositions

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.

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.

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.

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

2.8 IMPLEMENTATION OF NON-CUSTODIAL MEASURES

2.8.1 Supervision

The purpose of supervision is to reduce reoffending and to assist the offender's integration into society in a way which minimizes the likelihood of a return to crime.
If a non-custodial measure entails supervision, the latter shall be carried out by a competent authority under the specific conditions prescribed by law.

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.

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.

2.8.2 **Duration**

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

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

2.8.3 **Conditions**

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.

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.
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.

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

2.8.4 Treatment process

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.

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

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.

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

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

For each offender, a case record shall be established and maintained by the competent authority.
2.8.5 Discipline and breach of conditions

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

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.

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

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.

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.

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.

2.9 STAFF

2.9.1 Recruitment

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.

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.

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.

2.9.2 Staff training

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.

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.

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.

2.10 VOLUNTEERS AND OTHER COMMUNITY RESOURCES

2.10.1 Public participation

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.

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

### 2.10.2 Public understanding and cooperation

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

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.

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.

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

### 2.10.3 Volunteers

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.

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.

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.

2.11 RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION

2.11.1 Research and planning

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.

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

2.11.2 Policy formulation and programme development

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.

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

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

**2.11.3 Linkages with relevant agencies and activities**

Suitable mechanisms should be evolved at various levels to facilitate the establishment of linkages between services responsible for noncustodial 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.

**2.11.4 International cooperation**

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.

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.

**2.12 UNITED NATIONS RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY**

**2.12.1 Fundamental Perspectives**

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles.

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

2.12.2 Scope and Application of the Rules

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.

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.

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.

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.
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.

The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

2.12.3 Juveniles under Arrest or Awaiting Trial

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.

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.

2.13 THE MANAGEMENT OF JUVENILE FACILITIES

2.13.1 Records

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.

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.
2.13.2 Admission, registration, movement and transfer

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 therefor;

(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.

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.

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.

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.

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.

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.

2.13.3 Classification and placement

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.

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.

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.

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.

2.13.4 Physical environment and accommodation

Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.
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.

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.

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.

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.

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.

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.

2.13.5 Education, vocational training and work

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 detention 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.

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.

Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

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.

Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

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.

All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.

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.

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.

2.13.5 Recreation

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.

2.13.6 Religion

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.

2.13.7 Medical care

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.
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.

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.

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.

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.

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.

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 testers in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

2.13.8 Notification of illness, injury and death

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.

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.

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

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 home 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.

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.

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.

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.

2.13.9 Limitations of physical restraint and the use of force

Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

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.

The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

2.13.10 Disciplinary procedures

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.

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.

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.

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.

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.

No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

2.13.11 Inspection and complaints

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.

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.

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.

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.

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.

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.

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.

2.13.12 Return to the community

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.

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.

2.13.13 Personnel

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.

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.

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.

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.

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.

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.

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.

2.14 GUIDELINES FOR ACTION ON CHILDREN IN THE CRIMINAL JUSTICE SYSTEM\textsuperscript{12}

2.14.1 Aims, objectives and basic considerations

The aims of the Guidelines for Action are to provide a framework to achieve the following objectives\textsuperscript{13}:

(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;

\textsuperscript{12} Recommended by Economic and Social Council resolution 1997/30 of 21 July 1997

\textsuperscript{13} 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. 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. 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, 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), 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, hereinafter together referred to as United Nations standards and norms in juvenile justice.
(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.

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.

The Guidelines for Action should be based on the principle that the responsibility to implement the Convention clearly rests with the States parties thereto.

The basis for the use of the Guidelines for Action should be the recommendations of the Committee on the Rights of the Child.

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 the 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

2.14.2 Measures of general application

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.

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.

2.14.3 Specific targets

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.

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.

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 an 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.

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), with special regard to ensuring respect for due process rules in applying such measures and for the principle of minimum intervention.

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.

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.

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.
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.

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.

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.

States should consider positively requests from concerned humanitarian, human rights and other organizations for access to custodial facilities, where appropriate.

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.
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.

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.

2.14.4 Measures to be taken at the international level

Juvenile justice should be given due attention internationally, regionally and nationally, including within the framework of the United Nations system-wide action.

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.

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.

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.

2.14.5 Mechanisms for the implementation of technical advice and assistance projects

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.

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.

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).

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.

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.

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.

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). 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.

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.

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.

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 extrabudgetary resources. Most of the resources for specific projects will have to be mobilized from external sources.

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.

2.14.6 Further considerations for the implementation of country projects

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.
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.

2.14.7 Plans concerned with child victims and witnesses

In accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 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.

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.

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.
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.

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.

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.

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.

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.

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.

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 or the Hague Convention on the Protection of Children and Cooperation in respect of Inter-Country 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.

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 extrabudgetary resources, in developing multidisciplinary training, education and information activities for law enforcement and other criminal justice personnel, including police officers, prosecutors, judges and magistrates.

2.15 **GUIDELINES ON JUSTICE IN MATTERS INVOLVING CHILD VICTIMS AND WITNESSES OF CRIME** ¹⁴.

2.15.1 Objectives

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.

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.

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, ¹⁵ by parties to that Convention;

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¹⁴ Adopted by Economic and Social Council resolution 2005/20 of 22 July 2005
¹⁵ General Assembly resolution 44/25, annex.
(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;\(^{16}\)

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

1. 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.

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.

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.

2.15.2 Special considerations

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, among other things, through implementation of the Guidelines for the Prevention of Crime;¹⁷

(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

¹⁷ Economic and Social Council resolution 2002/13, annex.
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\textsuperscript{18};

(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.

\subsubsection{2.15.3 Principles}

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

\textsuperscript{18} Including the \textit{Handbook on Justice for Victims} and the \textit{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
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 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.

2.15.4 Definitions

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.

2.15.5 The right to be treated with dignity and compassion

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.

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

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.

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.

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.
2.15.6 The right to be protected from discrimination

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.

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.

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.

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.

2.15.7 The right to be informed

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.

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.

2.15.8 The right to be heard and to express views and concerns

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.
2.15.9 The right to effective assistance

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 40-42 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.

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

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.

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.
2.15.10 The right to privacy

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

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.

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.

2.15.11 The right to be protected from hardship during the justice process

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.

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.

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.

2.15.12 The right to safety

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.

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\textsuperscript{19}.

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.

2.15.13 The right to reparation

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.

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.

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\textsuperscript{20}.

\textbf{2.15.14. The right to special preventive measures}

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.

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\textsuperscript{21}.

\textbf{2.15.15. Implementation}

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.

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

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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.
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\(^{22}\).

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.

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.

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.

And the list of such initiatives is endless but what bothers the

most is uniform implementation of these guidelines, regular upgradation and a willingness to bring the change in conditions of juveniles internationally.

India has had interventions on justice for children first through the National Children’s Act, 1960. This was followed by the Juvenile Justice Act, 1986 and presently the Juvenile Justice (Care and Protection of Children) Act 2000, as amended in 2006. The Juvenile Justice Law in India deals with children in need of care and protection as well as children in conflict with law.

2.16. JUVENILE DELINQUENCY AND INDIA

Ever since the dawn of human civilization, crime has always been one of the major prevailing problems. Very hardly any society can be thought about without besetting the problem. Human beings inherently by nature are fighting animals; to think about a crimeless society thus is nothing but a mere myth. Adolphe Quetelet, the eminent Belgian social statistician observed some one and a half century ago that adolescents, especially the young males are more prone to crime, disorder and delinquency due to their childish impulsiveness and adolescent conflict. In his own words, “the propensity to crime is at its maximum at the age when strength and passions have reached their height, yet when reason has not acquired sufficient control to master their combined influence”. A child is born innocent and if nurtured with tender care and attention, will blossom with faculties; physical, mental, moral and spiritual; into a person of excellent stature. On the contrary, unhealthy surroundings, negligence of basic needs, wrong company and other abuses may turn a child to a delinquent. The noted Nobel laureate Gabriel Mistral has observed and commented in
this regard as,

“We are guilty of many errors and many faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of things we need can wait, the child cannot, right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him, we cannot answer ‘tomorrow’. His name is ‘today’.

Children are always believed to be the most important asset of this planet and every possible effort should be made to provide equal opportunities for their development so that they become robust citizens of tomorrow.

Studies have shown that basically neglected children and juveniles fall an easy prey to criminality. As long ago as 1895 the Gladstone Committee in UK gave official recognition and strong support to the view that the juvenile delinquent of today is the hardened and persistent adult criminal of tomorrow. By this hypothesis, if juvenile delinquency could be understood and possibly prevented, a large portion of adult criminality could be pre-empted and checked.

2.16.1 What is juvenile delinquency?

Etymologically, the term delinquency has been derived from the Latin word ‘delinquer’ meaning ‘to omit’. The Roman used the term to refer to the failure of a person in case of performing the assigned duty or task. It was in 1484 when William Coxton used the term ‘delinquent’ to describe a person found guilty of customary offence. The word also found place in the famous Shakespearean play “Macbeth” in the year 1605. Indeed, in the ordinary sense,
delinquency is a form of behaviour or rather misbehaviour or deviation from the commonly accepted norms or conduct in the society.

However, according to the interpretation of the modern penologists, ‘juvenile delinquency’ refers to a large variety of disapproved behaviour of children and adolescents which society does not approve of and for what some admonishment, punishment or corrective measure is justified in the public interest. The perception that juvenile delinquency is a creeping social menace is sharpened because the crimes with which the youths are most often associated are those of wanton violence and destruction where the motive is often difficult to discover. However, the exact types of menacing behaviour have been changing over time; but in Britain have been personified by such groups as Teddy Boys in the 1950s, muggers, and football hooligans in 1970s and 1980s. Thus the term expresses a very extensive meaning, covering hostile and rebellious behaviour of children and their malignant attitude towards society. Certain other acts as such begging, truancy, vagrancy, obscenity, loitering, pilfering, drinking, gambling etc. Which vicious persons very often commit is also included within the meaning of the term. It may therefore, be inferred that a juvenile delinquent is an adolescent between childhood and manhood or womanhood as the case may be who indulge in some kind of anti-social behaviour, which if not checked in time may grow into a potential offender.

2.16.2 Major causes of juvenile delinquency

Causes for juvenile delinquency have been pointed out by different criminologists in different ways. Cohen in his major work “Delinquent Boys” has claimed that crime committed by the young
could be explained by the subcultural values of the peer grouping and particularly he has emphasised on the problem arising from the middle class values. On the otherhand, Cloward and Ohlin attached more importance to the criminality of the lower-class juvenile, because it illustrates the existence of gangs or subcultures which support and approve of the actions of the delinquent. Additionally, psychological researches on teen-age violence brought into light that reason for violence may be birth complications, poverty, anti-social parents, poor parenting, aggression, academic failure, psychological problems, alienation from home, school etc.. However, so far the Indian society is concerned; the chief causes for this unprecedented increase in juvenile delinquency may be as:

- Although increasing industrial and economic growth in India has resulted into urbanization, it has invited various novel problems like housing, slum dwelling, overcrowding, lack of parental control and family disintegration and so on. Moreover temptation for modern luxuries of life lures young people to resort to wrongful means in order to satisfy their wants. Such factors cumulatively lead to an enormous increase in juvenile delinquency in urban areas of the country.

- Disintegrated family system and laxity in parental control over children is also another reason for it. The natural consequences of broken homes, lack of parental control, absence of security and want of love and affection towards children are contributing factors.

- Another very crucial cause of the said problem is unprecedented increase in divorce cases and matrimonial disputes. Undue discrimination amongst children or step-motherly treatment also
makes adverse psychological effect on youngsters. Feeling of being neglected may make a child to go astray and this furnishes a soothing ground for juvenile delinquency. Hence children need affection, protection and also guidance at home where they must be handled carefully. Indeed, greater attention should be given on preventing them from indulging into criminality rather than curing them after committing the offence. The parents and other elderly members of the family must keep an eye on the proper development of the personality of their children and should try to provide adequate and equal opportunities to them. Proper education and training and childcare can make it possible.

- Certain biological factors are also responsible for creating delinquent behaviour amongst juveniles. Early psychological maturity and low intelligence carry a major problem; especially to the young Indian girls. Though Indian girls attain puberty mostly at the age of twelve or thirteen, they still remain incapable of conceiving about the realities of life. Consequently they fall a very easy prey to sex involvements for momentary pleasure without, however, realizing the seriousness of the result of the act. So, it is necessary for the parents to unhesitatingly explain to their children, especially the girls, the probable consequences of prohibited sex indulgences which might serve a timely warning to them. Special care should also be taken in order to ensure effective protection to girls and child pornography.

- The rapidly changing patterns of modern lifestyle have created difficulty among young people regarding adjustment to new ways of life. They are seriously confronted with the problem of culture
conflict and usually fail to differentiate between what is right and what is wrong that may so easily drive them to commit crime.

- Migration of deserted and destitute boys to slums brings them closely in contact with anti-social elements caring on prostitution, smuggling of liquor or narcotic drugs and bootlegging. Hence in this way they jump into the world of crime without even knowing what they are doing is prohibited by law.

- In a country like India poverty is one of the potential causes behind juvenile delinquency. Parent’s failure in providing basic necessities of life such as food and clothing drive to their children to earn money by easier means, no matter what the way is that they will have to choose.

- Apart from these all illiteracy, child labour, squalor etc. are other contributing factors aggravating juvenile delinquency.

   It must be stated here that the nature of delinquency among male juveniles and those of girls are not, however, of same kind. Boys are found to be more prone to offences such as theft, pick-pocketing, gambling, eye-teasing, obscenity, cruelty, mischief etc. while girls more commonly are discovered in sex-involvements, running away from home, truancy and shop lifting. Furthermore, as researches have shown delinquency rate in respect of boys is much higher than those of girls, as boys by nature are more adventurous and easily get aggressive as compared to girls.

2.16.3 Philosophy of Matza and Sykes behind Juvenile Delinquency

   In the year 1957 David Matza and Gresham Sykes produced a theory of delinquency which since he later extended, it has come to be attributed generally to Matza alone. Matza mainly concerned to the
theme what he called ‘drift’. In contrast to the theories covered, theory of drift involves an element of free will; individual choice and judgement of behaviour and this admission of free will into his doctrine is to a certain extent a return to the classical school of criminology which existed before positivism became popular.

Matza and Sykes (1957) list five justifications (before the act) or excuses (after the act) which delinquents (and others) may use to explain or neutralize their criminal acts.

- Usually they deny responsibility by claiming that the act was a result of uncontrollable factors; an accident, parental neglect, poverty, broken home, being led astray by friends.

- The delinquent may claim that no one is actually harmed for his act, either physically or financially. If items are stolen from wealthy individuals, or from employers or large shops, it may be taken as they can easily afford the loss or that the insurance company will pay for it. In such cases the perpetrators may be basically law-abiding but have an extended view of acceptable behaviour.

- The delinquent may also take the plea that since the victim deserved the harm caused, he is not a true victim (e.g. the victim is also a criminal and should not make any complaint; or the victim started the trouble and therefore ‘only got what was coming’). Similarly in respect of sex crime: ‘she was asking for it because of the way she was dressed’; and in domestic violence, that the victim deserved the violence as he had ‘misbehaved’.

- An offender might claim that since everyone has at sometime committed criminal act or, no one is in a position to condemn him.
The approval of the group or gang (or the corporation) may be said to be more important than that of the family or of society. Thus when the group calls for the delinquency it is justified.

These justifications underline Matza’s main point that individual has in a particular instance chosen delinquent behaviour. The way of exercising free will is influenced by the variety of factors, but the youth is not bound by the constrains of a group. However, Matza’s theory of drift is distinctive from other theories of both Cohen and of Cloward and Ohlin in the sense that he sees most delinquents as being neither committed to criminality, nor to law abiding behaviour; they have some area of choice as to whether they will perform criminal acts when both the opportunity and the temptation arise.

As per the revised definition of Juvenile under the Juvenile Justice (Care and Protection of Children) Act, 2002 boys and girls upto 18 years have been considered as juveniles. Now let us have a glance over juvenile crimes within a specific period of time in India. As share of crimes committed by juveniles to total IPC crimes has remained static during the years 2003, 2004, and 2005. The juvenile IPC crimes were registered against juvenile during 2004 which went down to 18,939 cases during 2005.

As per the crime statistics of the year 2005 indicate that the juveniles of the age - group between 12 to 16 years, contributed to be more susceptible to juvenile crimes and recorded highest number of arrests i.e. 73 per cent amongst all age-groups. The proportion of boys and girls in the total arrests remained more or less same in comparison with previous girls. Girls are mostly involved in cases of committing crimes, falling under prohibition laws and the Immoral Traffic Prevention Act.