

Participant's Name: _____

Unlocking Children's Rights

**Strengthening the capacity of professionals in
the EU to fulfil the rights of vulnerable children**

Participant's Workbook

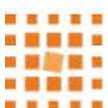
Module One – Introduction to Child Rights

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"Above everything else, the professionals should be at peace with themselves. If you are not at peace with yourself, you cannot help the children".

Focus Group Participant, Greece

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MODULE 1: INTRODUCTION TO INTERNATIONAL CHILD RIGHTS

PROPOSED DURATION: 3 hours

AGENDA

❖ CHILD RIGHTS – THE INTERNATIONAL AND REGIONAL CONTEXT

❖ THE UNDERPINNING PRINCIPLES OF THE CONVENTION ON THE RIGHTS OF THE CHILD

- NON-DISCRIMINATION
- THE BEST INTERESTS OF THE CHILD
- THE RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT
- THE RIGHT TO PARTICIPATION AND TO BE HEARD

❖ CHILD RIGHTS IN THE NATIONAL CONTEXT

❖ CHILD RIGHTS IN THE PROFESSIONAL CONTEXT

1.1: CHILD RIGHTS – THE INTERNATIONAL AND REGIONAL CONTEXT

What is a child?

In order to understand children's rights, it is first important to understand what is meant by the words 'child' and 'childhood': two related concepts that have grown in use and understanding over the past two centuries and which lie at the heart of this module on understanding child rights.¹

Internationally, the word 'child' is understood to mean 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier' according to the definition set out in the Convention on the Rights of the Child.²

Across the globe, there is a consensus that all children have rights that should be protected: this is demonstrated most clearly by the near-universal ratification of the Convention on the Rights of the Child in the late 1990s.³

¹ See, generally, Marc Depaepe "The History of Childhood and Youth: From Brutalization to Pedagogization?", in *Understanding Children's Rights*, ed. Eugene Verhellen, University of Ghent, 1996.

² G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990.

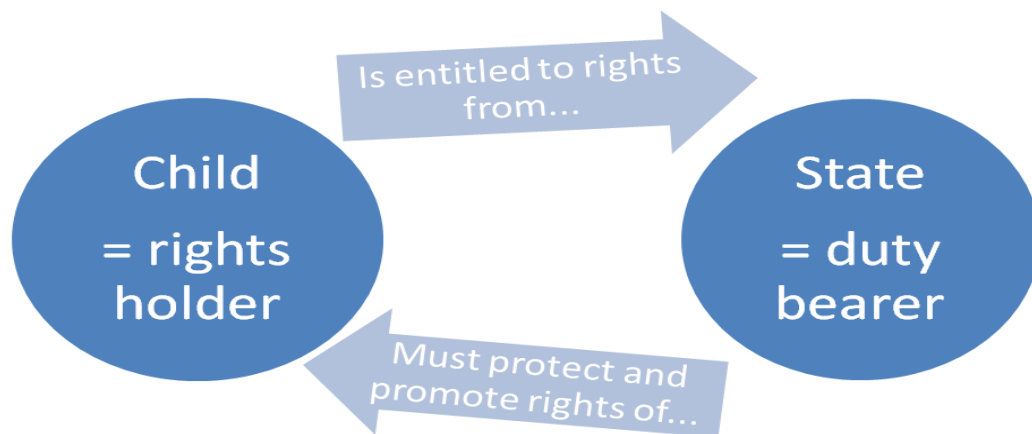
³ United Nations Treaty Collection, Convention on the Rights of the Child, available at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-11&chapter=4&lang=en

What do we mean by child's rights?

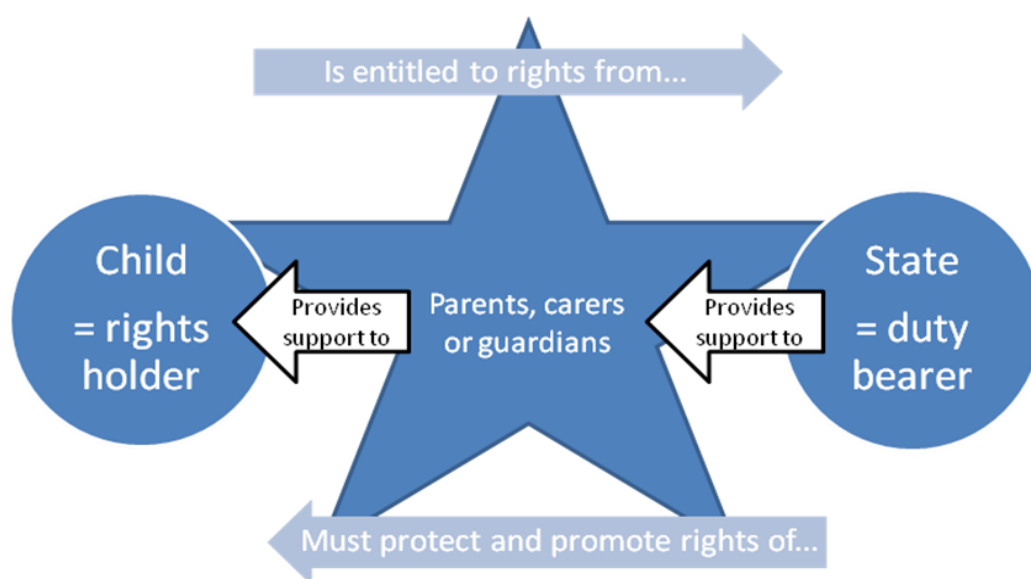
Child rights are things, sometimes described as 'freedoms' or 'standards' to which all children are entitled. While human rights are applicable to all humans, universally, child rights apply to children as additional protections "on top of" the human rights to which all humans are also entitled. It is important to note that rights are universal, but can be limited in specific circumstances. A good example of this is the right to liberty – in most States, if an individual is convicted of a serious crime, she or he may have his or her liberty limited in accordance with domestic laws. This is not a rights violation, as long as it follows what are known as 'due process' rights.

The relationship between the child and State can be demonstrated by two diagrams.

The first shows the child as a rights holder, who is entitled to claim rights from the duty bearer, the State.



The second diagram shows this connection in relation to the child's parents, carers or guardians



What does the Convention on the Rights of the Child ('CRC') include and why is it important?

The Convention covers a full range of civil, political, economic, social and cultural rights; 41 substantive rights in all. It is important because when a State ratifies it, it commits, legally, to implement and protect the convention rights.

As of October 2016, only the United States of America had not ratified the treaty. The USA has chosen not to ratify the Convention due to concerns over its compatibility with domestic law. This makes it the most widely ratified human rights convention.

The UN Committee on the Rights of the Child is a body of experts that was established under the Convention. Its functions include monitoring implementation of the Convention, as well as providing guidance (for example, via its 'General Comments') on its interpretation and implementation. The Convention is accompanied by three Optional Protocols that focus on particular themes⁴ in more detail than in the Convention itself.

Different ways to think about the rights

The Three Ps – Protection, Provision and Participation

The Convention rights are often discussed in terms of three categories, which are known as the "3 Ps"⁵:

- **Protection:** The right to be protected against actions and behaviour.
 - For example, the right to be protected from discrimination or exploitation.
- **Provision:** The right to access benefits, services, or activities.
 - For example, the right to receive an education, the right to health and nutrition, the right to an adequate standard of living.
- **Participation:** The right to engage in activities.
 - For example, the right to have views and to make these views known, the right to participate and express an opinion relating to decisions affecting the child, the right to enjoy freedom of expression.

Even when using these categories, the rights contained in the CRC are 'interdependent' and 'indivisible'; this means that it is not possible to promote and protect rights in isolation, without taking other rights into account.

⁴ Children and armed conflict; sale of children, child prostitution and child pornography; and a communications procedure.

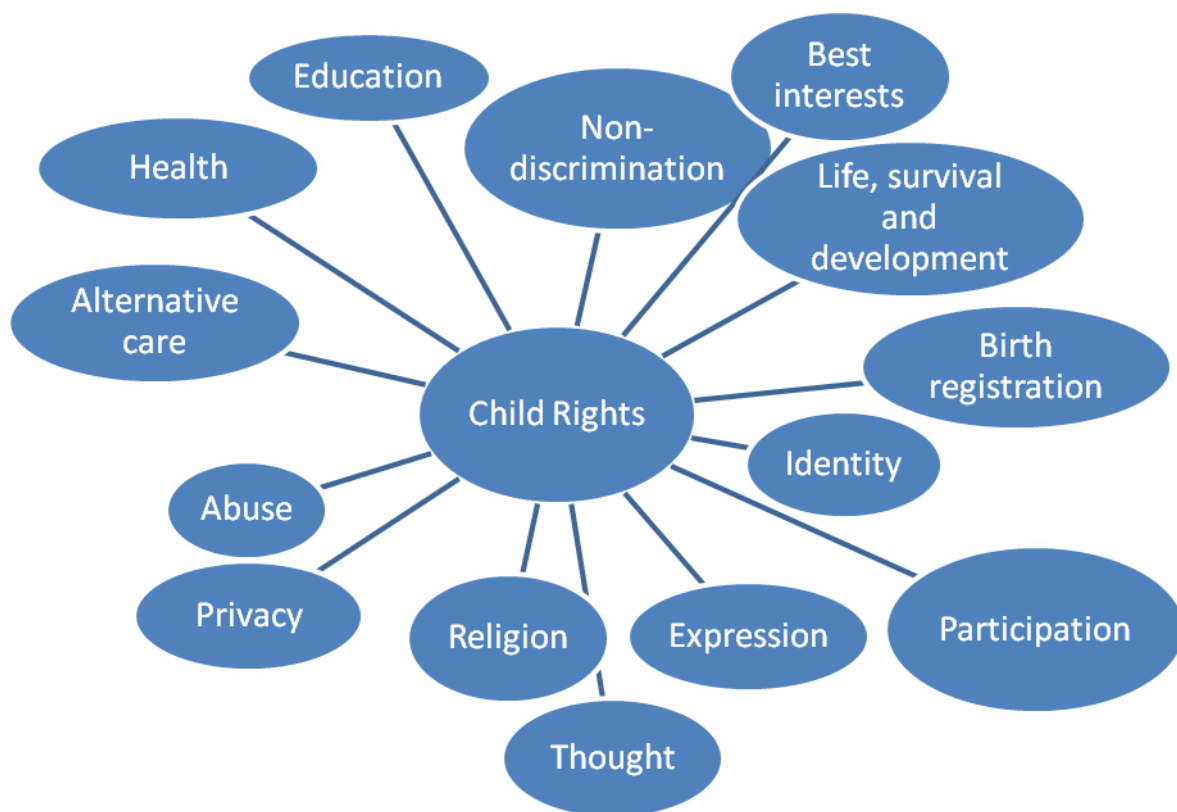
⁵ Eugene Verhellen, "The Convention on the Rights of the Child", pp. 37, in *Understanding Children's Rights*, ed. Eugene Verhellen, University of Ghent, 1996.

What are the underpinning principles?

Another way that child rights experts approach the Convention is to emphasise the four **underpinning, or general, principles**:⁶

- The right to non-discrimination (Article 2);
- That the best interests of the child shall be a primary consideration in all matters affecting children (Article 3.1);
- The right to life, survival and development (Article 6);
- The right to be heard (Article 12).

What are the other rights?



Additional notes:

⁶ For further information, please see CRC Committee General Comment No 5 “General measures of implementation for the Convention on the Rights of the Child” CRC/GC/2003/5, (2003).

1.2 THE UNDERPINNING PRINCIPLES OF THE CONVENTION ON THE RIGHTS OF THE CHILD

The best interests of the child (Article 3.1): According to this Article, the child has a right to have his or her best interests taken into account as a primary consideration in all matters affecting the child. This means, for example, that when a judge makes a decision about whether a child should live with her mother or father, that judge must take into account the best interests of that child as a primary consideration to inform the decision.

Non-discrimination (Article 2): According to this Article, children have a right to protection from both direct and indirect discrimination. The right to protection from discrimination requires States to refrain from implementing laws, policies and practices that discriminate either on the face of the law/policy/practice (and therefore directly), or that apply to everyone but, in their effect, place an individual/group at a particular disadvantage (indirect discrimination). As an example, it would be a rights violation to have a law that prevents children from a particular ethnic group from attending school because of their ethnicity but it would also be discriminatory to have a law that indirectly prevents these children from attending school, for example by requiring uniforms that are incompatible with the beliefs of those in the group.

Right to life, survival and development (Article 6): According to this Article, all children have a right to live in a society, community and environment that protects their right to life, survival and all forms of development. This right can be challenging to understand because, although it is not controversial, it can be hard to grasp exactly what the right requires a State to do. This provision is interpreted broadly to include a child's holistic development. In order to comply with this right, States must take action to protect this right, including by creating an enabling environment to actively support the child to live and develop, and to prevent, prohibit and punish violations of this right.

Right to be heard/ to participate (Article 12): This Article states that children have a right to express their views in all matters affecting them and to have those rights taken into account, in line with their age and maturity. This important right is sometimes overlooked when professionals assume that children are too young to have opinions or coherent views. In 2009, the Committee on the Rights of the Child addressed this concern in **General Comment No 12: "The right of the child to be heard."**⁷ In this Comment, the Committee explained that Article 12 is now largely associated with the term "participation", which it described as an "ongoing processes, which include information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes."⁸

⁷ CRC Committee, General Comment No. 12 "The right of the child to be heard", CRC/C/GC/12.

⁸ CRC Committee, General Comment No. 12 "The right of the child to be heard", CRC/C/GC/12 at para 3.

NON-DISCRIMINATION

What does the international and regional rights framework say?

Article 2 of the Convention on the Rights of the Child is a key provision. It considers non-discrimination to be a cross-cutting principle applicable when implementing all articles of the Convention. The child is also protected from discrimination on the basis of the status of his/her parents, legal guardians or family members.

- *“1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*
- *2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.”*

Note also:

- **Article 2 Universal Declaration on Human Rights:** Everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- **Article 2(1) International Covenant on Civil and Political Rights:** Each State Party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- **Article 2(2) International Covenant on Economic, Social and Cultural Rights:** State Parties undertake to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- **International Convention on the Elimination of All Forms of Racial Discrimination:** For the purposes of this Convention, ‘racial discrimination’ is defined as, “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”
- **Article 14 European Convention on Human Rights:** The enjoyment of the rights and freedoms set forth in the European Convention on Human Rights shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

- **Article 1(1) of Protocol No. 12 to the European Convention on Human Rights:** Sets out a general prohibition of discrimination: “1. *The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.* 2. *No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.*”
- **Article 21 of the EU Charter of Fundamental Rights** also contains the principle of non-discrimination on the basis of age, ethnic origin and sex, among other grounds: “1. *Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.* 2. *Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.*”
- **EU Race Equality Directive 2000/43/EC**
- The **Council of Europe’s Guidelines on Child-Friendly Justice** state that non-discrimination is a basic standard to be applied when implementing all guidelines, together with the principles relating to the best interests of the child, right to participation, dignity and the rule of law (further details on the Guidelines are provided in Module 4).

What does it mean?

Key selected concepts of discrimination are set out in the following table:

Types	Definition	Example
DIRECT	Occurs when a person or group is treated less favourably than another is, has been or would be treated in a comparable situation, based on a protected characteristic (e.g. ethnicity, sex, gender, social status, disability, etc.)	Ethnic minority children are not allowed to join others for swimming classes.
INDIRECT	Occurs where an apparently neutral law, policy or practice places an individual or group with a protected characteristic at a particular disadvantage.	No headscarf is allowed in the school, which puts Muslim women at a particular disadvantage.
HARASSMENT	Occurs when an unwanted conduct relating to a protected characteristic (for example, gender) takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive	Racist jokes; sexist remarks.

	environment.	
Victimisation	Occurs when a person suffers adverse treatment for complaining about discrimination or for helping someone who has been the victim of discrimination.	Pupil complains about a teacher's sexist remarks, and is then made to fail the exam.
Instruction to discriminate	Occurs when a subordinate is instructed to treat a person differently constituting an act of discrimination.	Headmaster instructs teachers not to allow Roma kids to join afterschool activities.

Why is it important?

Non-discrimination is a basic principle of international human rights law. The non-discrimination principle is closely linked to the right to human dignity⁹. Non-discrimination is of particular importance for children with disabilities or of different national or ethnic backgrounds or children in particularly vulnerable situations (for example asylum seekers, unaccompanied children, victims of violence, etc.).

Children may face discrimination on multiple grounds as distinct acts of discrimination (referred to as, 'multiple discrimination'). For example, a girl with disabilities may be prohibited from chess class because she is a girl (gender discrimination) and, distinctly, may be unable to access her school building because of a lack of wheelchair access (discrimination on the grounds of disability). Children may also face discrimination based on a combination of characteristics that comprise a person's identity (referred to as, 'intersectional discrimination'). For example, a Romani woman may undergo forced sterilisation because she is a *Romani woman* (i.e. the grounds of ethnicity and gender intersected).

Examples of discrimination are: racism, Islamophobia, xenophobia, homophobia, anti-Semitism, gender and other stereotypes, etc.

1. What remedies are available for victims of discrimination?

- Victims of discrimination must have access to judicial, administrative, and conciliation procedures;
- Conciliation procedures are not a substitute for judicial procedures but can be an important additional avenue of redress;
- Judicial procedures can be civil and criminal.

⁹ The principle of dignity of the Council of Europe Guidelines on Child-Friendly Justice stipulates that children must always be treated with care and respect, taking into account their different needs and personal situation. The child's physical and psychological integrity shall also be protected. See Section III, paragraph C of the Guidelines, and Module 4, for more details.

2. What criteria sanctions have to meet?

Sanctions for the violation of the right to equal treatment must be effective, proportionate and dissuasive, and *may* include payment of compensation to the victim.

3. Is there a justification for different treatment?

Direct discrimination: No justification for race/ethnicity discrimination unless it is a positive action measure (Race Equality Directive 2000/43).

Direct (except race, ethnicity)/Indirect discrimination: may be justified if it can be shown that the difference in treatment pursues a legitimate aim (namely, one that is legal and represents a real objective consideration) and proportionate (namely, is appropriate and necessary).

4. Positive action

With a view to ensuring full equality in practice, adopting or maintaining specific measures to prevent or compensate for disadvantages linked to the protected groups is a 'positive action' measure.

For example, a program or policy intended to correct the effects of past discrimination in areas such as employment, education or housing. Positive action can include out-reach programmes, setting goals, and extra opportunities for members of underrepresented groups (for example Roma).

Case study exercise

1. Facts: The courthouse is not accessible with a wheelchair.
Key issues:

2. Facts: Romani children in state care are often placed in institutional settings due to their alleged “uneducated, bad behaviour” by care workers, while non-Roma children are placed with foster parents
Key issues:

3. Facts: Girls in an immigration centre are exposed to continuous sexist remarks by one of the guards.
Key issues:

4. Facts: All children, including Jewish children, are served with pork at the residential care centre.
Key issues:

5. Facts: Children with hearing impediments cannot be heard as witnesses because no sign language interpreter is available at the local court.
Key issues:

6. Facts: The director of a detention centre issues a call that employees have to refuse the entrance of Muslim parents to the institution for security reasons.
Key issues:

7. A victim of alleged sexual abuse is handcuffed and held in a police cell for six hours before being interviewed by police.
Key issues:

8. Facts: A child in conflict with the law was not eligible for diversion from criminal proceedings because his family could not afford to pay the victim compensation.
Key issues:

1.2B BEST INTERESTS OF THE CHILD

What does the rights framework say?

- Article 3.1 Convention on the Rights of the Child: In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
- General Comment No. 14 by the Committee on the Rights of the Child provides guidance on the interpretation of the best interests of the child and is available at: <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

What does it mean?

To think about exactly what this provision means, it is useful to break it down into its constituent components.

- All actions concerning children:
 - Broadly: This means anything that concerns a child or groups of children, and includes, for example, budget setting, legislative drafting, national policies and anything that concerns children on a broad level.
 - More directly: This also means decisions directly affecting children, such as education policies, infant or paediatric healthcare, dental hygiene, parks and leisure, funding of children's activities.
 - Directly: Finally, it means decisions about groups or individual children, including decisions about the child's entry to school, or accommodation placement, custody decisions, divorce hearings, institutional placement, etc.
- The best interests of the child:
 - This should be flexible to the individual needs and rights of an individual child, or should be based on an assessment of the needs and rights of any group of children in question.
 - In order to determine the best interests, an assessment will be necessary, which should take into account: the child's views; the child's identity; preservation of the family environment and preserving relationships; care, safety and protection of the child; situation of vulnerability; the child's right to health and the child's right to education. (See General Comment 14 for more information.)
- A primary consideration:
 - This requires that the best interest plays a strong role in any decision making.

Why is it important?

This Article is extremely important, especially in communication with children, because it helps to protect and promote all other rights enjoyed by children. It also helps to focus the minds and actions of policy makers and professionals acting in any way that affects a child to consider what is in the best interests of that child, or group of children, and to remind professionals of the impact that all decisions can have on a child/children.

It is also important to note that the 'best interests of the child' will sometimes conflict with the child's 'wishes and feelings', and, in these circumstances, it is essential for professionals to know what their duty is. For example, in the UK, a guardian or advocate has the sole responsibility of helping a child to share, or relay, his or her wishes or feelings whereas a social worker is driven by the child's best interests. It is equally important that the child understands the professional's responsibilities and duties so that they know what to expect from any decision making process, and from whom.

Examples

- The Ministry of Justice is drafting a new Bill in relation to employment. An assessment is done into the impact upon children generally, and specific groups of children, which finds that some of the provisions could make it particularly difficult for children below the age of 16 to work. The assessment considers the best interests of children and determines that it would be in some children's best interests to be able to take gainful employment while under the age of 16 in safe, secure and regulated circumstances, and relevant amendments to the Bill are made.
- The parents of a young boy are separating in an acrimonious divorce. There is a large dispute over which parent the boy should live with. His advocate/ guardian ad litem seeks his views, while the social worker conducts an assessment of his best interests in order to guide the Court to make a decision that takes his best interests as a primary consideration.
- A residential care centre is establishing its menu for the week. The price of meat has recently increased significantly and one member of the team wants to remove meat from the menu for three days a week. An assessment is carried out to balance the cost implications with the children's best interests in relation to health and nutrition, as well as to the right to participate in menu decisions, as a primary consideration.

CHECKLIST: The following factors may be useful in determining the best interests of the child

Step 1: Talking to the child

- ☐ Can you ask the child directly? What does he/she say?
- ☐ What the child's views, wishes and feelings?
- ☐ Can you ask the child what he/she thinks is in his/her best interests?

Step 2: Hearing from those who know the child

- ☐ What do the child's parents, guardians or carers say the child wishes/feels (be cautious as to whether this is accurate)?
- ☐ What do the child's parents, guardians or carers think is in the child's best interests?
- ☐ What do his/her guardian ad litem or other representative say the child wishes/feels (be cautious as to whether this is accurate)?
- ☐ What do other professionals think?

Step 3: What do you think about the best interests of the child?

- ☐ Take into account the needs of the child, considering the age/gender/culture and any other factors including disability or developmental delays.
- ☐ Consider your own professional experience and the experiences of others/ but also the individual needs of the child.
- ☐ What are the short term, medium term and long term known, potential and possible outcomes/consequences of any actions?

Step 4: After making a decision, don't forget to talk to the child about this.

Participants may wish to add checklist notes based on the training and discussions with others

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1.2C: RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT

What does the rights framework say?

Article 6 Convention on the Rights of the Child: 1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

What does it mean?

This right means that States have an obligation to protect the child's right to life, survival and development, both through enabling provisions that actively support a child to live and develop, and by preventing, prohibiting and punishing actions that are detrimental to the child's life, survival and development.

Why is it important?

This right is important because it acknowledges that children have an inherent right to live, and therefore that States have a fundamental obligation to support that child to live and thrive, by avoiding activities that harm the child's 'life' but also by actively helping the child to enjoy full survival and development.

Examples

- A State's criminal code prohibits murder – this is an example of how a State can address the taking of a child's life.
- Traffic regulations require that drivers decrease their speed around schools and playgrounds.
- A State provides comprehensive, free healthcare to all children.
- Prohibition of life sentences without the possibility of parole.
- The use of the deprivation of liberty only as a measure of last resort and for the shortest appropriate period of time.
- The implementation of activities and programmes for institutionalised children that aim to facilitate their rehabilitation.

Note on evolving capacities: The concept of evolving capacities (Article 5 of the Convention on the Rights of the Child) is also important:

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

The Committee on the Rights of the Child has explained ‘evolving capacities’ in General Comment No. 7 from the UN Committee on the Rights of the Child, an extract of which is provided below. In line with the Committee’s guidance, respecting a child’s evolving capacities entails **continually adjusting the levels of support and guidance offered to a child, taking account of a child’s interests and wishes as well as the child’s capacities for autonomous decision-making and comprehension of his/her best interests:**

- “Article 5 draws on the concept of “evolving capacities” to refer to processes of maturation and learning whereby children progressively acquire knowledge, competencies and understanding, including acquiring understanding about their rights and about how they can best be realized. Respecting young children’s evolving capacities is crucial for the realization of their rights, and especially significant during early childhood, because of the rapid transformations in children’s physical, cognitive, social and emotional functioning, from earliest infancy to the beginnings of schooling. Article 5 contains the principle that parents (and others) have the responsibility to continually adjust the levels of support and guidance they offer to a child. These adjustments take account of a child’s interests and wishes as well as the child’s capacities for autonomous decision-making and comprehension of his or her best interests. While a young child generally requires more support than an older child, it is important to take account of individual variations in the capacities of children of the same age and of their ways of reacting to situations. Evolving capacities should be seen as a positive and enabling process, not an excuse for authoritarian practices that restrict children’s autonomy and self-expression and which have traditionally been justified by pointing to children’s relative immaturity and their need for socialization. Parents (and others) should be encouraged to offer “direction and guidance” in a child-centred way, through dialogue and example, in ways that enhance young children’s capacities to exercise their rights, including their right to participation (art. 12) and their right to freedom of thought, conscience and religion (art. 14).”¹⁰

Simply put, the idea of ‘evolving capacities’ is that it enables children to exercise their rights in line with the course of their childhoods. The concept of ‘evolving capacities’ relates directly to ideas of child development, which are discussed in Module 2 of this full training course.

¹⁰ UN Committee on the Rights of the Child: General Comment Number 7 “Implementing child rights in early childhood” CRC/C/GC/7/Rev.1 (2006), para 17.

1.2D PARTICIPATION AND THE RIGHT TO BE HEARD

What does the rights framework say?

- Article 12 Convention on the Rights of the Child: 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
- 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

What does it mean?

This Article means that all children have a right to be heard and to be listened to in all matters affecting them, either collectively, or as an individual.

The right to be heard is often associated with the right to participation, which is made meaningful through aids to participation. For example, child-friendly language and environments can support a child to express his or her views by making the child more comfortable, feel more secure, and adapting the experience to the child's needs, instead of forcing a child to participate in non-child sensitive, formal settings. The right to be heard also implicates the child's right to be informed so that he or she is able to participate and has the tools, knowledge and skills to do so. For example, a child may be called upon to provide testimony in Court, but if he or she does not understand the Court proceedings, this can be almost impossible. Children must receive adequate support to truly enjoy their right to be heard.

The qualifying language 'who is capable of forming his or her own views' and 'due weight in accordance with the age and maturity of the child' should not be used to deny the child's right to be heard. It is not appropriate to set out age limits on the right to be heard – but, rather, children's capacity should be viewed on an individual level (see above regarding evolving capacities).

Why is it important?

Participation and the right to be heard are known as part of the underpinning principles of the Convention on the Rights of the Child and are important for many reasons, including because they:

- Are a fundamental right;
- Allow for the enjoyment of other fundamental rights by children;
- Contribute to the child's overall dignity and well-being;
- Contribute to the development of society and society's future.

Examples

- A child has been accused of an offence. He is supported to participate, meaningfully, in a hearing related to a diversion programme. He is able to articulate his remorse, but also to explain a little about why he acted in the way that he did. He later completes a community based diversion programme in which he addresses these root causes and, after which, he does not go on to reoffend.
- The Ministry of Education is amending the national curriculum in relation to sexual education for secondary schools. Children are invited to participate fully in all meetings and discussions in a way that takes into account their age and maturity and make numerous comments and suggestions that have a material impact in shaping the curriculum. As a result, the curriculum is more age appropriate and better received by both teachers and students.
- A child is the victim of a sexual assault. She is taken to the doctor's office by her mother, who thinks something is wrong but does not know what. The doctor supports the child to explain what happened and makes a child protection referral. A social worker and police officer work together to facilitate a police interview, during which the child is able to explain what happened in terms and ways with which she is comfortable. She attends Court as a witness when the case comes to trial and is supported to testify via a video-link. All court officials speak to her in sensitive language and without their wigs (which they would otherwise wear for formal proceedings). She provides her testimony and a conviction is secured. The girl is 5 years old.

Later in this training course, participants can find more detail on how to facilitate child participation using child-friendly communication techniques (Module 3), and through establishing child-friendly environments in justice settings (Module 4), including examples of international and regional good practices in these areas.

1.3 CHILD RIGHTS IN THE NATIONAL CONTEXT

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1.4 CHILD RIGHTS IN THE PROFESSIONAL CONTEXT

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PARTICIPANT'S READER – MODULE ONE

Brief history of the international children's rights movement

1923 - Eglantyne Jebb, founder of Save the Children in the United Kingdom, drafts principles relating to children's rights in response to the suffering of children after World War One.¹¹

1924 - The League of Nations adopts Jebb's principles as "The Declaration on the Rights of the Child."¹² The Declaration is applicable to all children, without discrimination.

1934 - Signatories to the Declaration agree to incorporate the principles into domestic law.¹³

1946 - United Nations and UNICEF are established.

1948 – The Universal Declaration on Human Rights is adopted; Second Declaration on the Rights of the Child is adopted (adding clearer provisions on non-discrimination and the right to live with a family).¹⁴

1959 - The Third Declaration on the Rights of the Child is adopted.¹⁵

1960s and 1970s - Several treaties are adopted that touch upon children's rights, including the International Covenants on Civil and Political Rights¹⁶ and on Cultural, Economic and Social Rights (1976)¹⁷ and the Convention on the Elimination of all forms of Discrimination Against Women (1980)¹⁸.

1979 - International Year of the Child. UN Commission on Human Rights convenes a Working Group to develop a draft convention on children's rights.¹⁹

1989 – Convention on the Rights of the Child opens for signature and becomes the most quickly and widely ratified international instrument in history.

2000 – Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict open for signature (enter into force in 2002).

2011 – Optional Protocol to the Convention on the Rights of the Child on a communications procedure opens for signature (enters into force in 2014).

¹¹ Save the Children UK, "History", available at: <http://www.savethechildren.org.uk/about-us/history>

¹² UN Documents, "Geneva Declaration on the Rights of the Child", available at: <http://www.un-documents.net/gdrc1924.htm>).

¹³ Report of the Secretary-General, International Child Welfare Review, 1934, 30. Cited in Van Buren, Geraldine, *The International Law on the Rights of the Child*, Save the Children, 1995, p 9.

¹⁴ Child Rights Information Network, "Declaration on the Rights of the Child – 1948" available at: <http://www.crin.org/resources/infodetail.asp?ID=1309>

¹⁵ G.A. res. 1386(XIV), (1959).

¹⁶ G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

¹⁷ G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976.

¹⁸ G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981.

¹⁹ Audiovisual Library of International Law, "Convention on the Rights of the Child, New York, 20 November 1989", available at: <http://untreaty.un.org/cod/avl/ha/crc/crc.html>

Selected excerpts from relevant texts (for optional exercise 1.4)

UN CONVENTION ON THE RIGHTS OF THE CHILD (1989)

Article 2

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

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

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 6

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

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

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 19

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

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

Article 20

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

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

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

Article 23

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

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

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

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

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

Article 24

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

Article 27

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

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

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

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

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

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

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

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

Article 32

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

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

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

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

Article 34

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

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

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

Article 36

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

Article 37

States Parties shall ensure that:

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

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

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

Article 40

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (2006)

Article 3 - General principles

The principles of the present Convention shall be:

- a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- b) Non-discrimination;
- c) Full and effective participation and inclusion in society;
- d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- e) Equality of opportunity;
- f) Accessibility;
- g) Equality between men and women;
- h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Article 7 - Children with disabilities

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.
3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

UN GUIDELINES FOR THE ALTERNATIVE CARE OF CHILDREN (2010)

Alternative care

11. All decisions concerning alternative care should take full account of the desirability, in principle, of maintaining the child as close as possible to his/her habitual place of residence, in order to facilitate contact and potential reintegration with his/her family and to minimize disruption of his/her educational, cultural and social life.
12. Decisions regarding children in alternative care, including those in informal care, should have due regard for the importance of ensuring children a stable home and of meeting their basic need for safe and continuous attachment to their caregivers, with permanency generally being a key goal.
13. Children must be treated with dignity and respect at all times and must benefit from effective protection from abuse, neglect and all forms of exploitation, whether on the part of care providers, peers or third parties, in whatever care setting they may find themselves.
14. Removal of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary and for the shortest possible duration. Removal decisions should be regularly reviewed and the child's return to parental care, once the original causes of removal have been resolved or have disappeared, should be in the best interests of the child, in keeping with the assessment foreseen in paragraph 49 below.
15. Financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing his/her reintegration, but should be seen as a signal for the need to provide appropriate support to the family.
16. Attention must be paid to promoting and safeguarding all other rights of special pertinence to the situation of children without parental care, including, but not limited to, access to education, health and other basic services, the right to identity, freedom of religion or belief, language and protection of property and inheritance rights.

UN MINIMUM RULES FOR THE ADMINISTRATION OF JUVENILE JUSTICE: THE 'BEIJING RULES' (1985)

8. Protection of privacy

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

Commentary

Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal".

Rule 8 stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle. (The general contents of rule 8 are further specified in rule 2 1.)

10. Initial contact

10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

10.2 A judge or other competent official or body shall, without delay, consider the issue of release.

10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

Commentary

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

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

Rule 10.3 deals with some fundamental aspects of the procedures and behaviour on the part of the police and other law enforcement officials in cases of juvenile crime. To "avoid harm" admittedly is flexible wording and covers many features of possible interaction (for example the use of harsh language, physical violence or exposure to the environment). Involvement in juvenile justice processes in itself can be "harmful" to juveniles; the term "avoid harm" should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as

any additional or undue harm. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile's attitude towards the State and society. Moreover, the success of any further intervention is largely dependent on such initial contacts. Compassion and kind firmness are important in these situations.

11. Diversion

11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

Commentary

Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practised on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence). In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.

As stated in rule 11.2, diversion may be used at any point of decision-making-by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one authority or several or all authorities, according to the rules and policies of the respective systems and in line with the present Rules. It need not necessarily be limited to petty cases, thus rendering diversion an important instrument.

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

of the appropriateness of dispositions involving young offenders by a "competent authority upon application". (The "competent authority," may be different from that referred to in rule 14.)

Rule 11.4 recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion...

UN GUIDELINES FOR THE PREVENTION OF JUVENILE DELINQUENCY: THE 'RIYADH GUIDELINES' (1990)

C. Community

32. Community-based services and programmes which respond to the special needs, problems, interests and concerns of young persons and which offer appropriate counselling and guidance to young persons and their families should be developed, or strengthened where they exist.

33. Communities should provide, or strengthen where they exist, a wide range of community-based support measures for young persons, including community development centres, recreational facilities and services to respond to the special problems of children who are at social risk. In providing these helping measures, respect for individual rights should be ensured.

34. Special facilities should be set up to provide adequate shelter for young persons who are no longer able to live at home or who do not have homes to live in.

35. A range of services and helping measures should be provided to deal with the difficulties experienced by young persons in the transition to adulthood. Such services should include special programmes for young drug abusers which emphasize care, counselling, assistance and therapy-oriented interventions.

36. Voluntary organizations providing services for young persons should be given financial and other support by Governments and other institutions.

...

D. Mass media

40. The mass media should be encouraged to ensure that young persons have access to information and material from a diversity of national and international sources.

41. The mass media should be encouraged to portray the positive contribution of young persons to society.

42. The mass media should be encouraged to disseminate information on the existence of services, facilities and opportunities for young persons in society.

43. The mass media generally, and the television and film media in particular, should be encouraged to minimize the level of pornography, drugs and violence portrayed and to display violence and exploitation disfavouredly, as well as to avoid demeaning and degrading presentations, especially of children, women and interpersonal relations, and to promote egalitarian principles and roles.

44. The mass media should be aware of its extensive social role and responsibility, as well as its influence, in communications relating to youthful drug and alcohol abuse. It should use its power for drug abuse prevention by relaying consistent messages through a balanced approach. Effective drug awareness campaigns at all levels should be promoted.

UN RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY: THE 'HAVANA RULES' (1990)

E. Education, vocational training and work

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

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

41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

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

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

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

45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or

her own use or to indemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

J. Contacts with the wider community

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

60. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel.

61. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.

62. Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

K. Limitations of physical restraint and the use of force

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

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

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

L. Disciplinary procedures

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile

and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

...

UN GUIDELINES ON JUSTICE IN MATTERS INVOLVING CHILD VICTIMS AND WITNESSES OF CRIMES (2005)

III. Principles

8. ... (a) Dignity. Every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected;

(b) Non-discrimination. Every child has the right to be treated fairly and equally, regardless of his or her or the parent or legal guardian's race, ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status;

(c) Best interests of the child. While the rights of accused and convicted offenders should be safeguarded, every child has the right to have his or her best interests given primary consideration. This includes the right to protection and to a chance for harmonious development...

...

(d) Right to participation. Every child has, subject to national procedural law, the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life, including those taken in any judicial processes, and to have those views taken into consideration according to his or her abilities, age, intellectual maturity and evolving capacity.

V. The right to be treated with dignity and compassion

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

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

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

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

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

BASIC PRINCIPLES ON THE USE OF FORCE AND FIREARMS BY LAW ENFORCEMENT OFFICIALS (1990)

Special provisions

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

GUIDELINES ON THE ROLE OF PROSECUTORS (1990)

Role in criminal proceedings

10. The office of prosecutors shall be strictly separated from judicial functions.

11. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.

12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

BASIC PRINCIPLES ON THE INDEPENDENCE OF THE JUDICIARY (1985)

Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (1950)

Article 3 – Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 8 – Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 10 – Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (2000)

Article 24 - The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

FURTHER REFERENCE

- UNICEF, Implementation Handbook for the Convention on the Rights of the Child
http://www.unicef.org/publications/index_43110.html
- Website of the Committee on the rights of the child,
<http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>
- Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (2010)
Council of Europe child friendly justice website,
http://www.coe.int/t/dghl/standardsetting/childjustice/default_en.asp
- EU Guidelines for the Promotion and Protection of the Rights of the Child (2007)
<http://www.consilium.europa.eu/uedocs/cmsUpload/16031.07.pdf>
- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007),
https://www1.umn.edu/humanrts/instree/COE_child_protection_no-201.html
- UN Committee on the Rights of the Child General Comment No. 10 on children's rights in juvenile justice (2007)
- UN Committee on the Rights of the Child General Comment No 12 on the right of the child to be heard (2009)
- UN Committee on the Rights of the Child General Comment No 13 on the right of the child to freedom from all forms of violence (2011)
- UN Committee on the Rights of the Child General Comment No 14 on the right of the child to have his or her best interests taken as a primary consideration (2013)

All general comments by the CRC Committee are available via this portal:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11