

CHAPTER 3 – International human rights instruments

Chapter overview

- Outlines the range of international and regional human rights instruments in place that are of relevance to juvenile justice issues, indicating which ones are child-specific and legally binding.
- Provides an overview of the contents of the child-specific instruments and how they work together.

International and regional human rights instruments at a glance

There are a series of international instruments in relation to children in the criminal justice system that can be grouped as follows. The shaded instruments are **legally binding** on states that have ratified them. However, all other guidelines and rules still carry the authority of the UN and can be used to support advocacy based on the legally binding instruments.

	CHILD-SPECIFIC INSTRUMENTS	NON-CHILD-SPECIFIC INSTRUMENTS
INTERNATIONAL	UN Convention on the Rights of the Child: CRC (1989)	UN International Covenant on Civil and Political Rights: ICCPR (1966) ¹
	UN Committee on the Rights of the Child General Comment 2 on the role of independent national human rights institutions in the promotion and protection of the rights of the child (2002) ²	UN International Covenant on Economic, Social and Cultural Rights: ICESCR (1966) ³
	UN Guidelines on the Prevention of Juvenile Delinquency: the 'Riyadh Guidelines' (1990)	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: CAT (1984) ⁴
	UN Minimum Rules for the Administration of Juvenile Justice: the 'Beijing Rules' (1985)	UN International Convention on the Elimination of All Forms of Racial Discrimination: CERD (1966) ⁵
	UN Rules for the Protection of Juveniles Deprived of their Liberty: the 'JDLs' (1990)	UN Convention on the Elimination of All Forms of Discrimination Against Women: CEDAW (1979) ⁶
	UN Resolution 1997 / 30 – Administration of Juvenile Justice: the 'Vienna Guidelines' (1997)	UN Standard Minimum Rules for the Treatment of Prisoners: The Standard Minimum Rules (1955) ⁷
		UN Minimum Rules for Non-Custodial Measures: The Tokyo Rules (1990) ⁸
		UN Code of Conduct for Law Enforcement Officials (1979) ⁹
		UN Basic Principles on the use of Force and Firearms by Law Enforcement Officials (1990) ¹⁰
REGIONAL	African Charter on the Rights and Welfare of the Child: ACRWC (1990)	American Convention on Human Rights: ACHR (1969) ¹¹ and Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights: the 'Protocol of San Salvador' (1988) ¹²
		European Convention for the Protection of Human Rights and Fundamental Freedoms: ECHR (1950) ¹³

¹ Available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm. "It is surprising that the Covenant has hardly, if ever, been used for the promotion of good practice in juvenile justice. The Human Rights Committee states that it does not receive information on juvenile justice issues, although it would be interested to do so. NGOs working in this area could usefully meet with members of the Human Rights Committee to discuss ways in which the Committee could work for children." Seymour, D., in Petty, C. and Brown, M. (eds), *Justice for Children: Challenges for Policy and Practice in Sub-Saharan Africa*, Save the Children, June 1998, p.111.

² Available at [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2002.2.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2002.2.En?OpenDocument). This comment includes language on access to places of detention and to care institutions, provision of legal aid, collection of disaggregated statistical data, and other relevant issues. A 'general comment' issued by the Committee on the Rights of the Child is not legally binding, but reflects the official position of the Committee on particular issues and can be referred to when the Committee is considering state reports.

³ Available at http://www.unhchr.ch/html/menu3/b/a_ceschr.htm

⁴ Available at http://www.unhchr.ch/html/menu3/b/h_cat39.htm

⁵ Available at http://www.unhchr.ch/html/menu3/b/d_icerd.htm

⁶ Available at <http://www.unhchr.ch/html/menu3/b/e1cedaw.htm>

⁷ Available at http://www.unhchr.ch/html/menu3/b/h_comp34.htm

⁸ Available at http://www.unhchr.ch/html/menu3/b/h_comp46.htm

⁹ Available at http://www.unhchr.ch/html/menu3/b/h_comp42.htm

¹⁰ Available at http://www.unhchr.ch/html/menu3/b/h_comp43.htm

¹¹ Available at <http://www1.umn.edu/humanrts/oasinstr/zoas8pdp.htm>

¹² Available at <http://www1.umn.edu/humanrts/oasinstr/zoas10pe.htm>

¹³ Available at <http://www1.umn.edu/humanrts/instree/z17euroco.html>

Child-specific instruments

1. UN Convention on the Rights of the Child (CRC)¹⁴

In many ways the CRC is the most important legal instrument in relation to juvenile justice because it is legally binding on all countries except Somalia and the USA. It is therefore more powerful and more widely applicable than some of the other instruments. The most specific articles in relation to juvenile justice are Articles 37 and 40¹⁵:

Article 37 prohibits torture, cruel, inhuman, degrading treatment or punishment, capital punishment and life imprisonment, arbitrary or illegal arrest, detention or imprisonment; stipulates that arrest and detention shall only be used as a last resort and for the shortest appropriate period of time; outlines the right of children deprived of their liberty to be treated with humanity, respect and dignity in a manner that takes into account their age, to be separated from adults, to maintain family contact, to have prompt access to legal and other assistance, to challenge the legality of their detention and to expect a prompt decision in relation to any resulting action.

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

Although the decriminalisation of ‘status offences’¹⁶ is not specifically mentioned in the CRC, the Committee on the Rights of the Child is increasingly raising this issue during its country reviews. Furthermore, the CRC’s requirement that arrest and detention only be used as a last resort and for the shortest possible time is generally understood to prohibit the routine arrest and detention of children for status offences – an interpretation which the Committee has adopted in some of its concluding observations.

¹⁴ Available, along with a list of states who have ratified it and those who have entered any reservations to any of the provisions at <http://www.unhcr.ch/html/menu3/b/k2crc.htm>.

¹⁵ See Appendix 2 for further information on the CRC in relation to street children and the full text of Articles 37 and 40.

¹⁶ Conduct which would not, under law, be an offence if committed by an adult. Examples include truancy, running away and underage drinking. Its classification as an ‘offence’ is therefore related to the ‘status’ of the ‘offender’ as a child.

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[Practical tips]

How to use the CRC more holistically

However, bearing in mind the need for a holistic approach and the fact that Articles 37 and 40 do not deal with broader – yet essential – issues of prevention, it is very important to set Articles 37 and 40 in the context of the overall framework of the CRC and its umbrella rights. These include:

- **Art. 6** (the right to life, survival and development)
- **Art. 3.1** (the best interests of the child as a primary consideration)
- **Art. 2** (non-discrimination on any grounds)
- **Art. 12** (the right to ‘participation’)
- **Art. 4** (implementation – including of economic, social and cultural rights to the maximum extent of available resources)

This more holistic approach allows a broader scope for lobbying for reform from a child rights-based approach. Other CRC articles pertinent to street children and juvenile justice, including aspects of prevention, are:

- **Art. 3.3** (standards of care in institutions and services)
- **Art. 9** (separation from parents)
- **Art. 13, 14 & 15** (freedom of expression, thought, conscience, religion, association and assembly)
- **Art. 16** (right to privacy)
- **Art. 17** (access to information / role of the media)
- **Art. 19** (protection from violence)
- **Art. 20** (special protection and assistance for children deprived of a family environment)
- **Art. 23** (children with mental and physical disabilities)
- **Art. 24** (health)
- **Art. 25** (periodic review of placements)
- **Art. 27** (adequate standard of living)
- **Art. 28 & 29** (right to, and aims of, education)
- **Art. 30** (minority rights)
- **Art. 31** (right to rest, leisure and play)
- **Art. 32, 33, 34 & 36** (protection from economic exploitation / child labour, substance abuse, sexual exploitation and abuse and other forms of exploitation)
- **Art. 39** (recovery and reintegration of victims of all forms of neglect, exploitation or abuse).

For further discussion of the CRC and the rights-based approach to street children and juvenile justice issues, including the ‘table leg test’ programming tool, see Chapter 2.

2. UN Guidelines for the Prevention of Juvenile Delinquency: the ‘Riyadh Guidelines’¹⁷

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

¹⁷ Available at http://www.unhcr.ch/html/menu3/b/h_comp47.htm . Information in this section is compiled from Roy, N. and Wong, M., Juvenile Justice Review and Training Documents prepared for Save the Children UK, 2002-3 and Penal Reform International, *International Instruments Governing the Rights of Children in Conflict with the Law*, www.penalreform.org.

policy, legislation and juvenile justice administration. Prevention is seen not merely as a matter of tackling negative situations, but rather 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 the prevention of children coming into conflict with the law, and to recognise that ‘formal agencies of social control’ should be utilised only as a means of last resort. 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;
- Youth participation in prevention policies and processes.

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

3. UN Minimum Rules for the Administration of Juvenile Justice: the ‘Beijing Rules’¹⁸

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. They were the first international legal instrument to comprehensively detail norms for the administration of juvenile justice with a child rights and child development approach. They pre-date the CRC, are specifically mentioned in the CRC Preamble, and have several of their principles incorporated into the body of the CRC (explaining why Article 40 is by far the longest and most detailed article of the whole Convention).

The Rules encourage:

- The use of diversion from formal hearings to appropriate community programmes;
- Proceedings before any authority to be conducted in the best interests of the child;
- 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.

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.

4. UN Rules for the Protection of Juveniles Deprived of their Liberty: the JDLs¹⁹

¹⁸ Available at http://www.unhcr.ch/html/menu3/b/h_comp48.htm. Information compiled as in *ibid*.

This very detailed instrument sets out standards applicable when a child (any person under the age of 18) is confined to any institution or facility (whether this be penal, correctional, educational or protective and whether the detention be on the grounds of conviction of, or suspicion of, having committed an offence, or simply because the child is deemed ‘at risk’) by order of any judicial, administrative or other public authority. In addition, the JDLs include principles that universally define the specific circumstances under which children can be deprived of their liberty, emphasising that deprivation of liberty must be a last resort, for the shortest possible period of time, and limited to exceptional cases. In the context where deprivation of liberty is unavoidable, the following conditions should be fulfilled:

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

The 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.

Riyadh, Beijing and JDLs – interrelated strengths

These three sets of rules can be seen as guidance for a three-stage process:

1. Firstly, social policies must be applied to prevent and protect young people from offending (the Riyadh Guidelines);
2. Secondly, a progressive justice system needs to be established for young people in conflict with the law (the Beijing Rules);
3. Thirdly, fundamental rights must be safeguarded and measures established for social reintegration of young people deprived of their liberty, whether in prison or other institutions (the JDLs).²⁰

In technical terms, unlike the CRC these Rules and Guidelines are not legally binding on countries. They do, however, present detailed guidance based on UN authority and can be referred to equally alongside the CRC for lobbying purposes.

¹⁹ Available at http://www.unhchr.ch/html/menu3/b/h_comp37.htm. Information compiled as in *ibid*.

²⁰ Roy, N. and Wong, M., Juvenile Justice Review and Training Documents prepared for Save the Children UK, 2002-3.

UN Resolution 1997/30 – Administration of Juvenile Justice: the ‘Vienna Guidelines’ (1997)²¹

This UN Resolution (also known as the Vienna Guidelines) provides an overview of information received from governments about how juvenile justice is administered in their countries and in particular about their involvement in drawing up national programmes of action to promote the effective application of international rules and standards in juvenile justice. The document contains as an annex Guidelines for Action on Children in the Criminal Justice System, as elaborated by a meeting of experts held in Vienna in February 1997. This draft programme of action provides a comprehensive set of measures that need to be implemented in order to establish a well-functioning system of juvenile justice administration according to the CRC, Riyadh Guidelines, Beijing Rules and JDLs.

African Charter on the Rights and Welfare of the Child (ACRWC)²²

When the CRC was written, it was important that it be applicable to countries and cultures across the globe. While this broad description of children's rights is relevant to all people, it became apparent that the situation of the African child was different from other regions. The Organisation for African Unity (now known as the African Union) responded by drafting the ACRWC, which guarantees children's basic rights within the context of African culture. For example, Article 21 of the ACRWC addresses harmful traditional practices common in many African countries that can violate the rights of children, such as corporal punishment, child labour, early marriage and female genital mutilation.

As with the CRC, the ACRWC contains a broad range of socio-economic provisions that can be referred to holistically, as well as the specific juvenile justice provisions of Article 17, ‘The Administration of Juvenile Justice’, which provides that:

- Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others;
- No child who is detained or deprived of his/her liberty shall be subject to torture, inhuman or degrading treatment or punishment;
- Children are separated from adults in their place of detention;
- Every child shall be presumed innocent until proven guilty;
- Every child shall be afforded legal assistance in the preparation of his/her defence;
- The essential aim of treatment during the trial and if found guilty shall be his/her reformation, reintegration into his/her family, and social rehabilitation.

Summary of the instruments

Provisions of the international guidelines

Taken together, the Convention on the Rights of the Child and the other international guidelines include the following provisions:

²¹ Available at: www.unhcr.ch/huridocda/huridocda.nsf/Documents?OpenFrameset. Information in this section adapted from Roy, N. and Wong, M., Juvenile Justice Review and Training Documents prepared for Save the Children UK, 2002-3.

²² Available at <http://www1.umn.edu/humanrts/africa/afchild.htm>.

- *All children should be respected as fully-fledged members of society, with the right to participate in decisions about their own futures, including in official proceedings without discrimination of any kind.*
- Children have the same rights to all aspects of due process as those accorded to adults *as well as specific rights due to their special status as children.*
- Children should be diverted from the formal system of justice wherever appropriate and specifically to avoid labelling as criminals.
- There is a set of minimum standards which should be provided to all juveniles in custody.
- Custodial sentences should be used as a last resort, for the shortest possible time and limited to exceptional cases.
- A variety of non-custodial sentences should be made available, including care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes.
- Capital and corporal punishment should be abolished.
- There should be specialised training for personnel involved in the administration of juvenile justice.
- Children have the right to release unless there are specified reasons why this should not be granted.
- *Children have the right to measures to promote recovery and reintegration for victims of neglect, exploitation, abuse including torture and ill-treatment, and armed conflict.*
- States are obliged to establish a minimum age of criminal responsibility which is not set too low, but reflects children's capacity to reason and understand their own actions.
- States should invest in a comprehensive set of welfare provisions to contribute to preventing juvenile crime. This should include provision for very young children. Provision should involve the government, NGOs, churches, volunteers, etc.

This summary is taken from Petty, C. and Brown, M. (eds), *Justice for Children: Challenges for Policy and Practice in Sub-Saharan Africa, Save the Children, June 1998, p.23 (with additional material shown in italics)*

Chapter summary

- There are many human rights instruments available to draw on in order to support lobbying for reform and to assist in the design and implementation of policies and programmes.
- Of these, the Convention on the Rights of the Child is the most powerful as it has the widest jurisdiction, is legally binding, and is specific to children. The African Charter on the Rights and Welfare of the Child provides a similar function in the African context. However, the CRC and/or ACRWC should be supported by reference to other instruments which can provide more detailed guidance.
- The use of any of these instruments should be grounded in a holistic approach that caters for the overall development of children by underscoring the importance of socio-economic prevention and protection programmes.