Chapter II  

Juveniles Justice under International Law

2.1. Introduction:

The provisions of International Law relating to the protection and treatment of children and ensuring the rights of children’s exist within various systems in various international conventions, treaties and instruments. The focus within the protection of children’s rights on a global level is on the legal framework of the United Nations (UN). The concerns of the world community began since 1946 through United Nations, when the Temporary Social Commission and the Economic & Social Council were insisted upon the thought that the Geneva Declaration of 1924, made under the auspices of the League of Nations, should be made binding on the people of the world even after the end of the second world war.

The International law has developed rapidly over the past few decades, especially since the dawn of the UN, when rules and norms regulating activities carried on outside the legal boundaries of the States were developed. Numerous international agreements, bilateral, regional or multilateral in nature, have been concluded and international customary rules, as evidence of a general practice accepted as law, have been established. There are two approaches, the first, is the monist approach, assumes that international laws are automatically incorporated into domestic law; the second, is the dualist approach, follows the rule that international laws are not automatically incorporated into domestic law and are said to require an act of legal transformation into domestic law. Besides the global level, children’s rights are also laid down on the regional and sub regional level.

General rules of public international law include rules of customary international law supported and accepted by a representatively large number of states. The notion of international agreement primarily refers to treaty in the traditional sense, i.e. international agreements concluded between states in written form and governed by international law, but it also includes conventions, protocols, covenants, charters, statutes, acts, declarations, concords, exchanges of notes, agreed minutes, memoranda of understanding, and agreements. Notably, not only agreements between states, but also those with the participation of other subjects of international law, e.g. international organisations, are covered by the term international agreement. In general, international agreements are binding upon states if the consent to be party to a treaty is expressed by signature followed by ratification; or by accession, where the state is not a
signatory to a treaty; or by declaration of succession to a treaty which was concluded before such a state existed as a subject of international law (United Nations 1969).\footnote{1 “The Vienna Convention on the Law of Treaties of 1969”, entered into force in 1980, the definition of treaty proposed by the International Law Commission; Article 2(a) of the Draft Articles on the Law of Treaties, with commentary, available at http://untreaty.un.org/ilc/texts/instruments/english/commentaries/1_1_1966.pdf; last visited on 12 October, 2009.}

International legal instruments take the form of a treaty (also called agreement, convention, or protocol) that binds the contracting states to the negotiated terms. When negotiations are completed, the text of a treaty is established as authentic and definitive and is “signed” by the representatives of states. A state can agree to be bound to a treaty in various ways. The most common are ratification or accession. A new treaty is ratified by those states that have negotiated the instrument. A state that has not participated in the negotiations may, at a later stage, accede to the treaty. The treaty enters into force, or becomes valid, when a pre-determined number of states have ratified or acceded to the treaty.

When a state ratifies or accedes to a treaty, that state may make reservations to one or more articles of the treaty, unless reservations are prohibited by the treaty. Reservations may normally be withdrawn at any time. In some countries, international treaties take precedence over national law; in others a specific law may be required to give a ratified international treaty the force of a national law. Practically all states that have ratified or acceded to an international treaty must issue decrees, change existing laws, or introduce new legislation in order for the treaty to be fully effective on the national territory.

The binding treaties can be used to force governments to respect the treaty provisions that are relevant for the rights of children and youth. The non-binding instruments, such as declarations and resolutions, can be used in relevant situations to embarrass governments by negative public exposure; governments who care about their international image may consequently adapt their policies.

The basic human rights principle laid down in the Universal Declaration of Human Rights is that all human beings are born free and equal in dignity and rights. However, specifically vulnerable groups such as women, indigenous people, and children have been assigned special protection by the UN legal framework (United Nations 1948).\footnote{2 Article 1 of “the Universal Declaration of Human Rights, 1948”}
The League of Nations adopted the Geneva Declaration of 1924 to achieve five points’ programmes for normal and natural development of the child, mentally, physically and spiritually with every support of all protection from every points of exploitation. To give effect that five points programmes in the year 1950, the Temporary Social Commission made a ten point draft declaration on the right of the child to provide assistance to the children and adolescents of those countries which had been the victims of aggression.

The Second World War engulfed the entire planet, and caused even greater suffering for non-combatants, particularly children. In 1945, the United Nations Organisation replaced the League of Nations. In 1946, the Economic and Social Council of the United Nations recommended that the Geneva Declaration be reaffirmed as a sign of commitment to the cause of children. The same year, the United Nations established a specialized agency — UNICEF with a mandate to care for the world’s children. Initially known as the United Nations International Children’s Emergency Fund, it provided assistance to children in Europe and elsewhere who had lost homes, family, and opportunity as a result of the war. Its mandate was later redefined so as to give the agency responsibility for long-term assistance to children who suffered from deprivation caused by economic and political conditions, as well as the effects of war. The present nomenclature of UNICEF is United Nations Children’s Fund (Dr. Savita Bhakhry, 2006).³

UNICEF helps children to get the care and stimulation they need in the early years of life and encourages families to educate girls as well as boys. It strives to reduce childhood death and illness and to protect children in the midst of war and natural disaster. UNICEF supports adolescents, wherever they are, in making informed decisions about their own lives, and strives to build a world in which all children live in dignity and security.

The General Assembly established the United Nations International Children’s Emergency Fund (UNICEF) on 11th December, 1946 in the twentieth anniversary year of the adoption of the Declaration of the Right of the Child, the General Assembly observed the International Year of the Child in 1979. This year has been marked by the activities at all level national, international as well as regional for the improvement of the living conditions of the children under the leadership of UNICEF.

³ "Children in India and their Rights", by Dr. Savita Bhakhry, Senior Research Officer, National Human Rights Commission, Faridkot House, Copernicus Marg, New Delhi 110 001, India, year of publication 2006, Page-18
Working with national governments, NGOs (non-governmental organizations), other United Nations agencies and private-sector partners, UNICEF protects children and their rights by providing services and supplies and by helping shape policy agendas and budgets in the best interests of children. In 1953, UNICEF became a permanent part of the United Nations system, its task being to help children living in poverty in developing countries.

Since the League of Nations held its meetings in Geneva, this 1924 Declaration of the Rights of the Child came to be known as the “Declaration of Geneva”. Recognising that ‘mankind owes to the child the best that it has to give’, the five simple principles of the Declaration established the basis of child rights in terms of both protection of the weak and vulnerable and promotion of the child’s development. The Declaration also made it clear that the care and protection of children was no longer the exclusive responsibility of families or communities or even individual countries; the world as a whole had a legitimate interest in the welfare of all children (Dr. Savita Bhakhry, 2006).

After the adoption of “Declaration of Geneva” an extended version of this text was adopted by the General Assembly in the year 1948, which was followed by a revised version adopted by the General Assembly in 1959 as the United Nations Declaration on the Rights of the Child. However, in the year 1978, a proposal was made by Poland for a new convention on children’s rights on the issues with regard to children’s rights being binding upon state parties. The Convention on the Rights of the Child (CRC), 1989 served and reflected the basis of Poland’s proposal consistent draft, with minor amendments. Poland’s proposal to use the 1979 Year of the Child as an opportunity to turn the 1959 Declaration into a legally binding international treaty may have had different reasons, including political ones linked to the East-West division of the international political arena. The reasons for an international change of heart towards the protection of children’s rights were manifold, but all the signatory states fundamentally recognised that the Declaration on the Rights of the Child, 1959 no longer reflected the actual needs of the world’s children in general under need of care and protection.

Although all the international instruments were developed that targeted the protection of children’s best interest in particular, it has to be emphasised that the UN instruments on Universal Declaration of Human Rights already recognize these rights. The International Bill of Human Rights contains a broad bundle of human rights which also applicable to children and many of its principles are reflected and substantiated in

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4 Ibid 3 Page-17
children-specific legislation. Children may enjoy protection by way of general provisions of the Universal Declaration of Human Rights, and their relevance should not be underestimated. The Universal Declaration of Human Rights, as the most prominent and fundamental UN human rights instrument, provides in its Article 25 that childhood is entitled to special care and assistance. Furthermore, the UN International Covenant on Civil and Political Rights, a legally binding document which came into force in 1978, contains provisions specifically referring to children.


The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) 1985 is the first direct step of the General Assembly on prevention of crime and youth offenders and also to review the actions of progress to administer Juvenile Justice within its member signatory states. This rule prescribes and provides the provisions relating to determination of Juvenile Delinquent, their right & privileges, trials before the court of Law and rehabilitation and lastly research relating to upgradation of delinquent Juvenile after home care.

The United Nations General Assembly keeping in mind its previous conventions and to recognize the international co-operation to improve the living standard, environment and conditions of children of every country of the world adopted its Convention on the Right of the Child on 20th November, 1989, particularly in the developing countries. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions provided by the Convention. The monitoring mechanism is a special reporting system as provided for in Article 44 of the CRC, according to which States Parties undertake to submit reports on the measures they have adopted which give effect to the rights recognised in the Convention and on the progress made on the
enjoyment of those rights. The Committee addresses progress that has been made by
the State Party concerned in implementing the Convention, identifies areas of concern
or outright incompatibilities of national law, and makes recommendations on how to
improve the implementation of the provisions of the Convention.

To protect the juveniles deprived of their liberty in all forms, consistent with
Human Rights and fundamental freedoms, the General Assembly framed rules by its
resolution 1990. On 14th December, 1990 the General Assembly adopted and
proclaimed its Riyadh Guidelines prescribing the rule of protection of Juvenile
Delinquents. Considering the need for the prohibition and elimination of the worst
forms of child labour as the main priority, the International Labour Organisation adopted
its Worst Forms of Child Labour Convention in the year 1999. The convention is an
international instrument which foster guarantee for the national and international
action including international co-operation assistance in the field. The Optional Protocol
to the Convention on the Right of the Child on the Sale of Children adopted by the
General Assembly on 25th May, 2000 which came into force on 18th January, 2002. The
Optional Protocol to the Convention on the Right of the Child on the Improvement of
Children in Armed Conflicts adopted by the General Assembly on 25th May, 2000 which
came into force on 12 February, 2002.

Moreover, the Convention on the Elimination of All Forms of Discrimination
against Women also contains provisions for the protection of children. For instance, it
encourages States Parties to specify a minimum age of marriage, and it also emphasises
that the interests of children are to be paramount consideration. Another important
legal document also applicable to children is the Convention on the Rights of Persons
with Disabilities, which establishes the principle of respect for the evolving capacities of
children with disabilities. The same applies to the Convention Against Torture and Other
Cruel, Inhuman or Degrading Treatment or Punishment. The Committee established
under the latter Convention has already expressed its concern about the general
vulnerability of abandoned children, who are at risk of torture and other cruel, inhuman
or degrading treatment or punishment, especially children used as combatants.

2.2. Historical evaluation:

The adoption of the Universal Declaration of Human Rights sixty years ago
ushered in an era of prolific standard-setting in the field of international human rights
law. As of 2007, universal human rights norms have been articulated in nine
international human rights treaties, including the Convention on the Rights of the Child
and its Optional Protocols. Since its unanimous adoption in 1989 and entry into force in 1990, the Convention has become the most widely ratified of the human rights treaties with 193 States parties, testifying to the willingness of States to embrace overarching norms that protect the rights of children, regardless of race, sex, religion, ethnic origin, ability or other status. These instruments reflect the principle of universal indivisible rights and responsibilities that are shared by all nations.

In the 21st century, our emphasis has shifted from standard-setting to implementation. The Convention on the Rights of the Child and its Optional Protocols are invaluable tools for doing just that. Through forty-four articles, the Convention outlines obligations borne by States parties, which are underpinned by the concepts of non-discrimination, the best interests of the child, the right to life, survival and development, and respect for the views of the child. Its Optional Protocols provide further tools to address the sexual exploitation of children and their involvement in armed conflict (Louise Arbour, 2007).

This chapter presents the survey of literature on various issues and aspects related to international law on Juvenile Justice and the role of globalised regime to develop the same. The ongoing process of world community through the UN towards development of a uniform principle oriented global Juvenile Justice System more or less encompasses and tailored upon the following Chronological path:

2.3. **Chronology** : The Path to Promoting Universal Juvenile Justice

**1919** : League of Nations established the Committee for the Protection of Children.

**September 26, 1924** : The Declaration of the Rights of the Child was adopted by the League of Nations. This document addressed a child’s right to the following regardless of race, nationality or creed: survival, nutrition, shelter, health care, humanitarian relief, protection from exploitation, and the right to grow up in an environment that fosters their development.

**1934** : League of Nations re-affirmed its support of the Declaration of the Rights of the Child.

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December 11, 1946: UNICEF was created by the UN General Assembly with the express purpose to address and alleviate the needs of children affected by World War-II.

December 10, 1948: UN General Assembly by resolution no 217A (III), U.N. Doc A/810 at 71 (1948) adopted the Universal Declaration of Human Rights. Although not directly stated, these rights implicitly apply to children.


November 20, 1959: The Declaration of the Rights of the Child was unanimously endorsed by the UN General Assembly by resolution no. 1386(XIV). This document built upon the provisions listed in the 1924 Declaration by adding provisions regarding a child’s right to an identity, family, education, and freedom from discrimination.

December 21, 1965: General Assembly by resolution no 2106 (XX) Adopted and opened for signature and ratification the International Convention on the Elimination of All Forms of Racial Discrimination.


January 4, 1969: In accordance with Article-19 of the UN the International Convention on the Elimination of All Forms of Racial Discrimination entered into force.


1978 : The 1924 and 1959 Declarations of the Rights of the Child were not legally binding instruments but statements of goodwill. Recognizing the need for a legal mechanism to ensure that the rights of all children were upheld, the Polish Government drafted the precursory text for what would eventually become the Convention on the Rights of the Child.

1979 : UN General Assembly celebrated the 20th Anniversary of the Declaration of the Rights of the Child by proclaiming the year 1979 as the International Year of the Child. Working group established by the UN Commission on Human Rights to review and further build upon the provisional child rights treaty created by the Polish Government.

December 10, 1984 : General Assembly by resolution no 39/46 adopted and opened for signature, ratification and accession the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.


June 26, 1987 : The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force, in accordance with article 27 (1).

1979-1989 : Governmental representatives the member states and NGOs worldwide worked on drafting the CRC, regarding a child’s right to freedom of thought, speech, association, religion and privacy.

November 20, 1989 : UN General Assembly unanimously adopted the CRC. Following ratification by 20 countries, the CRC became international law.


September 29 & 30, 1990 : Heads of State and Government and other senior officials gathered in New York for the World Summit for Children to discuss how to translate the CRC into action. The event culminated with the signing of the World Declaration on the Survival, Protection, and
Development of Children.


**June 17, 1999**: The International Labour Organization adopted the Worst Forms of Child Labour Convention, 1999 (No. 182).

**November 19, 2000**: In accordance with article 10 the Worst Forms of Child Labour Convention, 1999 (No. 182) entered into force on.


**January 18, and February 12, 2002**: Following ratification by 10 countries, the Optional Protocols became international law.

**May 8, 2002**: Individuals gathered in New York for the UN Special Session on Children to discuss how to improve the situation of the world’s children and young people. The event concluded with the adoption of A World Fit for Children, a document which reaffirmed leaders’ obligations to promote and protect the rights of children as established by the CRC and its Optional Protocols.

**2009**: 193 nations have ratified the CRC.
2.4. **Geneva Declaration of the Rights of the Child, 1924**

The fundamental characteristic of the international community is that it is generally an anonymous entity (without a face) when it makes promises and pledges commitment; however, when the time comes to fulfill its promises and implement its decisions, the international community suddenly becomes endowed with an institutional face. In most cultures of the world children are considered vulnerable and defenseless, and therefore deserving of special protection and treatment. However, throughout history millions of children have suffered or died due to starvation, disease, poverty, exploitation, or war.

The emphasis on the protection of children started at the beginning of the twentieth century, and it is still evolving. The first international legal instrument specifically targeting children was the Minimum Age Convention in 1919. Two years later the League of Nations passed the International Convention for the Suppression of traffic in Women and Children. The basic rights of children, including protection from exploitation, were first stated in the 1924 Geneva Declaration of the Rights of the Child. The Geneva Declaration of the Rights of the Child of 1924 is the curious feeling of the international community is both pledging to give a better future to every child and reproaching itself for falling short of this great promise.

**Historical background:**

The 1924 Declaration of the Rights of the Child, also known as the Geneva Declaration, was adopted by the Fifth Assembly of the League of Nations in 1924 and was the first international instrument explicitly acknowledging children’s rights. As a declaration, however, it referred only to “men and women of all nations” without imposing obligations on States. Furthermore, the child was not yet seen as a holder of rights of its own but rather as an object of the protection that the Declaration aimed to afford. As with the Convention on the Rights of the Child, NGOs (such as Save the Children Fund and International Council of Women) played an important role in the drafting of the Geneva Declaration. In fact the Declaration was part of the 1923 Charter of Save the Children International Union, with the introductory paragraph being added before its adoption by the Assembly (United Nations, 2007).

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7 Ibid 5 page-3
2.4.1. **Comment:**

The 1924 Declaration, did not define the term and meaning of “child” and the cutoff age to hold a person as child. It also does not provide any process to determine the age of a human being to treat as child but it only has extended to all children in general without distinction or discrimination, the special social position to enjoy protection, and opportunities and facilities for their development physically, mentally, spiritually and socially in a healthy and normal manner. The Declaration was well ahead for the first time on the concept of children having independent special recognition was seen as radical followed by several subsequent international instruments on the subject.

The term declaration used herein indicates that the state parties do not intend to create any binding obligations but merely want to declare certain aspirations to perform their duties towards the child within their own domain. Most notably, it restricts children’s rights to a mere duty of protection, rather than incorporation the notion that children possess specific rights and liberties. The declaration places the onus of protecting children on the men and women of all nations, thereby specifying that adults in each family and community are primarily responsible for the protection of children.

Starting with this Declaration that ‘mankind owes to the child the best it has to give’, there have been many endeavours of the international community in protecting the interests of the child. However, this Declaration contained no concrete provision to recognize and prescribe the rights of a child in conflict with the law. The global approach to prevention of juvenile delinquency and the protection of young offenders through the administration of justice has undergone vast transformations under the auspices of the United Nations (Dr. Borhan Uddin Khan et al, 2008).

2.5. **Universal Declaration of Human Rights, 1948**

The Universal Declaration of Human Rights comprises a broad range of rights. Although the Declaration is not a legally binding document, it has inspired more than 60 human rights instruments which together constitute an international standard of human rights. These instruments include two legally binding treaties like the International Covenant on Economic, Social and Cultural Rights and the International Covenant on

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8 “Protection of Children in Conflict the Law in Bangladesh”, Dr. Borhan Uddin Khan, Professor, Department of Law University of Dhaka and Muhammad Mahbubur Rahman Lecturer, Department of Law, University of Dhaka, first Publication: March 2008, page-3

Civil and Political Rights. Together with the Universal Declaration, they constitute the International Bill of Rights.

The Declaration recognizes that the "inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world" and is linked to the recognition of fundamental rights towards which every human being aspires, namely the right to life, liberty and security of person; the right to an adequate standard of living; the right to seek and to enjoy in other countries asylum from persecution; the right to own property; the right to freedom of opinion and expression; the right to education, freedom of thought, conscience and religion; and the right to freedom from torture and degrading treatment, among others. These are inherent rights to be enjoyed by all human beings of the global village -- men, women and children, as well as by any group of society, disadvantaged or not -- and not "gifts" to be withdrawn, withheld or granted at someone's whim or will.

The concept of human rights in its present form has evolved in the present century and has become very significant aspect of contemporary international relations. Human Rights are currently a matter of great international interest. The present concern for formulation and protection of human rights is a result of gross violation of the same during the two world wars (Dr. B.N. Mani Tripathi, 1999).

2.5.1. Historical perspective:

During the twentieth century, new economic and social claims have come to broaden the spectrum of human rights. Because they depend for their fulfillment on affirmative government policy, they may be referred to collectively as positive rights. They are designed in legal terms to meet basic human needs not otherwise satisfied by the socioeconomic system. In the twentieth century, the combined influence of political parties and trade unions has been decisive in promoting positive rights policies of social welfare (Richard P. Claude, 1977).

The history of origin and development of human rights is very fascinating. The origin of human right is traced, by some scholars, back to the times of ancient Greeks. The idea of human rights pre-dates the United Nations. When the United Nations was formed in 1945, there was overwhelming consensus among the participating member states at San Francisco conference that the maintenance of international peace and

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security one of the primary aims with which the organisation was established was not possible without the promotion of human rights and fundamental freedoms (Dr. U. Chandra, 2001).\textsuperscript{12}

The adoption of the Universal Declaration stems in large part from the strong desire for peace in the aftermath of the Second World War. This was the first time in history that a document considered to have universal value was adopted by an international organization. It was also the first time that human rights and fundamental freedoms were set forth in such detail. There was broad-based international support for the Declaration when it was adopted. It represented "a world milestone in the long struggle for human rights".

On 10 December 1948, at the Palais de Chaillot in Paris, the 58 Member States of the United Nations General Assembly adopted the Universal Declaration of Human Rights, with 48 states in favour and eight abstentions (two countries were not present at the time of the voting). The General Assembly proclaimed the Declaration as a "common standard of achievement for all peoples and all nations", towards which individuals and societies should "strive by progressive measures, national and international, to secure their universal and effective recognition and observance" (UNDPI, 1997).\textsuperscript{13}

The repeated invocation of the Universal Declaration over more than forty-five years by the United Nations and other international organizations, its use in diplomatic exchanges between governments, its incorporation into treaties and national constitutions, and its application by international and national tribunals have given at least some of its rights binding character as custom (Thomas Buergenthal, et al, 1979)\textsuperscript{14}

2.5.2. Comment:

Universal Declaration of Human Rights (UDHR) has acquired more juridical status than originally intended and has been widely used, even by national courts, as a means of judging compliance with member states' human-rights obligations. The declaration’s drafting process was marked by a series of debates on a range of issues, including the meaning of human dignity, the importance of contextual factors in the determination of the content and range of rights, the relationship of the individual to

\textsuperscript{12} "Human Rights" by Dr. U. Chandra published by Allahabad Law Agency Publications, 10, Sir P.C. Banerji Road, Allahabad, 2000 reprint of third edition 2001


\textsuperscript{14} "Codification and Implementation of International Human Rights and Human Dignity", Oceania Publication, 1979
the state and to society, the potential challenges to the sovereign prerogatives of member states, the connection between rights and responsibilities, and the role of spiritual values in individual and societal welfare. The provisions of UDHR’s highlight the interrelated and interdependent nature of different categories of human rights as well as the need for global cooperation and assistance to realize them. Its inherent flexibility has offered ample room for new strategies to promote human rights and has allowed it to serve as a springboard for the development of numerous legislative initiatives in international human rights law.

The international law provides a strong framework to promote and protect the human rights of children. Indeed, the imperative of protection children’s rights was the concern of a number of very early international multilateral treaties, most notably the 1926 Slavery Convention. However, the establishment of the United Nations, whose Charter proclaims the promotion and encouragement of respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion as one of the principal purposes of the Organisation, provided the basis for the development of the comprehensive international legal system of human rights protection which exists today to which children, as human beings, are fully entitled. Children are also entitled to enjoy the protection contained in international legal instruments relating to international criminal, humanitarian and labour law. Since the adoption of the Universal Declaration of Human Rights, the first authoritative, although not legally binding, statement of human rights in 1948, over 60 treaties addressing concerns such as slavery, administration of justice, genocide, the status of refugees and minorities and human rights have been elaborated. Each is grounded in the concepts of non-discrimination, equality and recognition of the dignity of each and every individual contained in the United Nations Charter, the constituent document of the Organisation and the Universal Declaration, and each makes it clear that the rights and protections they contain are available to all, including children, on a basis of equality (Jane Connors, 2010).  

The preamble of the declaration says that human rights are inherent; we are simply born with them and they belong to each of us as a result of our common humanity. Human rights are not owned by select people or given as a gift. They are inalienable; individuals cannot give them up and they cannot be taken away — even if

governments do not recognize or protect them. They are universal; they are held by all
people, everywhere – regardless of age, sex, race, religion, nationality, income level or
any other status or condition in life. Human rights belong to each and every one of us
equally. The Universal Declaration of Human Rights, is the most prominent and
fundamental UN human rights document. The 1948 Universal Declaration Human Rights
reads, in article 25 (2), that ‘motherhood and childhood are entitled to special care and
assistance’. So the rights categorically recognized in the Universal Declaration of Human
Rights, 1948 resides inherently in the individual human being independent of and even
prior to his participation in the society by birth.

By the way of adoption of the Universal Declaration of Human Rights the
General Assembly recognized and proclaimed the essential Rights of the Child to the end
that he may have a happy childhood and be enabled to grow up to enjoy for his own
good and for the good of society, the fundamental rights and freedoms, particularly
those specified in the Universal Declaration of Human Rights, and calls upon men and
women as individuals as well as upon local authorities and national Governments to
recognize and strive for the observance of those rights through the application principles
enshrined in the instrument. All children whether born in or out of wedlock shall enjoy
these rights irrespective of his paternity (UN Commission on Human Rights, 1959).

As such, and with the profound impact of the declaration, there is no general,
comprehensive, detailed, as well as specific international legal standards relating to the
human rights of the children. With the almost universal acceptance of the declaration,
and the broad acceptance of human rights treaties generally, the elaboration of further
binding international instruments or sets of rules or recommendations delineating
concrete actions to implement international standards and governing specific issues,
relating to children’s rights or juvenile justice, helped the world community to pave the
way of present day comprehensive juvenile justice system.

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16 The text of the resolution adopted at the 639th and 640th meetings, on 7 and 8 April 1959, the Commission
on Human Rights, discussed a draft resolution submitted by Argentina, India and the Philippines,
(E/CN.4/L.544 and E/CN.4/L.544/Rev.1) for draft declaration of the rights of the child and adopted it
unanimously and it also acknowledged in page 18 of Legislative History of the Convention on the rights
2.6. **Declaration of the Rights of the Child, 1959**\(^\text{17}\)

On the basis of the five points of Geneva Declaration 1924, the Temporary Social Commission adopted in 1950 a draft Declaration on the right of child. It was later on adopted by the General Assembly on 20 November 1959, as the Declaration of the Rights of the Child, which reiterated that ‘mankind owes to the child the best it has to give’. The General Assembly recognized and proclaimed the essential Rights of the Child to the end that he may have a happy childhood and be enabled to grow up to enjoy for his own good and for the good of society, the fundamental rights and freedoms, particularly those specified in the Universal Declaration of Human Rights, and calls upon men and women as individuals as well as through their local authorities and national Governments to recognize and strive for the observance of those rights through the application of the following principles (UN Social commission, 1950).\(^\text{18}\)

2.6.1. **Historical background:**

The Second World War and the events leading up to it brought international action in the field of children’s rights to an almost complete standstill. After the war, the International Labour Organization (ILO) revived the question of child welfare. The newly established United Nations concerned itself with the rights of the child from an early stage. The Temporary Social Commission discussed the question of a declaration of children’s rights when certain functions of the League of Nations were transferred to the United Nations in 1946. A possible update of the Geneva Declaration was considered so that its provisions “should bind the peoples of the world today as firmly as it did in 1924”. In 1947, the Social Commission called for “the preparation of documentation on the [...] Geneva Declaration (1924), referring in particular to any changes or additions which it may be considered necessary to make with a view to its acceptance as the United Nations Charter of the Rights of the Child”. At its third session, the Social Commission recommended that, even though great weight should be given to the Geneva Declaration, the proposed Charter should nevertheless include additional principles which “would transform the document into a United Nations Charter of the Rights of the Child, embodying the main features of the newer conception of child welfare”. The Social Commission also suggested that the Secretary-General consult with Member States and non-governmental organizations. The resulting report supported the

\(^{17}\) Proclaimed by General Assembly resolution 1386(XIV) of 20 November 1959

Commission’s view that a new instrument should be drafted. At this point it was also proposed to draw up a non-binding declaration rather than a charter. The Social Commission subsequently appointed a committee to draft such a declaration. During the discussion many of the members of the Commission expressed themselves in favour of a brief declaration which should proclaim general principles without provisions on methods of implementation. Some members stated that they would have preferred a legally binding convention rather than a declaration, but they were prepared to support the principle of a declaration. They stressed, however, that such a declaration should not be limited to a simple proclamation of general principles but should also provide for practical measures to ensure the observance of the rights of the child proclaimed. The Commission on Human Rights at the time was drafting the two international covenants on civil and political rights and economic, social and cultural rights, the draft declaration was considered for the first time in 1957. A new draft was sent out to Member States and non-governmental organizations and then discussed by the Commission at its 626th to 640th meetings, from 30 March to 8 April 1959. The said draft finally on 20th November 1959 adopted by General Assembly resolution No. 138 (XIV) as the Declaration of the Rights of the Child, 1924 (United Nations, 2007).

2.6.2. Comment:

The UN Declaration on the Rights of the Child (1959) did not contain any autonomy-based rights for children and provided only for their well and protection. It stresses upon the following points:

1) That the Rights of the Child fall under the category of “The Inaugural Human Right — to be born free and Equal”.

2) that the Rights of the Child is of immense importance for explicitly affirming the unborn child’s right to life and to appropriate legal protection,

3) that the Rights of the Child are essentially inalienable and timeless,

4) that the Rights of the Child are clarified by the Holocaust experience, and

5) That no child to be excluded.

6) These rights also protect children’s against cruel, inhuman, and degrading treatment and punishment, before or after birth and repudiate abortion as part of the “science of death” that advocated the use of pre-natal testing in order to abort “defective” children.

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19 Ibid 5
2.7. **Standard Minimum Rules for the Treatment of Prisoners, 1955**

The Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations to put an end to the purposeful infliction of severe pain or suffering on a detainee by public officials or with their acquiescence. The Standard Minimum Rules address to a broad range of issues, observing that “in view of the great variety of legal, social, economic, and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations”.

2.7.1. **Historical background**:

Since its inception the United Nations has formulated numerous international instruments designed to enhance criminal justice policies and practices. The United Nations congresses on the prevention of crime and the treatment of offenders have contributed to this process of standard-setting, beginning with the First Congress, in 1955, which adopted the Standard Minimum Rules for the Treatment of Prisoners. Since then, significant work has been done by the agencies of the UN, and national and international partners, which has led to the development of a number of instruments specific to various facets of criminal justice.

The Standard Minimum Rules for the Treatment of Prisoners were adopted on 30 August 1955 by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva, and approved by the Economic and Social Council in resolutions of 31 July 1957 and 13 May 1977. The “Standard Minimum Rules for the Treatment of Prisoners” were first adopted by the UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955. The Standard Minimum Rules were approved by the UN Economic and Social Council (ECOSOC) later through resolutions adopted in 1957 and 1977. In 1971, the UN General Assembly by its Resolution entitled Human Rights in the Administration of Justice recommended the member states to implement the rules in the administration of penal and correctional institutions and also to consider incorporating the provisions into their respective national legislations (Human Rights in the Administration of Justice 1971).

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2.7.2. **Objectives:**

1) To recognize that the United Nations standards and norms in crime prevention and criminal justice contribute to efforts to deal with crime effectively.

2) To endeavour, as appropriate, to use and apply the United Nations standards and norms in crime prevention and criminal justice in national law and practice.

3) To review relevant national and international legislation and administrative procedures, as appropriate, with a view to providing the necessary education and training to the officials concerned and ensuring the necessary strengthening of institutions entrusted with the administration of criminal justice.

4) To safeguard basic elements of human rights in an integrated manner in the administration of criminal justice system.

5) To treat the prisoners giving due respect to their inherent dignity and value as human beings.

6) To impose the responsibility upon the state to provide prisoners with a humane environment and treatment programmes that assist their reintegration into society facilitate their rehabilitation by allowing them continuous contact with the community.

7) To aim at alleviating problems arising from overcrowding in prisons and at streamlining the administration of criminal justice by promoting less use of confinement, through enhancing the use of alternative measures that can be exercised in society.

2.7.3. **Comment:**

The United Nations standards and norms are yardsticks developed largely by consensus: a set of basic principles that can help to upgrade national practices and harmonize legislative provisions and operational procedures across national frontiers. They can also help significantly to promote more effective and fair crime- and justice-related action in three dimensions. First, they can be used at the national level, by fostering in-depth assessments leading to the adoption of much needed and often overdue criminal justice reforms. Secondly, they can be used regionally and sub-regionally, by providing a framework for the formulation of regional and/or sub regional plans of action with concrete strategies to be implemented in phases and subject to periodic evaluations. Thirdly, in the largest sense, globally or internationally, they
highlight "best practices" and help States to adapt them to their specific needs so as to increase the prospects of cooperation between States (United Nations, 2003). As far as non-binding instruments are concerned the most important is the Standard Minimum Rules for the Treatment of Prisoners (1955). Although Standard Minimum Rules for the Treatment of Prisoners is not a legally binding international instrument, but the Standards provide guidelines for international and domestic laws as regards persons held in prisons and other forms of involuntary custody. The rule set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of penal institutions. The Standard Minimum Rules is a far-reaching document providing rules and guidelines in the main areas of prison services. It provides for basic rules for the management and treatment of prisoners, including material conditions (food, clothing and personal hygiene), access to health care, disciplinary proceedings and prison activities (educational, vocational training, etc). Even though the range of areas included in the Standard Minimum Rules is great in scope, it does not aim at creating a set of rigid rules or a prison model (rules 1 to 3). The Standard Minimum Rules provides only basic and minimum requirements for the operation of any prison system: the necessary conditions for a prison system to achieve minimally humane and effective standards.

In the first United Nations Congress on the Prevention of Crime and Treatment of offenders Geneva, Switzerland 22nd August to 3rd September, 1955 over 50 countries and 500 participants took part. The main focus of the event was the treatment of juvenile delinquents and prisoners, the numbers of which has been risen dramatically in the post war Europe. The first Congress made the recommendations for the prevention of juvenile delinquency through the community, the family school and social services, as well as the selection and training of prison personnel (UNODC, 2010).

Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and later on approved by the Economic and Social Council by its resolutions. So at the time of framing the rules the General Assembly was influenced upon the recommendation of the first United Nations Congress on the Prevention of

Crime and Treatment of offenders Geneva, Switzerland 22\textsuperscript{nd} August to 3\textsuperscript{rd} September, 1955 regarding prevention of juvenile delinquency. On that score, the Congress agreed to invite state parties to consider convening the United Nations Standard Minimum Rules for the Treatment of Prisoners, with a view to recommending possible next steps on recent advances in correctional science and treatment to reform and rehabilitate the wrong doer in the society, rather than to punish an offender for the offence, to the state parties, to put an end to the rising crime graph, according to the text of the rule.

The rule contemplates the basic Principles for the Treatment of Prisoners strives to distill the wrongdoer. The majority of the Basic Principles discuss the treatment of prisoners while imprisoned, but the resolution also counsels abstract post-detention policy recommendations, such as “the re-integration of the ex-prisoner into society under the best possible conditions.” In all the successive conventions and treaties of the United Nations regarding Juvenile Justice followed the Standards and guidelines provided in this Minimum Rules for the Treatment of Prisoners for international and domestic laws.

The rule 5(1) of the Standard Minimum Rules for the Treatment of Prisoners set aside the rule and regulations of young person’s for the management of Borstal institutions or correctional schools from the purview of general provisions of the rule. The rule 5(2) restricts imprisonment of all young persons who come within the jurisdiction of juvenile courts.

The rule 8 provides separate institutions or parts of institutions taking account of their age for the legal reason for their detention and the necessities of their treatment. The rule 8(d) mandates Young prisoners shall be kept separate from adults. Rule 85 provides similar provisions of separation from adults for the young prisoners under trial.

The rule 21(2) prescribes the right of the Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.

Rule-23 affirms the right of the child born in prison to nursing, care etc with acknowledgement in their birth certificate regarding their birth in prison for future reference.

Rule 71(5) is directory provisions for the states to provide vocational training in useful trades for prisoners able to profit thereby and especially for young prisoners.
All other provisions of the rule specially emphasizes upon the prescriptions of treatment, care and training of the prisoners to achieve the goal of his social rehabilitation.

Thus it may be concluded that the standard minimum rules for the treatment of Prisoners, contain provisions that are highly pertinent to the treatment of prisoners in general. In particular, the principles and internationally agreed separate standards for treatment, care and social rehabilitation should inform not only policies concerning the application of the life of youth prisoners, but also form the basis for reviewing alternative system of sanctions to the young offenders divorcing the primitive idea of revenge in administration criminal justice. The rule is contributing a phenomenon underpinned by the belief that the actual social rehabilitation of youth prisoners represents the panacea to problems of crime and social control. Following this principle the United Nation adopted its successive conventions and treaties to the universal application ensuring the present day provisions of juvenile justice system prohibiting the sentencing of imprisonment to the youth offenders.


All of us are equal before the law and are entitled to equal protection of the law against all forms of racial discrimination and incitement to racial hatred. Discrimination against individuals and groups by other individuals and groups on the grounds of race, colour, descent, and national or ethnic origin is an obstacle to the development of a child. Considering the need to introduce legislation to prevent and combat all forms of racial discrimination the United Nations Committee on the Elimination of All Forms of Racial Discrimination has maintained that the Convention obliges signatory states to introduce specific legislation to deal with racial discrimination. All the signatories’ states have an international obligation to prohibit all forms of racial discrimination.

Through the International Convention on the Elimination of All Forms of Racial Discrimination, the United Nation has made every endeavour to comply with the obligations under the Convention so as to support the international community’s efforts to combat racial discrimination by incorporating a number of principles and standards of international law into the domestic legislation of the respective state parties. All the

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23 Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969, in accordance with Article-19
member States shall pursue a policy of solidarity and equality between the country’s ethnic groups and all ethnic groups of respective member states, have the right to preserve and develop their fine traditions and those of the nation. All acts of division or discrimination between ethnic groups are to be prohibited. The State shall implement all necessary measures to develop and raise the economic and social standard of all ethnic groups.

2.8.1. **Key objectives of the convention:**

To drive out Racism by way of a resolute alliance of prohibitive measures and threats of criminal sanctions. Effectively uproot and combat the root causes of racism addressing its various manifestations.

1) A comprehensive approach, comprising educational, cultural, social, legal, political, economic and other initiatives to counter racism.

2) Implement a valid and viable multi-faceted approach to countering racism applies equally at international, levels.

3) An enhanced attention support for anti-racist goals at the international level.

2.8.2. **Comments:**

The convention aimed at addressing existing problems so as to prevent them from escalating into conflicts and would also include confidence building measures to identify and support structures to strengthen racial tolerance and solidify peace in order to prevent a relapse into conflict in situations where it has occurred. The Convention concerns for the lack of an adequate legislative basis for defining and criminalizing all forms of racial discrimination, as provided for in the Convention; inadequate implementation of enforcement mechanisms, including the lack of recourse procedures; the presence of a pattern of escalating ethnic hatred and violence, or racist propaganda or appeals to racial intolerance by persons, groups or organizations, notably by elected or other officials; a significant pattern of racial discrimination evidenced in social and economic indicators; and significant flows of refugees or displaced persons resulting from a pattern of racial discrimination or encroachment on the lands of minority communities. However, there is as yet no comprehensive prescription on racial discrimination in all the signatories’ states. There have been calls, both locally and internationally, for legislation to remedy this deficiency.

The convention does not provide for any direct provision to foster rights of the child or to implement the Juvenile Justice. It recognised the equality and equal
protection before the law and elimination of all forms of racial discriminations. One of the root causes of increase of the count of juvenile offender or juvenile delinquent or juvenile in conflict with laws, is ethnic hatred and violence owing to ethnic hatred and discrimination. By this way this convention passively paved the way to eradicate one of the major root causes of the violation of the right of the child.

2.9. **International Covenant on Economic, Social and Cultural Rights, 1966**

Basic rights and responsibilities, such as the right to food and the golden rule of “Do unto others as you would have them do unto you,” revolved around family, tribe, religion, class, community, or state. The earliest attempts of literate societies to write about rights and responsibilities date back were concentrated on the rights of citizens to equality, liberty, and due process and of participation in the political life, and also participation in their community and society through various activities. The massive scale of marginalization, in spite of continued global economic growth and development, raises serious questions, not only in relation to development, but also in relation to basic human rights. Human rights are universal, indivisible, interdependent, and inalienable. Therefore, the enhancement of all rights—civil, political, economic, social, and cultural—must be the goal of world community. Almost all of the world’s nations have indicated a commitment to achieving full economic, social, and cultural rights by agreeing to the United Nations’ international covenant on these rights.

2.9.1. **Historical Background:**

Long before human rights were written down in international documents and national constitutions, people revealed their commitment to principles of propriety, justice, and caring through cultural practices and oral traditions. On December 10, 1948, the Universal Declaration of Human Rights was adopted unanimously by 48 members of the United Nations, with eight countries abstaining. Today, the promotion of human rights is guided by what is referred to as the International Bill of Rights. It includes the UDHR and two treaties—the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. These treaties elaborate on rights identified in the UDHR and, when adopted by individual states, have the force of law. Each treaty provides for independent experts who monitor governments and requires periodic reporting by governments to ensure that they are following treaty provisions.

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With the gross atrocities of World War II in the social, political and cultural backdrop, the international community created the UN Charter which established the UN in 1945 and ushered in a new era in the promotion and protection of human rights. This charter, though containing a preamble and seven articles dealing with human rights, “…did not contain a specific definition of human rights nor specific arrangements for their implementation.” It did, however, create an institution which, through various other treaties, declarations and customary international law, would develop a global human rights system that would further question, challenge and develop the definition of and discourse on human rights and the undertaking of the promotion, protection and enforcement of them by the institution as well as by the international community. At the core of this global system is the International Bill of Human Rights (IBHR). However, an ideological battle, separated along a Western versus Eastern bloc delegations line, ensued within the commission regarding the structure of this covenant. The result of this confrontation was the birth of two covenants; the ICCPR and ICESCR.

2.9.2. Objectives:

Economic, social and cultural rights are designed to ensure the protection of people as full persons, based on a perspective in which people can enjoy rights, freedoms and social justice simultaneously (United Nations, 1994).

The International Covenant on Economic, Social and Cultural Rights commits states parties to promote and protect a wide range of economic, social and cultural rights, including rights relating to work in just and favourable conditions, to social protection, to an adequate standard of living, to the highest attainable standards of physical and mental health, to education and to enjoyment of the benefits of cultural freedom and scientific progress. It obliges states parties to respect and ensure that all individuals subject to their jurisdiction enjoy all the rights included in the ICESCR, without discrimination to enjoy the benefits of scientific progress and its applications.

2.9.3. Conclusion:

The Covenant contains some of the most significant international legal provisions establishing economic, social and cultural rights, including rights relating to work in just and favourable conditions, to social protection, to an adequate standard of living, to the highest attainable standards of physical and mental health, to education

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and to enjoyment of the benefits of cultural freedom and scientific progress. It also provides for the right of self-determination; equal rights for men and women; the right to work; the right to just and favourable conditions of work; the right to form and join trade unions; the right to social security and social insurance; protection and assistance to the family; the right to adequate standard of living; the right to the highest attainable standard of physical and mental health; the right to education; the right to take part in cultural life; and the right to enjoy the benefits of scientific progress and its applications.

Compliance by States parties with their obligations under the Covenant and the level of implementation of the rights and duties in question is monitored by the Committee on Economic, Social and Cultural Rights which submits annual reports on its activities to the Economic and Social Council.

Of all the basic human rights standards, the International Covenant on Economic, Social and Cultural Rights provides the most important international legal framework for protecting basic human rights (United Nations, 2000).26

It now encompasses that the UN’s three pronged approach to the global protection and promotion of human rights are based on the systems enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Together they bind states through the force of their great moral authority, ratification/accession processes and customary international law to certain standards and duties. The UDHR, though merely a declaration and therefore not binding (at the time), it set the stance of the international community with regards to human rights primarily by expressing the moral foundation of human rights and basic fundamental freedoms as well as by enumerating them. But, while finally expressing these fundamental rights, the UDHR was still a far cry from crystallizing what these rights entailed and how they were to be promoted, protected and enforced, particularly by states. It lists mostly civil and political rights and economic, social and cultural rights and a limited number of group rights as most of the rights listed are individual rights. It was, however, envisaged that the International Covenant on Economic, Social and Cultural Rights would tackle issues surrounding the development and enforceability of these rights in the form of a binding covenant to which states would formally commit and, therefore, be bound to.

The Covenant brings consistent provisions with the fundamental guiding principle of international human rights law enshrined in the Preambles to the Universal Declaration of Human Rights and both Covenants enshrined the dignity and worth of the individual. The new elements of the covenant are implicit in the UDHR, and this reflects a contemporary interpretation of the articles of UDHR. Other aspects of social discipline may also be inconsistent with human dignity, such as public humiliation. Nor should any form of discipline breach other rights under the Covenant, such as the right to food. A State party is required to take measures to ensure that discipline which is inconsistent with the Covenant does not occur in any manner its jurisdiction. In General the Convention identified a number of factors which factor upon the full growth and humane development of the child based on human rights including right to education and its “availability”, “affordability”, “accessibility” and “cultural adequacy”. Perhaps the most fundamental part of the Covenant is the guarantee provide in article 13 which states that education shall be directed to the full development of the human personality. It shall “enable all persons to participate effectively in a free society”, and it shall promote understanding among all “ethnic” groups, as well as nations and racial and religious groups. This are also found in article 26 (2) of the Universal Declaration of Human Rights.

The violations of article 13 include: the introduction or failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds, in the field of education, the failure to take measures which address de facto educational discrimination; the introduction of uniform process to ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour” (ILO Convention, Worst Forms of Child Labour, 1999).

The prohibition against discrimination enshrined in article 2 (2) of the Covenant is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination. The Covenant predate and reiterates in articles 2 (2) and 3 in the light of the UNESCO Convention against Discrimination in Education, the relevant provisions of the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the ILO Indigenous and
Tribal Peoples Convention, 1989 (Convention No. 169), and wishes to draw particular attention to the issues of full fledge humane growth of children’s.

2.10. **International Covenant on Civil and Political Rights, 1966**

The International Covenant on Civil and Political Rights (ICCPR) is an important universal treaty of the human rights. In its universal relevance it is open to all states for ratification. The UN International Covenant on Civil and Political Rights is a legally binding document which came into force in 1978, contains provisions specifically referring to children. The International Covenant on Civil and Political Rights (ICCPR) may be termed as the second Covenant of the Universal Declaration of Human Rights of 1948 which the General Assembly adopted on 16 December 1966 after prolonged research by the world community. Together with the Optional Protocols, they constitute the "International Bill of Human Rights". The International Covenant on Civil and Political Rights (ICCPR) is a landmark research produce of the international community in the efforts to promote human rights. It assigns the duty and obligation to the state parties to defend the right to life of the human being irrespective of their nationality and to stipulate that no individual be subjected to torture, enslavement, forced labour and arbitrary detention or is restricted from such freedoms as movement, expression and association.

2.10.1. **The key Objectives:**

‘Absence of discrimination’, on the one hand, and ‘equal protection of the law’, or the ‘prohibition of discrimination’, on the other hand is distinct manifestations of the principle of equality. The eradication of discrimination is subject to special rights of persons belonging to ethnic, religious and linguistic minorities and the equality or equal protection is subject to states obligation to provide the special rights and protection to the children and special provision for Juvenile Offender from sociological point of view for the purpose of reformation. The former one is mostly negative in its traditional approach in international human rights law. The latter terms describe the positive aspect of equality, requiring affirmative legislative, administrative and/or judicial action.

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27 Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entered into force 23 March 1976, in accordance with Article 49
2.10.2. **Principal subjects of convention:**

1) The State should ensure that all persons under its jurisdiction and effective control are afforded the full enjoyment of the rights enshrined in the Covenant.

2) The State should amend its Basic Laws and other legislation to include the principle of non-discrimination and ensure that allegations of discrimination brought before its domestic courts are promptly addressed and implemented.

3) The Covenant must be of an exceptional and temporary nature and be limited to the extent strictly required. Therefore, the party should:
   
   a. Complete as soon as possible its review of legislation governing the state. Pending the completion of its review, the State should carefully re-examine the modalities governing the renewal of the state of emergency;
   
   b. Refrain from using administrative detention, in particular for children, and ensure that detainees’ rights to fair trial are upheld at all times; and
   
   c. Grant administrative detainees prompt access to counsel of their own choosing, inform them immediately, in a language which they understand, of the charges against them, provide them with information to prepare their defence, bring them promptly before a judge and try them in their own or their counsel’s presence.

4) The State should invite an independent, international fact-finding mission to establish the circumstances of the boarding of the flotilla, including its compatibility with the Covenant.

5) The State should launch, in addition to the investigations already conducted, credible, independent investigations into the serious violations of international human rights law, such as violations of the right to life, prohibition of torture, and the right to humane treatment of all persons in custody and the right to freedom of expression. All decision makers, be they military or civilian officials, should be investigated and where relevant prosecuted and sanctioned.

6) The State should end its practice of extrajudicial executions of individuals suspected of involvement in terrorist activities. The State should ensure that all its agents uphold the principle of proportionality in their responses to terrorist threats and activities. The State should exhaust all measures for the arrest and detention of a person suspected of involvement in terrorist activities before
resorting to the use of deadly force. The State should also establish an independent body to promptly and thoroughly investigate complaints about disproportionate use of force.

7) The State should incorporate into its legislation the crime of torture, that the State should completely remove the notion of “necessity” as a possible justification for the crime of torture. The State should also examine all allegations of torture, cruel, inhuman or degrading treatment pursuant to the Manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment.

8) The State should ensure that all alleged cases of torture, cruel, inhuman or degrading treatment and disproportionate use of force by law-enforcement officials, including police, personnel of the security service and of the armed forces, are thoroughly and promptly investigated by an authority independent of any of these organs, that those found guilty are punished with sentences that are commensurate with the gravity of the offence, and that compensation is provided to the victims or their families.

9) The State should ensure that:

a. The security suspects are precise and limited to the countering of crimes and the maintenance of national security and are in full conformity with the Covenant;

b. All legislation, regulations and military orders comply with the requirements of the principle of legality with regard to accessibility, equality, precision and non-retroactivity;

c. Any person arrested or detained on a criminal charge, including persons suspected of security-related offences, has immediate access to a lawyer, for example by introducing a regime of special advocates with access to all evidence, including classified evidence, and immediate access to a judge;

d. A decision on postponement of access to a lawyer or a judge can be challenged before a court.

10) The State should increase its efforts to protect the rights of religious minorities and ensure equal and non-discriminatory access to places of worship.
Furthermore, the State should pursue its plan also to include holy sites of religious minorities in its list.

11) The State should:

a. Ensure that children are not tried as adults;

b. Refrain from holding criminal proceedings against children in military courts, ensure that children are only detained as a measure of last resort and for the shortest possible time, and that trials are conducted in a prompt and impartial manner, in accordance with fair trial standards;

c. Inform parents or close relatives of where the child is detained and provide the child with prompt access to free and independent legal assistance of its own choosing;

d. Ensure that reports of torture or cruel, inhuman or degrading treatment of detained children are investigated promptly by an independent body.

12) The State should continue its efforts to make its public administration services fully accessible to all linguistic minorities and to ensure that full accessibility in all official languages.

13) The State should also guarantee the alien access to all rights addressed in the covenant irrespective of their whereabouts on the territory of the concerned State and they shall not be expelled except in due process of law.

2.10.3. Comment:

The Covenant on Civil and Political Rights incorporates certain rights which do not found mentioned in the Universal Declaration of Human Rights, such as prohibition of imprisonment merely on the ground of inability to fulfill a contractual obligation; humane treatment of detainees and, certain rights of the child not mentioned the Universal Declaration (Dr. U. Chandra, 2000).

Whatever form of the constitution or the government is in force and power of a state, the Covenant requires States to adopt such legislative, administrative, and judicial and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights. The States Parties to the Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories,

have imposed their own responsibility upon themselves to promote the realization of
the right of self-determination, and to respect that right, in conformity with the
provisions of the Charter of the United Nations. It is however remarkable that the
ICCPR which is usually considered as applicable to every human being including children
do not pay any special recognition to the particular aspect of the child as a developing
person. It has explains only a very limited impact of the treaties on the recognition of
the child as a separate distinguished rights holder.

The 1966 International Covenant on Civil and Political Rights (CCPR) reiterates
these principles in the form of ‘hard law’, as well as prohibiting the death penalty for
persons found guilty of a crime committed when they were under the age of 18 (Art.
6.5). The CCPR also contains many safeguards applicable to all persons brought to trial
and detained, and specifically states that “[i]n the case of juvenile persons, the [court]
procedure shall be such as will take account of their age and the desirability of

The Covenant provides for a very unique process of criminal adjudication of a
person arrested or detained on a criminal charge in general. But at the same time from
the sociological and moral point of view to achieve the goal of reformation it prescribes
some special rights and protection to the children and special provision for Juvenile
Offender. Article 9 of the Covenant protects the rights of every individual in general
arrested or detained on a criminal charge and provides general provisions of the
initiation of criminal trial with special acknowledgement of the right to compensation of
the victim of unlawful arrest or detention. Article 10 (1) respects the inherent human
dignity and Article 10 (2) (a) respects the separate treatment and status of unconvicted
persons under trial from convicted persons. Article 10 (2)(b) and Article 10 (3) of the
Covenant not only given the juveniles on charge of any crime a separate status and
treatment but it also re-affirms and recognises and casts duty and obligation upon the
states to reform and rehabilitate the juvenile offender in the society. Article 14 of the
ICCPR recognizes the right in all proceedings to a “fair trial and a public hearing by a
competent, independent and impartial tribunal established by law”. As has been seen,
the trial of civilians in military courts and administrative detention pose severe threats
to Article 14, the brief outline of other violations which specifically risk violating due
process rights of women and children. To achieve the target of social rehabilitation of
juvenile offender Article 14 (1) prohibits the public hearing of the trial or press release of

International Child Development Centre Florence – Italy (unicef), page-2.
the judgement to make public except where the interest of juvenile persons otherwise requires. Article 14 (4) of the International Covenant on Civil and Political Rights requires the adjustment of legal procedures in the courtroom to the minor’s age: “in the case of juvenile persons, the procedure shall be such, as will take account of their age and the desirability of promoting their rehabilitation.”

Article 18 (4) is the States Parties undertaking to respect and ensure the education of children under the convictions of their parents and legal guardians. To abolish the social trauma of child marriage Article 23(2) recognised the right of men and women of marriageable age to marry and to found a family shall be recognized. Article 24 provides all the rights of a child including right to citizenship of nation to grow in a humane condition. Furthermore, the rights provided for in Article 24 are not the only ones that the Convention recognizes for children and that, as individuals, children benefit from all of the civil rights enunciated in the Covenant.

Thus the covenant emphsizes upon the utilization of the result of research of the UN agencies on the basis of 1924 and 1959 declaration of the UN for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The specific provisions of the covenant for juvenile establish the standards for integrating research into the process of policy formulation and application in juvenile justice administration within the broader context of overall development objectives of the child.

2.11. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is an international human rights instrument that aims to prevent torture around the world. The Convention requires state parties to take effective measures to prevent torture within their borders, and forbids states to return people to their home country if there is reason to believe that they will be tortured. The Convention, understood the term torture any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be

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30 Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 Entry into force 26 June 1987, in accordance with article 27 (1)
the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

2.11.1. Historical Background:

The prohibition against torture is well established under customary international law as jus cogens; that is, it has the highest standing in customary law and is so fundamental as to supersede all other treaties and customary laws (except laws that are also jus cogens). On 10 December 1984, after a seven-year drafting period by an ad hoc working group, the General Assembly of the United Nations, by consensus, adopted Resolution no. 39/46 embodying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opening it for signature or ratification. The Convention entered into force on 26 June 1987, one month after the twentieth ratification. The Convention is the first binding international instrument exclusively dedicated to the struggle against torture. It is one of the most widely ratified human rights conventions with 141 states parties as of 13 December 2005. ³¹

2.11.2. Objectives:

1) To strengthen the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment, by resorting to non-judicial means of a preventive character;

2) To prescribe the machinery at international and various states national level for the protection and treatment of the persons who allege that they are victims of torture;

3) To bring absolute prohibition upon Collective punishments, corporal punishment, punishment by placing in dark cell, and other cruel, inhuman degrading punishment;

4) To bind the State Party to ensure at their national that if any individual who alleges that he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities for compensation and other redress.

³¹ “Bringing the International Prohibition of Torture Home”, Page-11 and 12, Published on January 2006, Published by the Redress Trust, 3rd Floor, 87 Vauxhall Walk, London SE11 5HJ Tel: +44 (0)20 7793 1777 Fax: +44 (0)20 7793 1719, Registered Charity Number 1015787, A Limited Company in England Number 2274071 info@redress.org (general correspondence) URL: www.redress.org.
5) Protection for individuals and groups made vulnerable by discrimination or marginalization.

2.11.3. Comment:

The Convention was concluded in the conviction that ‘the protection of persons deprived of their liberty against torture and inhuman or degrading treatment or punishment could be strengthened by non-judicial means of a preventive character based on visits.’ In its operative part, the Convention does not set or specify standards, neither does it provide for any complaint or adjudicatory procedures. The operation of the mechanism of visits for the prevention of torture on the basis of fact finding at the places of detention and consulting with the competent authorities is an ambitious undertaking. It requires innovative and constructive cooperation on the part both of the governments and competent authorities of the Parties concerned and of the persons deprived of their liberty and other private persons. The objective of the Convention is more complex; it is not to apply the law to certain established facts or situations and, if the circumstances so demand, to condemn a certain state formal conduct. The object is, ‘in a spirit of cooperation and through advice, to seek improvements, if necessary, in the protection of persons deprived of their liberty.’ The underlying idea is to monitor and thereby improve the environment, i.e. places where persons are deprived of their liberty up to a point where torture and inhuman or degrading treatment or punishment will come under routine control or will no longer occur at all. Toward this end, the Convention provides for a complex and sensitive mechanism of on-site inspections of prisons and other places of detention, involving communication and interaction between the Committee, its members, including experts, the government of the Party concerned and its competent authorities, private persons deprived of their liberty and other persons who might supply relevant information.

The United Nations Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles for the Treatment of Prisoners, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provide authoritative guidance on the treatment of all persons, children and adults alike, deprived of their liberty. The Convention does not provide any direct or patent formula or process to implement right to child and/or Juvenile Justice. Torture and ill-treatment are among the most abhorrent violations of human rights and human dignity. In this convention combating and preventing of torture and ill-treatment has been considered as a priority in bilateral and multilateral co-operation for the promotion of human rights,
inter alia in collaboration with civil society, including in the legal field and the field of training. Particular attention has been given to such co-operation within the framework of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights. According to the Universal Declaration of Human Rights no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No exceptions are permitted under international law. All countries are obligated to comply with the unconditional prohibition of all forms of torture and ill-treatment upon human being. Despite the efforts by the international community torture and ill-treatment persist in all parts of the world. So the rights enshrined in this Convention are preceded with the rights Universal Declaration of Human Rights and UN International Covenant on Civil and Political Rights. This convention has once again re-affirmed and strengthened the basic rights already prescribed by the United Nation by previous Conventions.

Article 1 clearly defines the word torture which means and includes severe pain suffering by a person; whether physical or mental, so according to the definition infliction of mental pain also one kind of torture. Article 10 assigns the duty upon the concerned states to train its officials charged with the duty of arrest, detention or imprisonment. Article 14 confers the rights upon the Victim to a fair and adequate compensation in conformity with international law.

The states parties to this Convention has already taken up the duty, liability and responsibility to ensure and implement the rights of the child or juvenile by ratifying and/or signing Universal Declaration of Human Rights and UN International Covenant on Civil and Political Rights, so it is the concerned state which is bound to take all the necessary steps to provide and implement the rights already declared in these two declarations. As such if a juvenile or child is deprived from his rights received or derived under various declarations of the United Nation, he has suffered severe mental pain and according to the definition this pain amounts to torture and in this situation the said juvenile or child is the Victim. The protection and compensation of the Victim enshrined in Article 14 of this Convention. On the other hand in compliance of the Article 10 of this Convention if the officials of the concerned state charged with the duty of arrest, detention or imprisonment are being trained, the Juveniles in conflict with laws surely would be benefited during course of arrest, detention. By this way it may very easily be concluded that though there is no specific provision of the right to child or right to juvenile patently but those provisions very much present in this Convention.
The principle of this convention has been followed by the United Nation in its

Article 37 of the United Nation in its Convention on the Rights of the Child states as
follows:

States Parties shall ensure that:

a) No child shall be subjected to torture or other cruel, inhuman or degrading
treatment or punishment. Neither capital punishment nor life imprisonment
without possibility of release shall be imposed for offences committed by
persons below eighteen years of age;

b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The
arrest, detention or imprisonment of a child shall be in conformity with the law
and shall be used only as a measure of last resort and for the shortest
appropriate period of time;

c) Every child deprived of liberty shall be treated with humanity and respect for
the inherent dignity of the human person, and in a manner which takes into
account the needs of persons of his or her age. In particular, every child
deprived of liberty shall be separated from adults unless it is considered in the
child’s best interest not to do so and shall have the right to maintain contact
with his or her family through correspondence and visits, save in exceptional
circumstances;

d) Every child deprived of his or her liberty shall have the right to prompt access to
legal and other appropriate assistance, as well as the right to challenge the
legality of the deprivation of his or her liberty before a court or other
competent, independent and impartial authority, and to a prompt decision on
any such action.

So the basic principles of thought of the Convention against Torture and Other
Cruel, Inhuman or Degrading Treatment or Punishment has also been carried forward in
the United Nation in its Convention on the Rights of the Child, 1989. In this respect, the
Convention breaks new ground in the field of the promotion and protection of human
rights.

As the state began to establish their own juvenile justice system, the need became apparent during the 1980’s for an international coherent framework within which states would be able to operate their own systems of juvenile justice mechanism. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), 1985 provides for the guidance to the States for the protection of children’s rights and respect for their needs in the development of separate and specialised systems of juvenile justice. The aims of juvenile justice are of two-folds:

Firstly: the promotion and protection for the well-being of the juvenile;
Secondly: a proportionate reaction by the authorities to the nature of the offender as well as to the offence.

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

2.12.1. **Historical Background of the Rules**:

In the International Covenant on Civil and Political Rights 1966, some limited provisions concerning juvenile justice has been located. Prior to that in the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted in 1955, provides for some similar provisions setting out certain basic requirements addressing young offenders. The Beijing Rule is the first international legal instrument to comprehensively detail norms for the administration of juvenile justice with a child rights and development oriented approach. The Beijing Rule is a direct response to the call made by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders which convened in 1980. The Guidelines of Seventh Congress on "Youth, Crime and Justice", focus on early preventive and protective held at Beijing, China, in 1984. The present format of the United Nations Standard Minimum Rules for

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32 Adopted by General Assembly resolution 40/33 of 29 November 1985
the Administration of Juvenile Justice has been adopted by the General Assembly, in its 96th plenary session held on 29th November 1985. The resolution and decision of the General Assembly in 96th plenary session reproduced bellow in detail is the history behind framing of the Beijing rules;

The General Assembly,

Bearing in mind the Universal Declaration of Human rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as other international human rights instruments pertaining to the rights of young persons,

Also bearing in mind that 1985 was designated the International Youth Year: Participation, Development, Peace and that the international community has placed importance on the protection and promotion of the rights of the young, as witnessed by the significance attached to the Declaration of the Rights of the Child,

Recalling resolution 4 adopted by the Sixth United Nations Congress on the Prevention of Crime and the treatment of Offenders, which called for the development of standard minimum rules for the administration of juvenile justice and the care of juveniles, which could serve as a model for Member States, Recalling also Economic and Social Council decision 1984/153 of 25 May 1984, by which the draft rules were forwarded to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, Italy, from 26 August to 6 September 1985, through the Interregional Preparatory Meeting, held at Beijing from 14 to 18 May, 1984,

Recognizing that the young, owing to their early stage of human development, require particular care and assistance with regard to physical, mental and social development, and require legal protection in conditions of peace, freedom, dignity and security,

Considering that existing national legislation, policies and practices may well require review and the rules,

Considering further that, although such standards may seem difficult to achieve at present in view of existing social, economic, cultural, political and legal conditions, they are nevertheless intended to be attainable as a policy minimum,

- Notes with appreciation the work carried out by the Committee on Crime Prevention and Control, the Secretary-General, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders and
other United Nations institutes in the development of the Standard Minimum Rules for the Administration of Juvenile Justice;

- Takes note with appreciation of the report of the Secretary-General on the draft Standard Minimum Rules for the Administration of Juvenile Justice;


- Adopts the United Nations Standard Minimum Rules for the Administration of Juvenile Justice recommended by the Seventh Congress, contained in the annex to the present resolution, and approves the recommendation of the Seventh Congress that the Rules should be known as “the Beijing Rules”;

- Invites Member States to adapt, wherever this is necessary, their national legislation, policies and practice, particularly in training juvenile justice personnel, to the Beijing Rules and to bring the Rules to the attention of relevant authorities and the public in general;

- Calls upon the Committee on Crime Prevention and Control to formulate measures for the effective implementation of the Beijing Rules, with the assistance of the United Nations institutes on the prevention of crime and the treatment of offenders;

- Invites Member States to inform the Secretary-General on the implementation of the Beijing Rules and to report regularly to the Committee on Crime Prevention and Control on the results achieved;

- Requests Member States and the Secretary-General to undertake research and to develop a data base with respect to effective policies and practices in the administration of juvenile justice;

- Requests the Secretary-General and invites Member States to ensure the widest possible dissemination of the text of the Beijing Rules in all of the official languages of the United Nations, including the intensification of information activities in the field of juvenile justice;

- Requests the Secretary-General to develop pilot projects on the implementation of the Beijing Rules;

- Requests the Secretary-General and Member States to provide the necessary resources to ensure the successful implementation of the Beijing Rules, in particular in the areas of recruitment, training and exchange of personnel,
research and evaluation, and the development of new alternatives to institutionalization;

- Requests the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to review the progress made in the implementation of the Beijing Rules and of the recommendations contained in the present resolution, under a separate agenda item on juvenile justice;

- Urges all relevant organs of the United Nations system, in particular the regional commissions and specialized agencies, the United Nations institutes for the prevention of crime and the treatment of offenders, other intergovernmental organizations and non-governmental organizations to collaborate with the Secretariat and to take the necessary measures to ensure a concerted and sustained effort, within their respective fields of technical competence, to implement the principles contained in the Beijing Rules (UN General Assembly, 1985).  

2.12.2. Operation and Development under International Law:

In 1990, by resolution of the General Assembly, the United Nations passed Rules for the Protection of Juveniles Deprived of their Liberty. The core principles (Fundamental Perspectives) of these Rules re-affirm The Beijing Rules and emphasize that deprivation of liberty of a young person should be a disposition of last resort and for the minimum period and should be limited to exceptional cases. The Rules are intended to establish minimum standards with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society. They do not preclude the application of standards that are more conducive to ensuring the rights, care and protection of young persons (UN et al, 1990 and 2005).

The same year, the United Nations also passed Guidelines for the Prevention of Juvenile Delinquency (“The Riyadh Guidelines”). The Fundamental Principles of the Riyadh Guidelines acknowledge that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth

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process and tends to disappear spontaneously in most individuals with the transition to adulthood. This characteristic of youth has also been recognized by Supreme Court of the United States (United Nations, 1990 et al and 2005).

The Beijing Rule operates within the framework of two other sets of rules governing juvenile justice, both the rules has been adopted by the United Nations in year 1990: (1) The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and (2) 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);

Thirdly, safeguarding fundamental rights and establishing measures for social reintegration of young people once deprived to their liberty, whether in prison or other institutions (the United Nations Rules for the Protection of Juveniles Deprived of their Liberty).

Several fundamental principles of the Beijing Rules have been incorporated into the UN Convention on the Rights of the Child 1989, and they are expressly referred to in its Preamble. The Convention on the Rights of the Child 1989 in practice predates the provisions of the Beijing Rules.

2.12.3. Fundamental Principles:

1. The provisions of fair and humane treatment of the juveniles in conflict with law.

2. Encourage the consent of the juvenile in the use of diversion from formal hearings to appropriate community programmes.

3. Permissible detention of the juvenile only as a measure of last resort for the shortest possible period of time where diversion is not appropriate and separation from adult detainees.

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4. Right of the juvenile to express him/her freely before any authority during the course of any proceeding proceedings in view of the best interests of the juvenile and in the manner which allows him/her to participate.

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

6. Banning or abolition of Capital and corporal punishment for any crime committed by juvenile offender.

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

8. Institutionalisation of authorised persons and police officers dealing with juvenile with the benefit of continued specialised training process.

9. Appropriate education and care to assist juveniles in their return to society whilst they are undergoing institutional treatment under control of state authority or otherwise.

10. All kinds of detention for the juvenile shall be for the shortest possible period time.

2.12.4. Comments:

The broad fundamental perspectives of the rule refers to a comprehensive social policy in general and aimed at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the Rules.

Rules 1.1 to 1.3 are pointing to the important role that a constructive social policy for juveniles will play, inter alia, in the prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of social justice for juveniles, while rule 1.6 refers to the necessity of constantly improving juvenile justice, without falling behind the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services.

Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular rules necessarily to be different from the manner adopted in other States.
The Standard Minimum Rules are deliberately formulated so as to be applicable within different legal systems and, at the same time, to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders. The Rules are always to be applied impartially and without distinction of any kind.

Rule 2.1 therefore stresses the importance of the Rules always being applied impartially and without distinction of any kind. The rule follows the formulation of principle 2 of the Declaration of the Rights of the Child.

Rule 2.2 defines "juvenile" and "offence" as the components of the notion of the "juvenile offender", who is the main subject of these Standard Minimum Rules (see, however, also rules 3 and 4). It should be noted that age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of "juvenile", ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these Standard Minimum Rules.

Rule 2.3 is addressed to the necessity of specific national legislation for the optimal implementation of these Standard Minimum Rules, both legally and practically.

Rule 3 extends the protection afforded by the Standard Minimum Rules for the Administration of Juvenile Justice to cover:

a) The so-called "status offences" prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults (for example, truancy, school and family disobedience, public drunkenness, etc.) (Rule 3.1);

b) Juvenile welfare and care proceedings (rule 3.2);

c) Proceedings dealing with young adult offenders, depending of course on each given age limit (rule 3.3).

The extension of the Rules to cover these three areas seems to be justified. Rule 3.1 provides minimum guarantees in those fields, and rule 3.2 is considered a desirable step in the direction of more fair, equitable and humane justice for all juveniles in conflict with the law.

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the
moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.). Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.

Rule 5 refers to two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well-being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions. (This also refers to rule 14).

The second objective is "the principle of proportionality". This principle is well-known as an instrument for curbing punitive sanctions, mostly expressed in terms of just deserts in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reactions (for example by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to wholesome and useful life).

By the same token, reactions aiming to ensure the welfare of the young offender may go beyond necessity and therefore infringe upon the fundamental rights of the young individual, as observed in some juvenile justice systems. Here, too, the proportionality of the reaction to the circumstances of both the offender and the offence, including the victim, should be safeguarded.

In essence, rule 5 calls for no less and no more than a fair reaction in any given cases of juvenile delinquency and crime. The issues combined in the rule may help to stimulate development in both regards: new and innovative types of reactions are as desirable as precautions against any undue widening of the net of formal social control over juveniles.
Rules 6.1, 6.2 and 6.3 combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing so that those who make determinations can take the actions deemed to be most appropriate in each individual case; and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. Accountability and professionalism are instruments best apt to curb broad discretion. Thus, professional qualifications and expert training are emphasized here as a valuable means of ensuring the judicious exercise of discretion in matters of juvenile offenders. (See also rules 1.6 and 2.2.) The formulation of specific guidelines on the exercise of discretion and the provision of systems of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context. Such mechanisms are not specified here, as they do not easily lend themselves to incorporation into international standard minimum rules, which cannot possibly cover all differences in justice systems.

Rule 7.1 emphasizes some important points that represent essential elements for a fair and just trial and that are internationally recognized in existing human rights instruments (See also rule 14.). The presumption of innocence, for instance, is also to be found in article 11 of the Universal Declaration of Human rights and in article 14, paragraph 2, of the International Covenant on Civil and Political Rights. Rules 14 seq. of these Standard Minimum Rules specify issues that are important for proceedings in juvenile cases, in particular, while rule 7.1 affirms the most basic procedural safeguards in a general way.

Rule 8 stresses the importance of protecting the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young person's as "delinquent" or "criminal". Rule 8 stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle (The general contents of rule 8 are further specified in rule 21.).

Rule 9 is meant to avoid any misunderstanding in interpreting and implementing the present Rules in conformity with principles contained in relevant existing or
emerging international human rights instruments and standards—such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and the Declaration of the Rights of the Child and the draft convention on the rights of the child. It should be understood that the application of the present Rules is without prejudice to any such international instruments which may contain provisions of wider application (See also rule 27.).

Rule 10.1 is in principle contained in rule 92 of the Standard Minimum Rules for the Treatment of Prisoners.

The question of release (rule 10.2) shall be considered without delay by a judge or other competent official. The latter refers to any person or institution in the broadest sense of the term, including community boards or police authorities having power to release an arrested person. The same principle is visible in the International Covenant on Civil and Political Rights, article 9, paragraph 3.

Rule 10.3 deals with some fundamental aspects of the procedures and behaviour on the part of the police and other law enforcement officials in cases of juvenile crime. To "avoid harm" admittedly is flexible wording and covers many features of possible interaction (for example the use of harsh language, physical violence or exposure to the environment). Involvement in juvenile justice processes in itself can be "harmful" to juveniles; the term "avoid harm" should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile's attitude towards the State and society. Moreover, the success of any further intervention is largely dependent on such initial contacts. Compassion and kind firmness are important in these situations.

Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practised on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence). In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.
As stated in rule 11.2, diversion may be used at any point of decision-making—by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one authority or several or all authorities, according to the rules and policies of the respective systems and in line with the present Rules. It need not necessarily be limited to petty cases, thus rendering diversion an important instrument.

Rule 11.3 stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s). (Diversion to community service without such consent would contradict the Abolition of Forced Labour Convention.) However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (for example in order to avoid court appearance) or be pressured into consenting to diversion programmes. Thus, it is advocated that provision should be made for an objective appraisal of the appropriateness of dispositions involving young offenders by a "competent authority upon application". (The "competent authority," may be different from that referred to in rule 14).

Rule 11.4 recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed (for example first offence, the act having been committed under peer pressure, etc.).

Rule 12 draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. As police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner.

While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialized police units would therefore be indispensable, not only in the interest of implementing specific principles contained
in the present instrument (such as rule 1.6) but more generally for improving the prevention and control of juvenile crime and the handling of juvenile offenders.

The danger to juveniles of "criminal contamination" while they are in detention pending trial must not be underestimated. It is therefore important to stress the need for alternative measures. By doing so, rule 13.1 encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile. Juveniles under detention pending trial are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights, especially article 9 and article 10, paragraphs 2 (b) and 3.

Rule 13.4 does not prevent States from taking other measures against the negative influences of adult offenders which are at least as effective as the measures mentioned in the rule.

Different forms of assistance that may become necessary have been enumerated to draw attention to the broad range of particular needs of young detainees to be addressed (for example females or males, drug addicts, alcoholics, mentally ill juveniles, young person’s suffering from the trauma, for example, of arrest, etc.).

Varying physical and psychological characteristics of young detainees may warrant classification measures by which some are kept separate while in detention pending trial, thus contributing to the avoidance of victimization and rendering more appropriate assistance.

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4 on juvenile justice standards, specified that the Rules, inter alia, should reflect the basic principle that pre-trial detention should be used only as a last resort, that no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees and that account should always be taken of the needs particular to their stage of development.

It is difficult to formulate a definition of the competent body or person that would universally describe an adjudicating authority. "Competent authority" is meant to include those who preside over courts or tribunals (composed of a single judge or of several members), including professional and lay magistrates as well as administrative boards (for example the Scottish and Scandinavian systems) or other more informal community and conflict resolution agencies of an adjudicatory nature.
The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as "due process of law". In accordance with due process, a "fair and just trial" includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defences, the right to remain silent, the right to have the last word in a hearing, the right to appeal, etc.

Rule 15.1 uses terminology similar to that found in rule 93 of the Standard Minimum Rules for the Treatment of Prisoners. Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in rule 15.2 should be viewed as general psychological and emotional assistance to the juvenile a function extending throughout the procedure.

The competent authority's search for an adequate disposition of the case may pro fit, in particular, from the co-operation of the legal representatives of the juvenile (or, for that matter, some other personal assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role, for instance, if they display a hostile attitude towards the juvenile, hence, the possibility of their exclusion must be provided for.

Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc. For this purpose, some jurisdictions use special social services or personnel attached to the court or board. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.

The main difficulty in formulating guidelines for the adjudication of young person’s stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:

(a) Rehabilitation versus just desert;
(b) Assistance versus repression and punishment;
(c) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;
(d) General deterrence versus individual incapacitation.
The conflict between these approaches is more pronounced in juvenile cases than in adult cases. With the variety of causes and reactions characterizing juvenile cases, these alternatives become intricately interwoven.

It is not the function of the Standard Minimum Rules for the Administration of Juvenile Justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles. Therefore the essential elements as laid down in rule 17.1, in particular in subparagraphs (a) and (c), are mainly to be understood as practical guidelines that should ensure a common starting point; if heeded by the concerned authorities (see also rule 5), they could contribute considerably to ensuring that the fundamental rights of juvenile offenders are protected, especially the fundamental rights of personal development and education.

Rule 17.1 (b) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.

In line with resolution 8 of the Sixth United Nations Congress, rule 17.1 (b) encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed, bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.

Rule 17.1 (c) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress which aims at avoiding incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety.

The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights.

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

The power to discontinue the proceedings at any time (rule 17.4) is a characteristic inherent in the handling of juvenile offenders as opposed to adults. At any time, circumstances may become known to the competent authority which would make a complete cessation of the intervention appear to be the best disposition of the case.

Rule 18.1 attempts to enumerate some of the important reactions and sanctions that have been practised and proved successful thus far, in different legal systems. On the whole they represent promising opinions that deserve replication and further development. The rule does not enumerate staffing requirements because of possible shortages of adequate staff in some regions; in those regions measures requiring less staff may be tried or developed.

The example given in rule 18.1 has in common, above all, a reliance on and an appeal to the community for the effective implementation of alternative dispositions. Community-based correction is a traditional measure that has taken on many aspects. On that basis, relevant authorities should be encouraged to offer community-based services.

Rule 18.2 points to the importance of the family which, according to article 10, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, is "the natural and fundamental group unit of society". Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Rule 18.2, therefore, requires that the separation of children from their parents is a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this grave step (for example child abuse).

Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.
Rule 19 aims at restricting institutionalization in two regards: in quantity ("last resort"), and in time ("minimum necessary period"). Rule 19 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress: a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to "open" over "closed" institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

The speedy conduct of formal procedures in juvenile cases is a paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the interests of the juvenile offender. (See also rule 8.) "Other duly authorized persons" would generally include among others, researchers.

The authorities competent for disposition may be persons with very different backgrounds (magistrates in the United Kingdom of Great Britain and Northern Ireland and in regions influenced by the common law system; legally trained judges in countries using Roman law and in regions influenced by them; and elsewhere elected or appointed laymen or jurists, members of community-based boards, etc.). For all these authorities, a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required. This is considered as important as the organizational specialization and independence of the competent authority.

For social workers and probation officers, it might not be feasible to require professional specialization as a prerequisite for taking over any function dealing with juvenile offenders. Thus, professional on-the-job instruction would be minimum qualifications.

Professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the
recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfill their functions.

All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice. This was recommended by the Sixth Congress. Furthermore, the Sixth Congress called on Member States to ensure the fair and equal treatment of women as criminal justice personnel and recommended that special measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.

Disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time. Thus, it is important that the competent authority or an independent body (parole board, probation office, youth welfare institutions or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. In some countries, a juge de l'exécution des peines has been installed for this purpose.

The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 23 in order to ensure wide acceptability.

The promotion of the well-being of the juvenile is of paramount consideration. Thus, rule 24 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

This rule reflects the need for a rehabilitative orientation of all work with juvenile offenders. Co-operation with the community is indispensable if the directives of the competent authority are to be carried out effectively. Volunteers and voluntary services, in particular, have proved to be valuable resources but are at present underutilized. In some instances, the co-operation of ex-offenders (including ex-addicts) can be of considerable assistance.

Rule 25 emanates from the principles laid down in rules 1.1 to 1.6 and follows the relevant provisions of the International Covenant on Civil and Political Rights.

The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.
Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, violent and mentally ill young persons.

The avoidance of negative influences through adult offenders and the safeguarding of the well-being of juveniles in an institutional setting, as stipulated in rule 26.3, are in line with one of the basic guiding principles of the Rules, as set out by the Sixth Congress in its resolution 4. The rule does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule. (This has also reference to rule 13.4).

Rule 26.4 addresses the fact that female offenders normally receive less attention than their male counterparts. As pointed out by the Sixth Congress. In particular, resolution 9 of the Sixth Congress calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. Moreover, this rule should also be considered in the light of the Caracas Declaration of the Sixth Congress, which, inter alia, calls for equal treatment in criminal justice administration, and against the background of the Declaration on the Elimination of Discrimination against Women and the Convention on the Elimination of All Forms of Discrimination against Women.

The right of access (rule 26.5) follows from the provisions of rules 7.1, 10.1, 15.2 and 18.2. Inter-ministerial and inter-departmental co-operation (rule 26.6) is of particular importance in the interest of generally enhancing the quality of institutional treatment and training.

The Standard Minimum Rules for the Treatment of Prisoners were among the first instruments of this kind to be promulgated by the United Nations. It is generally agreed that they have had a world-wide impact. Although there are still countries where implementation is more an aspiration than a fact, those Standard Minimum Rules continue to be an important influence in the humane and equitable administration of correctional institutions.

Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules for the Treatment of Prisoners (accommodation, architecture, bedding, clothing, complaints and requests, contact with the outside world, food, medical care, religious service, separation of ages, staffing, work, etc.) as are provisions concerning punishment and discipline, and restraint for dangerous offenders. It would not be appropriate to modify those Standard Minimum
Rules according to the particular characteristics of institutions for juvenile offenders within the scope of the Standard Minimum Rules for the Administration of Juvenile Justice.

Rule 27 focuses on the necessary requirements for juveniles in institutions (rule 27.1) as well as on the varying needs specific to their age, sex and personality (rule 27.2). Thus, the objectives and content of the rule interrelate to the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners.

The power to order conditional release may rest with the competent authority, as mentioned in rule 14.1 or with some other authority. In view of this, it is adequate to refer here to the "appropriate," rather than to the "competent" authority.

Circumstances permitting, conditional release shall be preferred to serving a full sentence. Upon evidence of satisfactory progress towards rehabilitation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible. Like probation, such release may be conditional on the satisfactory fulfillment of the requirements specified by the relevant authorities for a period of time established in the decision, for example relating to "good behaviour" of the offender, attendance in community programmes, residence in halfway houses, etc.

In the case of offenders conditionally released from an institution, assistance and supervision by probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged. The importance of care following a period of institutionalization should not be underestimated. This rule emphasizes the necessity of forming a net of semi-institutional arrangements. This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide guidance and structural support as an important step towards successful reintegration into society.

The utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The mutual feedback between research and policy is especially important in juvenile justice. With rapid and often drastic changes in the life-styles of the young and in the forms and dimensions of juvenile crime, the societal and justice responses to juvenile crime and delinquency quickly become outmoded and inadequate.
Rule 30 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures and for planning within the broader context of overall development objectives.

A constant appraisal of the needs of juveniles, as well as the trends and problems of delinquency, is a prerequisite for improving the methods of formulating appropriate policies and establishing adequate interventions, at both formal and informal levels. In this context, research by independent persons and bodies should be facilitated by responsible agencies, and it may be valuable to obtain and to take into account the views of juveniles themselves, not only those who come into contact with the system.

The process of planning must particularly emphasize a more effective and equitable system for the delivery of necessary services. Towards that end, there should be a comprehensive and regular assessment of the wide-ranging, particular needs and problems of juveniles and an identification of clear-cut priorities. In that connection, there should also be a co-ordination in the use of existing resources, including alternatives and community support that would be suitable in setting up specific procedures designed to implement and monitor established programmes.

The Standard Minimum Rules for the Treatment of Prisoners were among the first instruments of this kind to be promulgated by the United Nations. It is generally agreed that they have had a world-wide impact. Although there are still countries where implementation is more an aspiration than a fact, those Standard Minimum Rules continue to be an important influence in the humane and equitable administration of correctional institutions. Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules for the Treatment of Prisoners which is founded on the provisions concerning punishment and discipline, and restraint for dangerous offenders.

The Beijing Rules are officially entitled United Nations Standard Minimum Rules for the Administration of Juvenile Justice. One aim is to avoid treating young offenders in an over-aggressive and inhumane way. The Rules are not of a binding in nature per se; however, this is considered a major weakness. Nonetheless, this legal instrument provides a detailed framework for the operation of national juvenile justice systems. The broad fundamental principles contained in the Beijing Rules are aimed at promoting
juvenile welfare to the greatest possible extent, minimizing the necessity of intervention by the juvenile justice system and, in turn, reducing the harm that may be caused by any intervention that is required.

The Beijing Rules are deliberately formulated in order to apply within different legal systems, regardless of the definition of juvenile under those systems. For example, for historical and cultural reasons, the minimum age for criminal responsibility differs widely among members of the UN. Indeed, so far, no lowest age limit for criminal responsibility has been agreed upon internationally. Nonetheless, what have been agreed on are the most important objectives of juvenile justice, as laid down in the Beijing Rules, namely –

- the promotion of the well-being of the juvenile;
- the principle of proportionality between just desert in relation to the gravity of the offence;
- the right to the presumption of innocence;
- the right to be notified of the charges;
- the right to remain silent;
- the right to counsel;
- the right to the presence of a parent or guardian;
- the right to confront and cross-examine witnesses;
- the right to appeal;
- the right to privacy;
- the right to be represented by a legal adviser, and
- the prohibition of capital punishment.

In sum, one could say that the Beijing Rules display what an ideal juvenile justice system should aim to achieve at the different stages of a process involving children who have committed crimes (Oliver C Ruppel, 2010).\textsuperscript{36}

The Rules are recommendatory in nature and non-binding per se. Certain of the principles enunciated within the Rules, however, there have been encompassed in

\textsuperscript{36} “The protection of children’s rights under international law from a Namibian perspective” 2010 by Oliver C Ruppel, pages 65 & 66
provisions of the Convention on the Rights of the Child, a global treaty which is binding on all States Parties. The Rules does 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.

However, the Beijing Rules refrain from prescribing approaches beyond setting forth the basic principles of proportionality and the limited use of deprivation of liberty. This shortcoming has however been resolved substantially by the Convention on the Rights of the Child (Beuren, Geraldine Van et al, 1995 and 2008).  

The Beijing Rules, in spite of being formulated well prior to the CRC, foresaw in 1985 the creation of a special regime of justice for adolescents in conflict with the law or accused of committing crimes. The Beijing Rules established the basic principles of juvenile criminal justice, coinciding on many aspects in what would later be stipulated in the CRC, but developing them a more detailed manner. All aspects of the juvenile criminal process were treated, beginning with the initial detention, investigation and trial procedure, up through sentencing and subsequent treatment both in and outside of prison institutions.

In accordance with the Beijing Rules, all agencies responsible for ensuring compliance with the laws governing juvenile criminal responsibility, including the police, must have specialised units, i.e., personnel exclusively dedicated to juvenile matters and trained in matters concerning the protection of child rights. The Beijing Rules clearly established the exceptionality of preventive or other kinds of imprisonment, cataloguing various measures of resolution to be used as alternatives to the deprivation of liberty. Other guarantees were also set forth such as the right to a specialised legal defence, the right of the adolescent to participate in the trial process, and the confidentiality of juvenile criminal records, among others (UNICEF, 2006).  

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2.13. **Convention on the Rights of the Child, 1989**\(^{39}\)

The United Nations Convention on the Rights of the Child is a human rights treaty setting out the civil, political, economic, social, and cultural rights of children. The Convention defines a child as any human being generally under the age of eighteen or any earlier age of maturity recognised by the concerned country's municipal or domestic law in force. The United Nations mission is the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. The organs of the United Nations are guided in doing this by the provisions and principles of the Convention on the Rights of the Child. The CRC provides a comprehensive baseline for children's rights.

The Convention is a universally agreed set of non-negotiable standards and obligations built on varied domestic legal systems and cultural traditions of the respective countries. With these rights comes the universal obligation on both governments and individuals not to infringe on the parallel rights of others.

2.13.1. **Historical Perspective:**

Bearing in mind that since the adoption by the General Assembly of the Declaration of the Rights of the Child nineteen years have elapsed, during which period States Members of the United Nations have taken into account in the formulation of their socio-economic policies, the principles of that Declaration, Conscious of the need further to strengthen the comprehensive care and the well-being of children all over the world.

Aware of the special need to assist children in the developing countries in a manner consistent with the goals of the new international economic order, and having in mind the International Covenant on Civil and Political Rights, in particular its articles 23 and 24, as well as the International Covenant on Economic, Social and Cultural Rights, in particular its article 10, Taking note of resolution 20 (XXXIV) of 8 March 1978 of the Commission on Human Rights, (UNs’ Economic and Social Council, 1978)\(^{40}\) the participants at the International Conference on the Legal Protection of the Rights of the Child held under the auspices of the International Commission of Jurists and the International Association of Democratic Lawyers, were convinced that the organizations and all lawyers should support every initiative aimed at realizing progressive and

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\(^{39}\) Adopted and opened for signature, ratification and accession by the General Assembly resolution 44/25 of 20 November 1989 Entry into force 2 September 1990, in accordance with article 49

\(^{40}\) Economic and Social council resolution 1978/18 on the “Question of a convention on the rights of the child” adopted on 5 May 1978 at the 15\(^{th}\) plenary meeting
humanist ideals in the service of greater respect for the dignity and value of man, of social progress and the creation of better conditions of life in greater freedom, being agreed that mankind should always give of its best to every child, welcome with satisfaction the initiative of the Thirty-fourth Session of the Commission on Human Rights in March 1978 contained in its resolution 20/XXXIV and confirmed in resolutions of the Economic and Social Council and the thirty-third session of the General Assembly of the United Nations, aimed at the acceptance by the United Nations, if possible in 1979, of an international convention on the rights of the child.

Every child needs care, education and the assurance that its material needs will be met. He has a right to full development. For balanced development of his personality, he needs love, understanding and a sense of security. All these can and should be assured to the child by adults. It was considered as common duty to protect the child against neglect, cruelty and exploitation and also the duty to bring up the child in the spirit of peace and humanity and to provide conditions which will ensure that the rights of the child are respected and the obligations of society towards the child are carried out.

Special protection of the child requires legally guaranteed opportunities and facilities for his physical, mental, moral, spiritual and social development in freedom and dignity. This applies to all children without exception, distinction or discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, social origin, property, birth or for any other reason relating to the child or his family. These duties towards the child, which are now a supreme moral imperative of society, should be reinforced by giving them the status of norms under international law in the form of an international convention on the rights of the child.

For this reason the state parties have called upon all who cherish the ideals of law and democracy to support actively the initiative for the speedy adoption of the child right convention. In common with all progressive opinion throughout the world the framers of the draft convention considered it necessary to draw attention to the need to take energetic measures for the purpose of realizing the ideals which led to the proclamation of Convention on the Rights of the Child.

The lawyers from every part of the world, considered that the adoption of an international convention on the rights of the child would be a highly significant event in the service of achieving these goals, bringing nearer the realization of the rights of
childhood, the recognition and assurance of which are in the interest of all progressive States and of all humanity (United Nations, 2007).41

U.N. member states first collectively recognized the rights of children in the Universal Declaration of Human Rights, a non-binding resolution adopted by the U.N. General Assembly in 1948. The Declaration states, “Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.” U.N. member states further enunciated children’s rights by unanimously adopting the Declaration on the Rights of the Child in 1959. The Declaration incorporates language from the Universal Declaration of Human Rights, calls on governments, families, and individuals to ensure that all children shall enjoy certain rights, including appropriate legal protections, a name and nationality, access to healthcare, and protection from abuse and exploitation. The international community also acknowledged the special rights of children in the International Covenant on Economic, Social, and Cultural Rights (CESCR) and the International Covenant on Civil and Political Rights (CCPR), which both entered into force in 1976. The possibility of a Convention on the Rights of the Child was first raised by the government of Poland in 1978 as U.N. member states planned activities and programs that would take place during the International Year of the Child in 1979. For the next decade, U.N. member states participated in a U.N. Commission on Human Rights (now the Human Rights Council) working group to draft the CRC text. The Convention was adopted by the U.N. General Assembly after a decade of negotiations on November 20, 1989, and entered into force on September 2, 1990 (Luisa Blanchfield, 2009).42

2.13.2. Objectives:

The main Objectives of the convention can be divided into three principle charters:

1) Provision: setting the rights to the provision of necessary goods services and resources that will help them reach their potential. This includes the right to food, health care, education, etc.

2) Protection: the right to be protected from neglect, abuse, exploitation, and discrimination.

41 “European conference on the rights of the child in Warsaw, E/CN.4/L.1428 (23 February 1979)” and ibid 5 page-50
3) Participation: the right to be respected; being active participants in the family, in the communities in which they live, as well as in organisations that provide services for them.

2.13.3. Principles:

The holistic approach to children’s rights of the CRC is, founded on the following six principles, to build the foundation for all children’s rights:

- The right to equality: No child may be discriminated against on the basis of race, colour, sex, language, and religion, political or other opinion, national or social origin, property, birth or other status.
- The best interest of the child has to prevail: Whenever decisions are being taken which may have an impact on children, the best interest of the child has to be taken into account at all stages. This applies to the family as well as to state action.
- The right to life and development: Every Member State has to ensure, to the maximum extent possible, the survival and development of the child by, inter alia, providing access to health care and education, and by protecting the child from economic and social exploitation.
- Respect for children’s own views: Children should be respected and taken seriously, and they should be involved in decision-making processes according to their age and maturity.
- Family environment and alternative care: This cluster addresses the fields of parental guidance; parental responsibilities; separation from parents; family reunification; recovery of maintenance for the child; children deprived of a family environment; adoption; illicit transfer and non-return; and abuse and neglect including physical and psychological recovery and social reintegration.
- Special protection measures: The Special protection measures are provided for, among others, children in situations of emergency; refugee children; children in armed conflicts, including physical and psychological recovery and social reintegration; children in conflict with the law with regard to the administration of juvenile justice; children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings; children in situations of exploitation, including child labour; and children belonging to minority or indigenous groups.
2.13.4. **Comment:**

The Convention is a special piece of international instrument on the Rights of the Child which recognised all the rights enumerated in the instrument are inherent to the child. By ratifying or acceding to the Convention the national governments agreed to undertake the obligations of the Convention and have committed themselves to protecting and ensuring children's rights and they have agreed to hold themselves accountable for this commitment before the world community. The State parties to the Convention are obliged to develop and undertake all necessary actions and make policies in the light of the best interests of the child. The eternal value of childhood itself is emphasised and considered by the child’s right. The CRC does not only recognise the child as a vulnerable person with rights to care and protection but also as a person with the right to development of her/his talents and abilities and to participation in all matters affecting her/him with the growing capacity to exercise her/his rights. It is a concept of the child and childhood significant different from the one before the CRC became a significant player in the field of human rights.

The Convention spells out all the basic human rights that children everywhere have: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. The four core principles of the Convention are non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the intention and views of the child. Every right spelled out in the Convention is inherent to the human dignity and harmonious development of every child. The Convention protects children's rights by setting standards in health care; education; and legal, civil and social services.

It is the first legally binding international instrument to incorporate the full range of human rights-civil, cultural, economic, political and social rights. The Convention reflects the philosophy that children too are equals, having the same inherent equal value as grown-ups. In the year 1989, world leaders have recalled and taken into consideration the provisions of all the previous conventions based on right of child or juvenile directly or other international conventions/instruments which indirectly recognises the right of the child since the adoption of the Geneva Declaration of the Rights of the Child of 1924 till the legislation of this convention and thereby they have given the identity of this convention a special piece of common internationally binding social instrument.
The Convention not only provides for monitoring of the performance of States Parties at the international level but also what is being done for children at the national level. Article 43 sets out the criteria for the establishment of the United Nations Committee on the Rights of the Child, which receives and reviews reports prepared by States Parties about their progress in implementing the Convention as required by Article 44. Unlike other international initiatives that have been taken on behalf of children, in particular, the Declaration and Plan of Action that emerged out of the World Summit for Children that was held at New York in September 1990, there is no requirement per se that the Convention is to be fully implemented by all countries within a stipulated date. Instead, all countries are required to make constant progress towards its implementation, but at a rate that suits their economic and political situation within the resources that are available to them (Dr. Savita Bhakhry, 2006).

The preamble of the Convention recognised the right when the child burgeoned in the womb of his mother far before his birth in the world. So all the recognised right of the child under this convention preceded with the right to born alive under care and protection of the concerned State and/or parents and/or society irrespective of his race, cast, social status or nationality. There are six unique features of the convention:

First: unique feature - provision of equal right to an unborn person with a living human being. The preamble of the convention states that bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth". So the Rights of the Child and the duty and responsibility to protect assure and enforce the same begins to run and play as soon as the child burgeoning in the womb of his mother. By this way the convention has given a new wider definition of right to life which means and includes right to born alive and recognizes the existence of an unborn person having juridical personality entitled to all legal rights and protection.

Second: unique feature - acknowledgement of various previous conventions of the United Nation ensuring specific special rights to child directly or other conventions affirming or re-affirming children’s rights in general. By this way this convention not only received its own binding force of enforceability but also acquired the right of enforceability of other United Nations conventions through this convention from the state parties to the convention irrespective to the fact that the previous conventions

\[43\text{ Ibid 3 Page -32}\]
acknowledged in the preamble of this convention has signed, acceded or ratified by the State parties or not.

Third: unique feature- the preamble as well as the whole instrument ratifies that a child is a person incapable of forming his or her own views for himself or mentally and psychologically immature or under developed as such the duty and responsibility to protect, nourish, foster, enforce or to implement the right of the child caste upon the State parties or the parent or legal guardian of the child. But at the same time Article 12(1) of the convention has given the due weight to the views of the affected child and to express the views freely in all matters affecting him though that right is subjected to the concerned Childs mental and psychological capability. Article 12(2) enshrined the right to be heard in any judicial and administrative proceedings affecting the child as an adult matured man. Article 13, 14, 15 provides all kinds of freedom including freedom to profess religion and to form association and assembly without any form of restriction on the part of the States. So the freedoms guaranteed in this convention are no less than the freedoms of an adult franchise.

Forth: unique feature- is equal right of citizen as well as non citizen. According to Article 7(2) of the convention it is the State Parties obligations under the relevant international instruments in the field to register immediately after birth of a child if the child otherwise be stateless. According to Article 9(1) the decision of separation of a child shall be adjudicated at the child's place of residence. Article 10(2) a child right whose parents reside in different States. Article 22(1) prescribes duty upon the States Parties to take appropriate measures to ensure that a child who is seeking refugee status or who is considered as refugee for appropriate protection and humanitarian assistance to the child. According to Article 7(1) a child shall have the right to acquire a nationality. So a stateless child by birth is entitled to avail and seek all the rights re-affirmed in the Convention including the right to acquisition of citizenship of the State of his birth.

Fifth: unique feature- the unique blend of joint and several social and legal responsibility or obligation from a common point of view to protect, treat, preserve, nourish, develop, enforce or implement the rights of the child to achieve highest attainable standard of living of the child for his complete growth, development and survival as a human being.

Sixth: unique feature- to bring a worldwide common and uniform universal child friendly social system/mecanism to attain the goal of complete protection and treatment of child right and thus this international instrument has received the shape of international social legislation.
The convention seeks to achieve a worldwide uniform universal child friendly social system/mechanism to attain the goal of complete protection and treatment of child right on the one hand and on the other hand it failed to provide a uniform code to determine the age of maturity of the child. The convention also failed to override the provisions of the national legislation if the domestic legislation existing or the law in force of the State parties contradicts the provisions of the convention. Rather the convention re-affirmed and reiterated the overwhelming authority of the national legislations of the State parties. The instrument does not provide any universal mechanism to implement international laws if the any of the State party failed to observe the mandate of the instrument of the convention and/or there is no penal provision to penalise the State party in case of such violation. The provisions of the convention are only repeated proclamation of the United Nations proclaimed earlier through its various previous conventions. The application of the convention is based upon the sweet will of the concerned State party even after the signature or ratification.

It can be stated that, although the CRC is a legally binding instrument according to the principles of public international law, there is no supervisory body to compel States Parties to comply with the provisions of the Convention. Moreover, individual complaints cannot be considered by the Convention’s treaty body, the Committee on the Rights of the Child, and there is no judicial organ established under the Convention to which violations of children’s rights could be brought. However, the Convention is an important instrument as it has heightened awareness of children’s rights violations and, in many cases, has resulted in improved national law and policy in terms of the protection of children’s rights.

In nutshell, the CRC does not have a time limit nor does it have an expiry date. The obligations on countries to live up to the rights of children will not cease, but will continue to require action and attention of each one of State Parties, to take the onus of protecting and respecting rights of children not because of an international agreement but because “that’s just the way children and childhood are to be protected and treated”.
(The Riyadh Guidelines), 1990

The United Nations Guidelines for the Prevention of Juvenile Delinquency, also called the Riyadh Guidelines, reveals a very comprehensive positive, pro-active approach to the prevention of Juvenile Delinquency. The Guidelines express a growing awareness that children are fully-fledged human beings, but which is rather obvious in other very recent regulations as the United Nations Convention on the Rights of the Child (1989). 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).

The UN Guidelines for the Prevention of Juvenile Delinquency recognize the importance of preventing young people from being stigmatized by the justice system. The Guidelines call for the development of measures that avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. This statement sends a profound message: Preventing juvenile delinquency or crime is not just a matter of protecting society; its aim is to help children overcome their misdeeds and fulfill their potential. It is also less costly and more efficient for society to prevent young people from starting on criminal careers than to pay for the outcome of criminal behaviour.

2.14.1. Historical Background:

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 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. The sixth congress (Caracas, 1980) 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. In 1985 (Milano) the so-called Beijing Rules were adopted: the Standard Minimum Rules for the Administration of Juvenile Justice. In 1990 at the Eighth United Nations Congress on the Prevention of Crime and the

44 Adopted and proclaimed by General Assembly Resolution 45/112 of 14 December 1990
Treatment of Offenders (Havana, 1990) gave birth to two important resolutions related to the phenomenon of juvenile delinquency:

* Guidelines for the Prevention of Juvenile Delinquency (Resolution 45/112)
* Rules for the Protection of Youngsters Deprived of their Liberty (Resolution 45/113)

Both resolutions complement the previously adopted (1985) Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, Resolution No. 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 Guidelines for the Prevention of Juvenile Delinquency, referring to an important international experts' meeting on the draft text held in the Saudi Arabian capital (1988) (child-abuse.com, 2010).

2.14.2. Main Objectives:

The Beijing Rules provide guidance to states on protecting children’s rights and respecting their needs when developing separate and specialised systems of juvenile justice. The object of the Rules focused on the following principles:

- The use of diversion from formal hearings to appropriate community programmes;
- Proceedings before any authority to be conducted in the best interests of the child;
- Careful consideration before depriving a juvenile of liberty;
- Specialised training for all personnel dealing with juvenile cases;
- The consideration of release both on apprehension and at the earliest possible occasion thereafter;
- The organisation and promotion of research as a basis for effective planning and policy formation.

2.14.3. Conclusion:

The Guidelines stress the importance to pursue a child-centred orientation in any preventive programme. A successful prevention of juvenile delinquency requires efforts on the part of the society to ensure the wellbeing and harmonious development of adolescents, with respect for and promotion of their personality from early childhood.

Young person’s should have active role and partnership within society and should not be considered as mere objects of control. Designed policies should consider that youthful behaviour or conduct that does not conform to overall norms and values is often part of the maturation and growth process and tends to disappear spontaneously with transition to childhood.

However, labeling a young person as ‘deviant’, 'delinquent' or 'prodelinquent' often contributes to the development of a consistent pattern of undesirable behaviour by young persons. Thus, community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilised as a means of last resort (NHRC Nigeria, 2002).

UN Guidelines for the Prevention of Juvenile Delinquency: the ‘Riyadh Guidelines’ The Riyadh Guidelines represent a comprehensive and proactive approach to prevention and social reintegration, detailing social and economic strategies that involve almost every social area: family, school and community, the media, social policy, legislation and juvenile justice administration. Prevention is seen not merely as a matter of tackling negative situations, but rather as a means of positively promoting general welfare and well-being. It requires a more proactive approach that should involve “efforts by the entire society to ensure the harmonious development of adolescents”.

More particularly, countries are recommended to develop community-based interventions to assist in preventing children from coming into conflict with the law, and to recognise that ‘formal agencies of social control’ should be utilised only as a means of last resort. General prevention consists of “comprehensive prevention plans at every governmental level” and should include: mechanisms for the co-ordination of efforts between governmental and non-governmental agencies, continuous monitoring and evaluation, community involvement through a wide range of services and programmes, interdisciplinary co-operation, and youth participation in prevention policies and processes. The Riyadh Guidelines also call for the decriminalisation of status offences.

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and recommend that prevention programmes should give priority to children who are at risk of being abandoned, neglected, exploited and abused (Anna Volz, 2009).47

The Riyadh Guidelines do not directly refer to juvenile criminal procedures, but rather to an earlier and parallel moment, providing general policy guidelines for preventing juvenile delinquency. These directives are based on the fundamental premise that preventing delinquency requires the state to provide basic essential services, opportunities for employment, and the means to satisfy the needs of the population, thereby generating conditions for living in dignity while paying special attention to the needs of high risk social groups.

The Riyadh Guidelines make diverse recommendations to states, such as providing support for families in need, promoting sporting, cultural and recreational activities for young people, encouraging the participation of youth in the community and in the affairs of their families, and so on. The Guidelines also recommend that the state’s public policies be organised with the broadest possible coverage so as to benefit all sectors of society, including those most marginalised, and they oblige all states to take into account the consequences of economic policies on those social sectors (UNICEF, 2006).48

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

2.15. United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 199049

The problems in the sphere of juvenile justice are manifold and often complex; and all are important from a children’s rights standpoint. International rules and guidelines, postulate that the treatment of a child in conflict with the law should primarily attempt the child’s reintegration into society and encourage him or to play a constructive role in that environment. Despite of adoption of CRC this approach is

48 Ibid 38
49 Adopted by General Assembly resolution 45/113 of 14 December 1990
missing in the criminal and juvenile justice system in many countries of the world. Still, the prevailing Juvenile Justice system of the various countries of the world is in flagrant violation of the key principles of juvenile justice: rehabilitation and the primacy of the well being of the child. The UN Rules for the Protection of Juveniles Deprived of their Liberty (the JDLs) sets out detailed standards applicable when a child or any person under the age of 18 is confined to any institution or facility (whether this be penal, correctional, educational or protective and whether the detention be on the grounds of conviction of, or suspicion of, having committed an offence, or simply because the child is deemed ‘at risk’) by order of any judicial, administrative or other public authority. The JDLs set out detailed minimum standards of conditions in the context where deprivation of liberty is unavoidable. The JDLs serve as an internationally accepted framework intended to counteract the detrimental effects of deprivation of liberty by ensuring respect for the human rights of children.

2.15.1. The Background to the Rules:

The United Nations Convention on the Rights of the Child 1989 was the first international instrument to adopt a coherent child rights approach to the international legal regulation of the deprivation of liberty for children. It operates as an umbrella for a set of three rules concerning child justice; the UN Guidelines for the Administration of Juvenile Delinquency (the Riyadh Guidelines), the UN Standard Minimum Rules for the Protection of Juvenile Justice (the Beijing Rules), and the UN Rules for the Protection of Juveniles Deprived of their Liberty. Neither the Declaration of the Rights of the Child 1924 nor the Declaration of the Rights of the Child 1959 refers directly either to juvenile justice or to the deprivation of liberty of children. Although the United Nations did adopt Standard Minimum Rules for the Treatment of Prisoners 1955, these do not seek as their primary goal to regulate the management of institutions for young people and hence do not take into account the special entitlements of children. The UN Rules for the Protection of Juveniles Deprived of their Liberty, however, are not only applicable to juvenile justice institutions but importantly apply to deprivations of liberty on the basis of the children’s welfare and health (Geraldine Van Bueren, and et al 2010).50

50 Ibid 37 p.183 and ibid 8 page-6
2.15.2. **Basic Principles:**

The Rules are based upon the following basic principles:

Only in exceptional cases as a means of last resort and for the minimum limited period of time the deprivation of liberty should be a disposition. The deprivation of personal liberty of the Juveniles should only be imposed in accordance with the principles and the procedures of international law. To enable individualised treatment and to avoid the additional negative effects of deprivations of personal liberty the facilities of open small establishment is encouraged. To deprive the personal liberty of the Juveniles there shall be a guarantee which facilitates the meaningful activities and programmes promoting the health, self-respect, and sense of responsibility of juveniles. The facilities should also foster skills to assist the Juveniles in developing their potential as members of society. Decentralisation of detention facilities is to enable the Juveniles to provide access to their family members and to allow them for integration into the community. The care and protection of the juveniles deprived of their liberty shall be treated as a social service of great importance. Necessary facilities are provided to make all juveniles deprived of their liberty to help them to understand their rights and obligations during detention and be informed of the goals of the care provided. The Juvenile justice personnel should receive appropriate training to deal with the Juveniles including child welfare and human rights. All juveniles should benefit from arrangements designed to assist them in returning to society.

2.15.3. **Comment:**

The UN Rules for the Protection of Juveniles Deprived of their Liberty incorporate standards regulating the entitlements of juveniles under arrest or awaiting trial, though as a general rule of detention before trial should be avoided and except under some limited circumstances. The rules seek to the highest priority of speedy trial and presumption of innocence and also to the unimpeded private access to legal counsel or free legal aid to the Juveniles. In order for juveniles to be aware of their entitlements they should be provided with a copy of the facilities, rules on description of their rights and obligations in the language which the juveniles understand. The personnel entrusted to handle juvenile under detention is duty bound to account for and maintain proper register for the detention period of the Juvenile to ensure a complete and secure record of information including information on the identity of the juvenile, the fact, reasons and authority for the commitment, the day and hour of admission, transfer and release and notify the details of information supplied to the parents and guardians. The
Juvenile who under gone detention is entitled to raise objection and rectify any entry in the register against his name manage by personnel.

In view of care, treatment and social rehabilitation of the juvenile under detention they shall be interviewed by the trained personnel and kept separately except in special cases where non separation for the best interest of the child as a special programe to re-induct the Juvenile into the society. The exemption emphasized upon the view of retention of family link during detention of the Juvenile.

All juveniles should benefit from necessary arrangements designed to assist them in returning to their respective community including early release and special courses. The process of re-integration into society, community and family includes proper facilities for educational, vocational training, use of telephone twice a week, access to news every day, prohibition on crying firearms by security personnel around detention home where the juveniles kept under detention. To increase their contact with the outside world, juveniles should be given the opportunity to keep themselves regularly abreast of the news.

The Rules per se are in the form of a non-binding recommendation, some of the rules have become binding by virtue of their incorporation into bilateral or multilateral treaties of nations and/or through incorporation of the provisions into domestic laws of the countries. The rules are the elaborations of the basic principles founded in the Convention on the Rights of the Child.


The CRC has been supplemented with two Optional Protocols. When a government ratifies a convention and/or the optional protocol(s) it is obligated to fulfill its promise to the provisions. The CRC is the first international treaty to place a comprehensive legal obligation on States Parties to protect children from all forms of sexual exploitation and abuse. This obligation is also an important landmark because it implicitly recognizes that sexual exploitation of children is likely to occur in every country in the world.

The Convention on the Rights of the Child has two optional protocols that provide specific protections for children: (1) the Optional Protocol on the Involvement of Children in Armed Conflict; and (2) the Optional Protocol on the Sale of Children, Child

Prostitution and Child Pornography. Though both Optional Protocols operate under CRC, they are independent multilateral agreements under international law. The Optional Protocol on Children in Armed Conflict limits the recruitment of children under the age of 18 for armed conflict and requires parties to provide children who have participated in armed conflict with appropriate physical and psychological rehabilitation. It entered into force on February 12, 2002, and has been ratified by 120 countries. The Optional Protocol on the Sale of Children requires parties to criminalize child pornography and prostitution, close establishments that practice such activities, and seize any proceeds. It entered into force on January 18, 2002, and has been ratified by 126 countries (Luisa Blanchfield, 2009).

The OPSC is an excellent guide for complying with Articles 34 and 35 of the CRC, requiring states to protect children from all forms of sexual exploitation and sexual abuse, and to prevent the abduction, sale or trafficking in children for any purpose and in any form. Article 3 specifies the activities that must be prohibited in the Criminal Code. Articles 4 and 5 require the establishment of extra-territorial jurisdiction and effective regulation of the extradition process for perpetrators of the prohibited activities (Professor Jaap E Doek, 2007).

2.16.1. Background to the Protocol:

The United Nations Commission on Human Rights, the main UN human rights forum until 2006, had a long history of concern with the sale of children, child prostitution and child pornography. In 1974, a Working Group on Slavery was established. Now called the Working Group on Contemporary Forms of Slavery, it holds annual hearings in which it considers, among other issues, severe forms of exploitation of children, including prostitution and trafficking. In 1992, the Commission on Human Rights adopted the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography prepared by the Working Group. In 1990 the Commission on Human Rights appointed a Special Rapporteur on the sale of children, child prostitution and child pornography. The Special Rapporteur, whose mandate extends to all UN Member States, plays a key role in raising awareness of these phenomena. The incumbent also works to combat sexual exploitation by publishing

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52 Ibid 42 page-4
reports on specific cases, undertaking fact-finding missions to investigate trends and situations in a given country or region, and conducting national and regional workshops.

The 1994 report of the Special Rapporteur called for strengthening of prevention strategies by States Parties and other actors. It also called for addressing the root causes of the sale of children, child prostitution and child pornography. The same year, the Commission on Human Rights adopted a resolution on the need for effective international measures to prevent and eradicate the sale of children, child prostitution and child pornography. The resolution recalled the 1993 Vienna Declaration and Programme of Action that called for effective measures against female infanticide, harmful child labour, the sale of children and their organs, child prostitution and pornography and other forms of sexual abuse. The Commission also recognized UNICEF’s work in these areas, and the efforts of the Committee on the Rights of the Child and the Special Rapporteur. The standards set by the ILO on exploitative forms of child labour were noted, as was a report of the Second International Workshop on National Institutions for the Promotion and Protection of Human Rights. It called for a draft optional protocol to the CRC concerning elimination of sexual exploitation and trafficking of children.

Ultimately, an open-ended working group of the Commission on Human Rights was established to draft a new optional protocol in cooperation with the Special Rapporteur and the Committee on the Rights of the Child. Thus began the thoughtful and deliberate process of drafting the Protocol. It was informed by the First World Congress against Commercial Sexual Exploitation of Children and by the efforts of the NGO community. In 1998, for example, a federation of child rights NGOs called for greater precision in terminology, the rejection of any notion of child ‘consent’ and recognition of the need for rehabilitation of victims. The Optional Protocol was adopted by the United Nations General Assembly on 25 May 2000 and entered into force on 18 January 2002. By October 2008, it had been ratified by 129 States (UNICEF, 2009).  

2.16.2. Conclusion:

The Convention on the Rights of the Child is the main UN Convention for the protection of children’s rights, including from all forms of violence, abuse, neglect and exploitation. A number of its provisions address to the provisions and rights enumerated in the OPSC. Article 34 of the CRC requires States Parties to protect children from “all

forms of sexual exploitation and sexual abuse.” This includes the inducement or coercion of a child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other unlawful sexual practices, and the exploitative use of children in pornographic performances and materials. It is also important that article 39, which requires States to provide recovery and reintegration in an environment that, fosters the health, self-respect and dignity of the child victims of sexual and other forms of exploitation.

The Optional Protocol criminalises specific acts relating to the sale of children, child prostitution and child pornography, including attempt and complicity. It lays down minimum standards for protection of the child victims in criminal justice processes and recognises the right of victims to seek compensation. It also encourages strengthening of international cooperation and assistance and the adoption of extra-territorial bilateral or multinational legislation. There are concerns that the OPSC does not protect children from victimization in criminal processes once they have been recognized as having had their rights violated. Because the OPSC applies to specific forms of sexual exploitation, it is important to bear in mind that article 34 of the CRC gives children the right to protection from all forms of sexual exploitation and abuse and that all exploited children have these rights recognized by the CRC. This includes the right to recovery and social reformation & reintegration in the light of article 39.

In conclusion, harmonisation of national laws with the norms UN Conventions and treaties to protect children from all forms of violence and exploitation Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography requires a comprehensive set of works and legislative measures.

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography was devised to strengthen protection for children against these forms of exploitation. Among its provisions are recommendations about the criminalization of such practices; procedures for extradition of those guilty of such offences; calls for international co-operation in tracking and prosecuting offenders; procedures for protecting and assisting child victims; and calls for the promotion of public awareness.

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography has succeeded in raising international awareness of the complex issues involved and in influencing national governments’ attempts to pass and enforce relevant
legislation. By July 2009, the Optional Protocol had been ratified by 132 countries and signed by a further 29 countries (UNICEF, 2009).

2.17. **Worst Forms of Child Labour Convention, 1999 (No. 182)**

Child labour has always been one of the core concerns of the International Labour Organisation (ILO). The term “child labour” generally refers to any economic activity performed by a person under the age of 15, defined by the International Labour Organization (ILO) of the United Nations. On the beneficial side of the continuum, there is “light work” after school or legitimate apprenticeship opportunities, such as helping out in the family business or on the family farm. In reality, children do a variety of work in widely divergent conditions. This work takes place along a continuum, from work that is beneficial, promoting or enhancing a child’s development without interfering with schooling, recreation and rest to work that is simply destructive or exploitative. There are vast areas of activity between these two poles. It is at the most destructive end, where children are used as prostitutes or virtual slaves to repay debts incurred by their parents or grandparents or as workers in particularly hazardous conditions that efforts are focused to stop such abuse. Overcoming apathy and resistance to measures to combat child labour is one of the most difficult tasks. But it is also quite fundamental, for unless the campaign to eliminate child labour has a large measure of popular support, very little can be achieved.

2.17.1. **Historical background:**

Two agencies United Nations, the United Nations Children's Fund (UNICEF) and the International Labour Organization (ILO) have directed their attention to the prevention of the problem of child labour worldwide. These two institutions have helped to eradicate the problems and to develop the present day integrated global legal frameworks to correct them. The result of the continuous works in the field of these two UN institutions, the world community now has several international treaties and conventions, banning child labour and identifying concrete measures for Governments to take. Since 1919, the year of the ILO’s foundation, many international labour standards have been adopted in this field.

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56 Adopted on 17 June 1999 by the General Conference of the International Labour Organization at its eighty-seventh session Entry into force: 19 November 2000, in accordance with article 10
Throughout its existence, ILO action has been based on establishing a minimum age for admission to employment as a yardstick for defining and regulating child labour. At the very first session of the International Labour Conference in 1919, the ILO adopted the first international treaty on child labour – the Minimum Age (Industry) Convention, 1919 (No. 5), which prohibited the work of children under the age of 14 in industrial establishments. During the following fifty years, nine further Conventions were adopted, all of them setting standards for minimum age in different sectors – industry, agriculture, maritime work, non-industrial employment, fishing, underground work. The adoption of these standards demonstrated a growing international commitment to abolish child labour, and to draw a line distinguishing child labour from more acceptable forms of work by children (ILO, 2002).

In 1919 the first ILO child labour convention, the Minimum Age (Industry) Convention (No. 5), adopted within months of the creation of the International Labour Organization, prohibited the work of children under the age of 14 in industrial establishments. The Forced Labour Convention, 1930 (No. 29) protected children from forced or compulsory labour, such as victims of trafficking, children in bondage, like Iqbal, and those exploited by prostitution and pornography. The International Covenant on Civil and Political Rights, 1966 adopted by UN re-emphasizing issues of slavery and forced or compulsory labour, was adopted by the General Assembly, along with the International Covenant on Economic, Social and Cultural Rights calling for the protection of young people from economic exploitation and work hazardous to their development. Convention concerning Minimum Age for Admission to Employment adopted by the United Nations on 26:06:1973 which came into force on 19:06:1976. It was adopted by the UN to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons (15 or the age reached on completion of compulsory schooling). The UN adopted the Convention on the Rights of the Child, 1989 specifying the right of the child to be protected from economic exploitation and hazardous work, and the refraining of States from recruiting any person under 15 into the armed forces. In 1999 ILO unanimously adopted the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour Convention (No. 182). It called for

States to prevent the most damaging child exploitation practices or the worst forms that currently exist.

2.17.2. **Main objectives:**

Perhaps ILO Convention No. 182 is the most significant international legal instrument to tackle the issue child labour worldwide. The ILO Worst Forms of Child Labour Convention, 1999 (No. 182), encompass the following six objectives:

1. Introduce action programmes to remove and prevent the worst forms of child labour;
2. Provide direct assistance for the rehabilitation of children and their social integration;
3. Ensure access to free education;
4. Identify, remove and rehabilitate children at special risk;
5. Take account of girls and their special situation.
6. To put a ban on all forms of slavery; Child prostitution; the use of children for illicit activities, especially drug trafficking; work exposing children to grave health and safety hazards.

2.17.3. **Comment:**

The aim of the follow-up the principles of the convention is to encourage the efforts made by the Members of the International Labour Organization to promote the fundamental principles and rights enshrined in the convention of the ILO. International cooperation of a much broader nature is required in order to mobilize resources in support of national programmes aimed at eliminating the worst forms of child labour. Such support should complement and be integrated into national programmes consisting of preventive and remedial measures to put an end to the denial of children's right and Juvenile Justice, and should help to address the longer-term development issues which lie at the heart of much of the child right related problems and its solutions.

The United Nations has adopted a number of Conventions and Covenants which complement the ILO’s child labour standards. The most comprehensive of these is the UN Convention on the Rights of the Child (CRC), adopted in November 1989. It lays down a full range of children’s rights, and several of its key provisions are closely related
to those of the ILO’s child labour standards, even though the language used in each is not identical (ILO, 2002).  

The ratification of the UN Convention on the Rights of the Child, important as it is, does not alone suffice to express a country’s commitment to eliminating child labour and particularly its worst forms. Ratification of ILO Conventions, such as Nos. 138 and 182, involves entering into different and in some cases more specific commitments, and agreeing to a different system of supervision (ILO, 2002). Convention No. 182 was adopted in recognition of the fact that the effective elimination of child labour depends on economic factors and may, therefore, take time to be accomplished. Nonetheless, there are certain forms of child labour that cannot be tolerated. Therefore, the Convention calls for immediate action to secure the prohibition and elimination of the worst forms of child labour, irrespective of the level of development or economic situation of the country. These “worst forms” against which all persons under the age of 18 must be protected comprise –

- all forms of slavery or similar practices, such as sale and trafficking, debt bondage, serfdom, and forced or compulsory labour
- the use of children in armed conflicts
- the use of a child for prostitution or pornography
- the use of a child for illicit activities such as drug trafficking, and
- work likely to harm the health, safety or morals of children, as determined at the national level (Oliver C Ruppel, 2009).

The provisions of the UN Convention on the Rights of the Child (CRC) are complement with ILO Conventions.

Article 32 of the CRC recognizes the right of the child to be protected from economic exploitation and any work that is likely:

(1) to be hazardous;

(2) to interfere with the child’s education; or

(3) to be harmful to the child’s health or physical, mental, spiritual, moral or social development.

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58 Ibid 57 page-37
59 Ibid 57 page-40
60 Ibid 36 page-72
Article 32 also requires legislative, administrative, social and educational measures to be taken to ensure implementation. States should in particular, and having regard to the relevant provisions of other international instruments provide for a minimum age for admission to any employment. Thus, any work carried out by children in conditions below those established by ILO or UN Conventions should be considered as economic exploitation.

Other relevant articles of the CRC include:

Article-33, requiring measures to prevent the use of children in illicit production and trafficking of drugs;

Article-34, requiring protection against sexual exploitation;

Article-35, requiring prevention of abduction, sale and trafficking of children for any purpose;

Article-36, requiring protection against all other forms of exploitation prejudicial to any aspects of the child’s welfare;

Article-28, confirming a child’s right to education; and

Article-39, providing for measures to promote the physical and psychological recovery and social integration of child victims.

So, the Worst Forms of Child Labour Convention, 1999 (No. 182), actually supplemented in a particular field, the child labour problem, the principles of previous successive conventions of the UN in the development of child right worldwide. With its broad mandate to promote social justice and decent work, the ILO has proved its unique competence to combat Child exploitation in the form of child Labour or otherwise immoral use of child in the name of labour.


The CRC has been supplemented with two Optional Protocols. When a government ratifies a convention and/or the optional protocol(s) it is obligated to fulfill its promise to the provisions. The CRC is the first international treaty to place a
comprehensive legal obligation on States Parties to protect children from all forms of sexual exploitation and abuse. This obligation is also an important landmark because it implicitly recognizes that sexual exploitation of children is likely to occur in every country in the world.

The Convention on the Rights of the Child has two optional protocols that provide specific protections for children: (1) the Optional Protocol on the Involvement of Children in Armed Conflict; and (2) the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. Though both Optional Protocols operate under CRC, they are independent multilateral agreements under international law. The Optional Protocol on Children in Armed Conflict limits the recruitment of children under the age of 18 for armed conflict and requires parties to provide children who have participated in armed conflict with appropriate physical and psychological rehabilitation. It entered into force on February 12, 2002, and has been ratified by 120 countries. The Optional Protocol on the Sale of Children requires parties to criminalize child pornography and prostitution, close establishments that practice such activities, and seize any proceeds. It entered into force on January 18, 2002, and has been ratified by 126 countries (Luisa Blanchfield, 2009).

The OPSC is an excellent guide for complying with Articles 34 and 35 of the CRC, requiring states to protect children from all forms of sexual exploitation and sexual abuse, and to prevent the abduction, sale or trafficking in children for any purpose and in any form. Article 3 specifies the activities that must be prohibited in the Criminal Code. Articles 4 and 5 require the establishment of extra-territorial jurisdiction and effective regulation of the extradition process for perpetrators of the prohibited activities (Professor Jaap E Doek, 2007).

2.18.1. Background to the Protocol:

The United Nations Commission on Human Rights, the main UN human rights forum until 2006, had a long history of concern with the sale of children, child prostitution and child pornography. In 1974, a Working Group on Slavery was established. Now called the Working Group on Contemporary Forms of Slavery, it holds annual hearings in which it considers, among other issues, severe forms of exploitation of children, including prostitution and trafficking. In 1992, the Commission on Human Rights adopted the Programme of Action for the Prevention of the Sale of Children, Child

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62 Ibid 42 page-4
63 Ibid 53
Prostitution and Child Pornography prepared by the Working Group. In 1990 the Commission on Human Rights appointed a Special Rapporteur on the sale of children, child prostitution and child pornography. The Special Rapporteur, whose mandate extends to all UN Member States, plays a key role in raising awareness of these phenomena. The incumbent also works to combat sexual exploitation by publishing reports on specific cases, undertaking fact-finding missions to investigate trends and situations in a given country or region, and conducting national and regional workshops.

The 1994 report of the Special Rapporteur called for strengthening of prevention strategies by States Parties and other actors. It also called for addressing the root causes of the sale of children, child prostitution and child pornography. The same year, the Commission on Human Rights adopted a resolution on the need for effective international measures to prevent and eradicate the sale of children, child prostitution and child pornography. The resolution recalled the 1993 Vienna Declaration and Programme of Action that called for effective measures against female infanticide, harmful child labour, the sale of children and their organs, child prostitution and pornography and other forms of sexual abuse. The Commission also recognized UNICEF’s work in these areas, and the efforts of the Committee on the Rights of the Child and the Special Rapporteur. The standards set by the ILO on exploitative forms of child labour were noted, as was a report of the Second International Workshop on National Institutions for the Promotion and Protection of Human Rights. It called for a draft optional protocol to the CRC concerning elimination of sexual exploitation and trafficking of children.

Ultimately, an open-ended working group of the Commission on Human Rights was established to draft a new optional protocol in cooperation with the Special Rapporteur and the Committee on the Rights of the Child. Thus began the thoughtful and deliberate process of drafting the Protocol. It was informed by the First World Congress against Commercial Sexual Exploitation of Children and by the efforts of the NGO community. In 1998, for example, a federation of child rights NGOs called for greater precision in terminology, the rejection of any notion of child ‘consent’ and recognition of the need for rehabilitation of victims. The Optional Protocol was adopted by the United Nations General Assembly on 25 May 2000 and entered into force on 18 January 2002. By October 2008, it had been ratified by 129 States (UNICEF, 2009).  

64 Ibid 54 page-3
2.18.2. **Comment:**

The Convention on the Rights of the Child is the main UN Convention for the protection of children’s rights, including from all forms of violence, abuse, neglect and exploitation. A number of its provisions address to the provisions and rights enumerated in the OPSC. Article 34 of the CRC requires States Parties to protect children from “all forms of sexual exploitation and sexual abuse.” This includes the inducement or coercion of a child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other unlawful sexual practices, and the exploitative use of children in pornographic performances and materials. It is also important that article 39, which requires States to provide recovery and reintegration in an environment that fosters the health, self-respect and dignity of the child victims of sexual and other forms of exploitation.

The Optional Protocol criminalises specific acts relating to the sale of children, child prostitution and child pornography, including attempt and complicity. It lays down minimum standards for protection of the child victims in criminal justice processes and recognises the right of victims to seek compensation. It also encourages strengthening of international cooperation and assistance and the adoption of extra-territorial bilateral or multinational legislation. There are concerns that the OPSC does not protect children from victimization in criminal processes once they have been recognized as having had their rights violated. Because the OPSC applies to specific forms of sexual exploitation, it is important to bear in mind that article 34 of the CRC gives children the right to protection from all forms of sexual exploitation and abuse and that all exploited children have these rights recognized by the CRC. This includes the right to recovery and social reformation & reintegration in the light of article 39.

In conclusion, harmonisation of national laws with the norms UN Conventions and treaties to protect children from all forms of violence and exploitation Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography requires a comprehensive set of works and legislative measures.

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography was devised to strengthen protection for children against these forms of exploitation. Among its provisions are recommendations about the criminalization of such practices; procedures for extradition of those guilty of such offences; calls for
international co-operation in tracking and prosecuting offenders; procedures for protecting and assisting child victims; and calls for the promotion of public awareness.

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography has succeeded in raising international awareness of the complex issues involved and in influencing national governments’ attempts to pass and enforce relevant legislation. By July 2009, the Optional Protocol had been ratified by 132 countries and signed by a further 29 (UNICEF, 2009).65


Millions of children are involved in armed conflicts throughout the world either directly on the front line or for second-line tasks, or in other war attached missions associated with sexual exploitation, in particular thousands of young girls. The question of child soldiers has been received the object of great attention since the promulgation of the Convention. The UN General Assembly, following upon a vast study conducted for several years, which drew the States' attention to this reality of the exploitation of children by certain governments or by armed groups, and the need to undertake something seriously and develop rules designed to give better protection to the young against this type of exploitation.

In conflict both sexes and both adults and children are associated with armed forces and groups; they can be fighters or accompany regular or irregular forces as cooks, porters, messengers or perform other tasks. Women and girls are often recruited for sexual purposes and forced marriages. Sometimes men and boys are also abused sexually.

Armed conflict affects all aspects of child development - physical, mental and emotional. Historically, those concerned with the situation of children during armed conflict have focused primarily on their physical vulnerability. But the loss, grief and fear a child has experienced must also be taken into account. For increasing numbers of children living in war-torn nations, childhood has become a nightmare. Armed conflict destroys homes, separates families, splinters communities, breaks down trust among people and disrupts health and education services, undermining the very foundation of children's lives. The psychosocial concerns intrinsic to child development must be taken

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65 Ibid 55
66 Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000 entry into force 12 February 2002
into account. Seeing their parents or other important adults in their lives as vulnerable can severely undermine children’s confidence and add to their sense of fear. As bad as these experiences are, many children have witnessed their parents' torture, murder or rape, and have been threatened with death themselves (Graça Machel, 1996).

2.19.1. **Main objectives:**

1) To prevent the recruitment of children to armed forces and armed groups in violation of applicable international law.

2) Remove all children from armed forces and armed groups as early as possible in particular to avoid that they become a bargaining tool in the political process, where children’s are already been recruited.

3) To take necessary measures to prevent their re-involvement in violent activities.

4) To draw attention to separate effectively the children from the armed groups and demobilised chain of command.

5) To support children to reintegrate into society, through community-based approaches.

6) To focus on the special needs of children associated with fighting forces taking into account in a child-focused release process, including family reunification whenever possible, education, including life skills courses, psychological and physical rehabilitation and trauma-healing.

2.19.2. **Comment:**

The Optional Protocol to the Convention on the Rights of the Child establishes eighteen as the minimum age for compulsory recruitment by States, and for any recruitment or use in hostilities by non-governmental armed groups, and also establishes that States shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities. This document recognises that children eligible for release, reintegartion and development programmes include those associated with any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers, and those accompanying such groups, other than purely as family members. Thus, this concept does not only refer to children who are carrying or have

carried arms. It has also been the prioritized efforts to prevent the recruitment of children in the first place, in accordance with the international human rights treaties, conventions and optional protocols, through support to awareness-raising, training and the creation of child protection units and focal points for children within law enforcement institutions.

The wounds inflicted by armed conflict on children - physical injury, gender-based violence, psychosocial distress, are affronts to every impulse that inspired the United Nations Convention on the Rights of the Child. When a country ratifies the Convention on the Rights of the Child, it must review its national laws to ensure that they are in line with the provisions of the Convention. Even though the principles of the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the Geneva Conventions and other international humanitarian and human rights law have been flouted, these instruments are genuine landmarks and provide a basis for action. Clearly, what are lacking, the mechanisms and the will for enforcement (Graça Machel, 1996).\(^{68}\)

The Convention’s consensual drafting process resulted in the minimum age for the involvement of children in armed forces being set at 15 years – an age deemed far too young by many countries. The Optional Protocol requires States parties to prohibit the conscription of anyone under 18, adopt all feasible measures to ensure that voluntarily recruited soldiers under the age of 18 do not fight, and criminalize the recruitment of children under 18 by rebel groups.

The protocol resolved the contradiction in the Convention that did not afford soldiers under 18 the same rights and protection as all other children, establishing a legal norm and international standard that makes it easier to hold nations accountable and encouraging the passing of national laws in accordance with its principles. By July 2009, it had been ratified by 128 countries and signed by a further 28 (UNICEF, 2009).\(^{69}\)

\(^{68}\) Ibid 67
\(^{69}\) Ibid 55
2.20. Conclusion:

The chapter has focused on the ascent of the movement for better child right and juvenile justice in the world. A detailed study has been made to ascertain the chronological pulls, pushes and influences for fortifying the child right concept and juvenile justice system across the world. The brutal fact is that there are innumerable ways by which numerous children around the world are economically exploited and physically mistreated. Nonetheless the common cause for children’s sufferings and deprivation across the globe can mostly be attributed to abject poverty i.e. economic injustice. The study shows that the rights of children got its prominence in the international laws from the last century. In this context the United Nations played a pioneering role in promoting children’s rights and making attempts to eradicate violence against children across the world. The efforts of the United Nations created a spark and then gradually caused fire, nay inferno in cajoling individual nation to chalk out strategies and policies including specific enactments to promote children’s rights and juvenile justice in line with the norms prescribed in the international law in its own country. In one word, the United Nations has impacted greatly the propagation of the concept of child right and juvenile justice in all countries.

Following the World War II, the United Nations (UN) concentrated on making the Universal Declaration of Human Rights. In this direction, several international consultations and debates were organised by the UN or its allied organizations. In these discourses the issue of violence against children and need for promoting and protecting child rights emerged as a matter of concern and immediate attention. Evidently the benefit of children’s rights is contained in general treaties and the principles derived from the human rights instruments. Subsequently a number of specialist international instruments as discussed in detail in the chapter have been created by the world community to accord extra protection to the children. It prompted almost all countries to either change their existing laws or introduce new legislations and take appropriate actions for better child rights and juvenile justice in their national territories.

The study reveals that in spite of several advancements, the international community continues to grapple with various emerging problems to promote and encourage rights to child. It clearly indicates that there are significant scopes for improvement in the way the UN promotes human rights, which is the foundation of the ‘right to child’ concept. There are ample opportunities for the national governments to
translate universal norms into meaningful actions for the protection of their children in their countries.

However, the study also shows that there is a growing tendency to lean towards the hybrid juvenile justice systems giving equal emphasis on both justice and welfare models. The majority of the countries reviewed believe that diverting young offenders and utilising community based programs when they enter the juvenile justice system, is the most effective way to reduce juvenile crimes. While there will always be a need for incarcerating certain young offenders, the critical issue is finding the most effective balance between such punitive measures and preventative and accommodating approaches. In this regard the United Nations and many partner organisations have formulated a framework of actions to provide guidance to the respective governments to respond to the urgent needs of children. In this direction, the multi-pronged strategy of the United Nations focuses on the factors like strengthening the family capacity for better protection and care of children, mobilising and supporting community-based responses to the vulnerable households, providing essential services including education, healthcare etc to all vulnerable children, ensuring governmental interventions through improved policy and legislation etc. for better protection of the vulnerable children, generating mass awareness for creating a supportive and children friendly environment, providing proper mechanism for care, treatment and rehabilitation of the children in conflict with laws, implementing effectively the child victim compensation programs and engaging the children to express their views and expectations.
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