

INTERNATIONAL REVIEW OF CRIMINAL POLICY

Nos. 49 and 50 1998–1999

UNITED NATIONS

HRE/ADM/3R/6

United Nations Office at Vienna

INTERNATIONAL REVIEW OF CRIMINAL POLICY

Nos. 49 and 50

1998–1999

**THE UNITED NATIONS AND JUVENILE JUSTICE:
A GUIDE TO INTERNATIONAL STANDARDS
AND BEST PRACTICE**



UNITED NATIONS
New York, 1999

Note

The present manual is intended for use as a practical human rights training programme for all those concerned with juvenile justice. The manual provides in-depth and authoritative information on the sources and standards in the international law on the rights of the child, together with practical guidance on implementing those standards. Exercises and sample training tools have also been included, together with good practice guidelines.

The views expressed in this publication do not necessarily reflect the official policy of the Secretariat of the United Nations or of the Office for Drug Control and Crime Prevention of the Secretariat.

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

The Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention wishes to acknowledge the contribution to the present manual of Geraldine Van Bueren, Professor of International Human Rights Law and Director of the Programme on International Rights of the Child, University of London, Queen Mary and Westfield College, United Kingdom of Great Britain and Northern Ireland. Professor Van Bueren also wishes to thank the following persons for their assistance in the drafting of this manual: Gert Capelaere of the University of Gent, Belgium; Allison Morris of the University of Victoria, Wellington, New Zealand; Ann Skelton, Lawyers for Human Rights, South Africa; and Julia Sloth Nielsen, Children's Rights Project, Community Law Centre, University of the Western Cape, South Africa.

ST/ESA/SER.M/49-50

UNITED NATIONS PUBLICATION

Sales No. E.99.IV.7

ISBN 92-1-130199-8

ISSN 0074-7688

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. EFFECTIVE TRAINING TECHNIQUES	1-13	1
A. Objectives of training	2	1
B. Effective training	3-4	1
C. Participatory training	5-11	1
D. Trainees and locations for training courses	12-13	2
II. HUMAN RIGHTS STANDARDS IN JUVENILE JUSTICE ..	14-109	3
A. Objectives, status and sources	14-18	3
B. Review of the principal juvenile justice instruments and how they reinforce each other	19-64	3
C. International umbrella principles	65-67	8
D. Practical application of the international umbrella principles	68-108	9
E. Practical training exercises	109	11
III. PREVENTING CHILDREN FROM COMING INTO CONFLICT WITH THE LAW	110-151	12
A. Sources of international human rights law	110-112	12
B. Three levels of prevention	113-117	12
C. Situational crime prevention and time-frame for prevention	118-120	12
D. International principles on preventing child crime	121	13
E. Practical application of the international principles on preventing child crime	122-150	13
F. Practical training exercises	151	15
IV. CHILDREN ACCUSED OF INFRINGING THE CRIMINAL LAW	152-237	16
A. Sources of international human rights law	152-155	16
B. Status of the Beijing Rules in international law	156	16
C. Age of criminal responsibility and exercise of discretion .	157-163	16
D. Diversions	164-190	17
E. Fundamental principles of diversion	191	19
F. Practical application of the fundamental principles of diversion	192-198	19
G. Additional principles relating to children accused of infringing the criminal law	199	19
H. Practical application of the additional principles relating to children accused of infringing the criminal law	200-227	20
I. Restorative justice	228-236	22
J. Practical training exercises	237	23

	<i>Paragraphs</i>	<i>Page</i>
V. CHILDREN DEPRIVED OF THEIR LIBERTY	238-309	24
A. Sources of international human rights law	238-242	24
B. Status of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty	243-244	24
C. Principles concerning the deprivation of liberty of children	245	24
D. Practical application of the principles concerning the deprivation of liberty of children	246-308	25
E. Practical training exercises	309	29
VI. GOOD PRACTICE GUIDELINES		30
A. Good practice guidelines for child justice personnel, policy makers and the mass media		30
B. Good practice guidelines for conferencing		34
C. Good practice guidelines for involving children in court processes ..		34
D. Good practice guidelines for protecting the rights of child victims and child witnesses		35
E. Recommended additional reading relating to good practice		36
VII. MODEL COURSE OUTLINE		37
A. Programme of work		37
B. Presentation of transparencies		38
C. Post-course examination		40
D. Post-course evaluation		42

I. Effective training techniques

1. The principal objective of any training course is to satisfy the needs of the trainee. Those working with juvenile justice need to know what the international rules are and, very importantly, how to do their job within the confines of those international rules. Training efforts that ignore the specified goals will not be effective or credible.

A. Objectives of training

2. The objectives of training are as follows:

(a) To provide practical information and develop knowledge of what children's rights are and what they mean;

(b) To develop and reinforce skills. Acquisition of skills is a process, as skills are developed through both practice and application;

(c) To develop the sensitivity of trainees, inducing either a change in negative attitudes or a reinforcement of positive attitudes and behaviour, so that those concerned with juvenile justice will accept or reaffirm the need to promote and protect the rights of children and act accordingly in the course of their work. Such a process needs to be supported by appropriate command and management structures and practices.

B. Effective training

3. Effective training will seek to improve knowledge, skills and attitudes, in order to contribute to appropriate behaviour.

4. The practical orientation of those concerned with juvenile justice should be reflected in the training methods adopted. To sustain concentration, the training techniques adopted should be varied, participatory and interactive. Questions, even challenges from the trainees, should be welcomed and addressed in a positive and forthright manner. Excessively rigid timekeeping may leave participants feeling frustrated. Every effort must be made to ensure that all material presented and discussed is relevant to the work of the participants. Where this is not self-evident, such relevance must be made clear.

C. Participatory training

5. Participatory techniques involve presentations and discussions, working groups, role-playing and field trips.

1. *Presentations and discussions*

6. The presentations should be supplemented by the use of study materials that should be distributed to the participants in advance. To sustain interest, presentations should be supplemented by visual aids, including blackboards, posters, overhead transparencies, flip charts and videos. Presentations should leave time for discussion. To initiate discussion, it is helpful if the presenter has to respond to one or two prepared questions.

7. The formation of a panel of presenters is particularly valuable when the presenters have different experiences and expertise in different aspects of the topic. Sufficient time should be allocated for a discussion between the panel members and the audience.

2. *Working groups*

8. Working groups ought to be sufficiently small to enable all trainees to participate. Each group is allocated a topic to discuss, a problem to solve, or something concrete to produce within a short time. The process of learning and sensitization occurs as a result of the group discussion on each issue. The course is then reconvened and a spokesperson presents the results of each working group. Sufficient time ought to be left for the participants to discuss responses of the working groups to the assigned topics.

9. Working groups may also be given case studies, which ought to be based on realistic scenarios, for consideration. Case studies require participants to exercise both their child justice skills and their knowledge of the internationally recognized rights of the child. The case study may be presented to the working group either in its entirety or as a developing situation to which the participants have to respond.

3. *Role-playing*

10. A written factual situation is distributed in advance and each participant has a specific role (the child, family members, the police etc.). Role-playing allows participants to practice a skill or to experience situations from a different perspective. The technique of role-playing is particularly valuable for sensitizing participants to the feelings of other groups, particularly children, and to the importance of specific rights of children.

4. *Field trips*

11. Group visits to places where children are deprived of their liberty, such as police cells and remand homes, can provide a valuable perspective. They are particularly helpful at the beginning of any training session.

D. Trainees and locations for training courses

12. Although separate training should be organized for different professions concerned with juvenile justice (lawyers, police, journalists, teachers, social workers etc.)

to enable a focusing on aspects of particular relevance, it is also important to bring together participants from different professions to exchange experiences and learn from each other.

13. The following factors should be borne in mind when arranging a training course:

(a) To avoid interruptions, courses should be held away from the normal place of work of the participants;

(b) There should be sufficient space to accommodate the presentations and a number of working groups.

II. Human rights standards in juvenile justice

A. Objectives, status and sources

14. The objective of training in human rights standards in juvenile justice is to introduce participants to the international human rights laws concerning juvenile justice that are binding on all States. Such training should also include other standards and developments. Together, those laws and standards provide an enlightened child-oriented framework that, when fully implemented, not only benefits children, but also families and the community in which they live.

15. There is a worldwide movement of States now seeking to ensure that their juvenile justice systems are in accordance with international human rights law. Since 1989, with increasing rapidity, States around the world have incorporated international principles into their own national laws and policies, and as a result, States have rewritten their legislation on juvenile justice. These include Australia,¹ Canada,² Costa Rica, New Zealand³ and Uganda.⁴ More and more personnel, including social workers, child rights personnel, detention personnel, judges, lawyers, police, policy makers and probation officers are being trained in how to apply those international principles.

16. The Convention on the Rights of the Child (General Assembly resolution 44/25), to which 191 States have become parties, is the principal binding treaty that sets out all the rights to which Governments have agreed that children are entitled. Three additional sets of rules adopted by the global community provide greater detail on the daily operation of juvenile justice. Those rules are the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (General Assembly resolution 40/33, annex), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113, annex) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (General Assembly resolution 45/112, annex). Those rules, together with the Guidelines for Action on Children in the Criminal Justice System (Economic and Social Council resolution 1997/30, annex) and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex) provide a comprehensive framework of juvenile justice.

17. The provisions of the Convention on the Rights of the Child together with the provisions of the other relevant international instruments reflect the results of experience and of reflection over several decades on the best ways to protect the rights of the child.

18. States in different regions are also bound by regional treaties that include principles of juvenile justice. Those treaties include the Convention for the Protection of Human Rights and Fundamental Freedoms (also known as the European Convention on Human Rights), adopted at Rome on 4 November 1950, the American Convention on Human Rights: "Pact of San José, Costa Rica", adopted at San José on 22 November 1969, and the African Charter on the Rights and Welfare of the Child, adopted at Addis Ababa on 11 July 1990.

B. Review of the principal juvenile justice instruments⁵ and how they reinforce each other

1. *Convention on the Rights of the Child*

19. The Convention on the Rights of the Child entered into force on 2 September 1990. One hundred ninety-one States are bound by its provisions, which means that States parties are committed to adopting all necessary measures to ensure that children enjoy all the rights set forth in the Convention. States are required to harmonize their national laws, procedures and policies with the provisions of the Convention.

20. The Convention protects the civil, political, economic, social and cultural rights of the child in peace and armed conflict. Although the Convention is lengthy, the rights enshrined in it may, for convenience, be divided into four principal approaches (also referred to as the "four Ps"), as follows: the participation of children in decisions affecting their own destiny; the protection of children against discrimination and all forms of neglect and exploitation; the prevention of harm to children; and the provision of assistance for their basic needs. The breakdown of the Convention in this way is useful, since, in addition to making the treaty easy to explain and digest for both children and adults, a duty expressly placed upon Governments by the Convention, the four specified areas involve the four principal complementary approaches to children's rights, namely, participation, protection, prevention and provision. Those four approaches apply equally to juvenile justice. It

¹See, for example, the Young Offenders Act 1993.

²Young Offenders Act 1985, as amended.

³Children, Young Persons and their Families Act 1989.

⁴Child Statute 1996.

⁵Drawn from Geraldine Van Bueren, *The International Law on the Rights of the Child* (The Hague, Kluwer, 1995).

is not a question of prevention or protection or participation or provision: all are equally necessary when applied appropriately.

21. The Convention on the Rights of the Child enshrines the full range of civil, political, economic, social and cultural rights. It stresses a holistic approach to children's rights. All rights are indivisible and related, and this has important implications for juvenile justice, as it implies that all rights must be considered for children in the criminal justice system, from their right to freedom of expression to their right to the highest attainable standard of health.

22. An analysis of the Convention reveals that it achieves five goals. First, it creates new rights for children under international law where no such rights existed, including the right of the child to preserve his or her identity and the right of indigenous children to practice their own culture (articles 8 and 30). Secondly, the Convention enshrines in a global treaty rights that, until the adoption of the Convention, had only been acknowledged or refined in case law under regional human rights treaties, for example, the right of a child to be heard either directly or indirectly in any judicial or administrative proceedings affecting that child, and to have those views taken into account (article 12). Thirdly, the Convention creates in areas of concern binding standards that, until the entry into force of the Convention, were only non-binding recommendations. They include safeguards in adoption procedures and recognition of the rights of mentally and physically disabled children (articles 21 and 23).

23. Fourthly, the Convention enshrines umbrella principles that apply to all children in relation to the exercise of all their rights. Areas covered by the principles include the best interests of the child, the evolving capacities of the child, the right of children to participate in decisions and non-discrimination. Those areas are explained under umbrella principles (see section C below). Fifthly, the Convention also contains specific articles on juvenile justice, including articles 37, 39 and 40.

24. Article 37 of the Convention specifies that children are not to be subject to torture or other cruel, inhuman or degrading treatment and punishment. The death penalty and life imprisonment for children without the possibility of release is prohibited.

25. Children should not be unlawfully or arbitrarily deprived of their liberty. If in custody, children are to be separated from adults, unless it is considered in the child's best interest not to do so. All children deprived of their liberty are to be treated with humanity and respect and in a manner that takes into account their needs. Such humanity includes the right to prompt legal and other assistance, such as medical and psychological services.

26. Article 37 also provides that deprivation of liberty for children can only be used as a measure of last resort and for the shortest appropriate time.

27. Article 39 focuses the attention of States on children as victims of crime, an aspect of criminal justice that is often overlooked. Article 39 requires all States parties to take appropriate measures to promote physical and psychological recovery and social reintegration for child victims of abuse, neglect, torture or any other form of cruel, inhuman or degrading treatment or punishment. Such recovery and reintegration ought to occur in an environment which fosters the health, self-respect and dignity of the child.

28. Article 40 provides that children in conflict with the law should be treated in a manner which promotes the child's sense of dignity and worth, takes age into account, and aims at the child's assuming a constructive role in society. The article also enshrines the minimum guarantees of due process of law including the presumption of innocence, provision of clear and prompt information about the nature of the charges, availability of legal or other assistance, proceedings conducted without delay, the right to silence, the right to cross-examine witnesses, equality for the witnesses of the defence, the right of appeal and the right of the child to have his or her privacy respected at all stages of the proceedings.

29. Article 40 also promotes the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of or recognized as having infringed the penal law. States are also to establish a minimum age below which children should not be presumed criminally responsible. Article 40 further highlights the desirability of diverting children away from formal justice procedures and from institutionalization.

30. A Committee on the Rights of the Child, responsible for overseeing the implementation of the Convention, has been established under the terms thereof. States parties undertake to submit to the Committee periodic reports providing information on how they have given effect to all the rights set forth in the Convention, including the provisions relating to juvenile justice. Each of the States parties are under a legal obligation to bring their laws, policies and institutions into line with the Convention.

31. The reports of States parties provide information both on progress made and on the factors and difficulties that have affected the degree of fulfilment of their obligations. The evaluation of a State party by the Committee, on the basis of the report of the State party concerned and of contributions from non-governmental organizations, and after an open dialogue with the delegation from the State party concerned, is reflected in a Committee document entitled "Concluding observations". That document identifies both the positive achievements and the obstacles experienced by the State party, and includes suggestions and recommendations by the Committee to be given priority consideration in future action. Both the report of the State party and the concluding observations of the Committee are published and freely available.

32. The Convention also facilitates international cooperation with, and technical assistance to, States in giving effect

to the rights enshrined in the Convention, including those relating to juvenile justice. That leads to a coordination of efforts between relevant United Nations bodies, specialized agencies and other organizations, and contributes to the strengthening of the rule of law, protection of children's rights, law reform and capacity-building.

33. In considering reports on juvenile justice, it has been the practice of the Committee to consider the Convention together with the international instruments, referred to in paragraph 16 above, establishing rules and guidelines relating to juvenile justice. The Convention is therefore extremely important in the field of juvenile justice.

2. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)⁶

34. The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4, called for the development of standard minimum rules for the administration of juvenile justice.⁷ By its resolution 40/33 of 29 November 1985, the General Assembly adopted the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as the Beijing Rules. The Beijing Rules provide, as intended, a framework within which a national juvenile justice system should operate and a model for States of a fair and humane response to children who may find themselves in conflict with the law.

35. The Beijing Rules, which are divided into six parts, cover the whole range of the child justice processes, including: general principles; investigation and prosecution; adjudication and disposition; non-institutional treatment; institutional treatment and research and planning; policy formulation; and evaluation.

36. The Beijing Rules are gender-sensitive and advocate the fair treatment of girls, as research demonstrates that girls are more harshly treated and are more vulnerable to sexual assault in custody by predominately male personnel. The Beijing Rules require gender-specific facilities and services.⁸

37. The Beijing Rules also call for trained and professional personnel, inter-agency coordination and the use of research as a basis for programme development, evaluation policy and decision-making.

38. It is an oversimplification to conclude that because the Beijing Rules are not a treaty they are as an entire body

of rules non-binding per se. Some of the rules have become binding on States parties by being incorporated into the Convention on the Rights of the Child; others can be treated not as establishing new rights but as providing more detail on the contents of existing rights.

39. The General Assembly also seeks to make the Beijing Rules more enforceable by providing mechanisms to advise States on methods of implementation. There is, for example, some scope for monitoring the implementation of the Beijing Rules. States are invited to inform the Secretary-General every five years on the application of the Rules. Under the rules, a State may request the assistance of the Secretary-General in adapting legislation and policies and in the development of alternatives to institutionalization. Such a service was made available because the rules recognize that existing legislation and policies may require review and amendment in light of the standards enshrined in the rules. States are also requested to provide the necessary resources to ensure the successful implementation of the rules, and non-governmental organizations are urged to collaborate to implement the principles.

3. United Nations Rules for the Protection of Juveniles Deprived of their Liberty⁹

40. The Standard Minimum Rules for the Treatment of Prisoners,¹⁰ held at Geneva in 1955, provide "what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions", as indicated in preliminary observation 1 of the rules. It is acknowledged, in preliminary observation 5(1), that the rules do not seek to regulate the management of institutions set aside for young persons, although "in general part I would be equally applicable to such institutions".¹¹

41. It became widely recognized after 1955 that there was a need for international rules regulating the deprivation of liberty, since the Standard Minimum Rules for the Treatment of Prisoners were insufficiently child-oriented. The Standard Minimum Rules for the Treatment of Prisoners are based on assumptions which are now considered inappropriate for children. The rules assume that adult institutions are capable of housing a large number of prisoners, while contemporary child justice theory and practice stresses the opposite: the need for small units integrated into the community and simulating family-like living arrangements. The Standard Minimum Rules for the Treatment of Prisoners also contain little guidance as to how the objectives of treatment are to be provided.

42. The adoption of the Beijing Rules, although aimed at the protection of the rights of children in the administration of justice, were never intended to provide a thorough,

⁶See Van Bueren, *The International Law ...*, pp. 169-205.

⁷See *Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August-5 September 1980: report prepared by the Secretariat* (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

⁸See "The situation of women as victims of crime: report of the Secretary-General" (A/CONF.121/16) and "The fair treatment of women by the criminal justice system: report of the Secretary-General" (A/CONF.121/17 and Corr.1 and Add.1).

⁹See Van Bueren, *The International Law ...*, pp. 206-231.

¹⁰See *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.94.XIV.1 (vol. I, Part I)), sect. H.

¹¹See also principle 2 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173).

systematic and practical approach to the conditions under which children could be deprived of liberty. Because of the paucity of detailed international law protecting the rights of children deprived of their liberty, the British Section of Amnesty International in 1981 produced draft standard minimum rules for the protection of juveniles deprived of their liberty, and enlisted the support of other non-governmental organizations. Taking as a model their work in the drafting of the Convention on the Rights of the Child, the non-governmental organizations persuaded States to adopt a resolution recommending that the Committee on Crime Prevention and Control develop standard minimum rules for the treatment of juveniles deprived of their liberty, with the intention of having States adopt them at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Havana in 1990. Subsequently, the United Nations Rules for the Protection of Children Deprived of their Liberty were adopted by the General Assembly, without a vote, by its resolution 45/113 of 14 December 1990. Unusually, in that resolution, the Assembly noted with appreciation the work of three non-governmental organizations: Amnesty International, Defence for Children International and Rädde Barnen (Swedish Save the Children Federation).

43. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty apply to all children deprived of their liberty in any situation, including child welfare institutions. They set out principles that universally define the specific circumstances under which children can be deprived of their liberty, emphasizing that deprivation of liberty is a means of last resort. The rules specify the conditions under which a child may be detained and which are consistent with respect for the human rights of children.

44. Although the words "minimum standards" do not appear in the title, rule 3 provides that the rules are intended to establish minimum standards.

45. The rules go beyond implicitly recognizing the negative effects of deprivation of liberty. They recommend that States should counteract the detrimental effects on children (rule 3), and should recognize that the care of children deprived of their liberty is a "social service of great importance", requiring the fostering of contacts between the child and the community (rule 8).

46. Importantly, the rules apply to anyone under the age of 18 (rule 11(a)). They therefore have the advantage of applying to all those under 18 deprived of their liberty, without any reference to national definitions of childhood, and without being dependent upon the jurisdiction of special proceedings.

47. Their adoption provided the Secretary-General of the United Nations with a legislative framework within which he was able to appoint a Special Rapporteur on the Application of International Standards Concerning the Human Rights of Detained Juveniles. The appointment raises the visibility of children deprived of their liberty within the United Nations as a whole, and operates as a catalyst by

which Member States are invited to focus on the current status of children within their care.

4. *United Nations Guidelines for the Prevention of Juvenile Delinquency* (also known as the *Riyadh Guidelines*)

48. The General Assembly, in its resolution 40/35 of 29 November 1985, noted the need to develop national, regional and international strategies for the prevention of delinquency among the young. It acknowledged that one of the basic aims of the prevention of juvenile delinquency was to provide assistance and a range of opportunities to meet, in particular, the varying needs of those who are most likely to commit a crime or be exposed to crime. The Assembly also highlighted the need for States to adopt measures aimed at protecting those who are deemed to be at social risk, children who are abandoned, neglected, abused or who live in marginal circumstances.

49. By its resolution 45/112 of 14 December 1990, the General Assembly adopted the United Nations Guidelines for the Prevention of Juvenile Delinquency, also known as the Riyadh Guidelines. In guideline 8, States are recommended to implement the guidelines in the context of their particular economic, social and cultural conditions.

50. In contrast to the Beijing Rules, which focus on the protection of children who come into conflict with the law, the Riyadh Guidelines are concerned with prevention. The guidelines focus on early protection and preventive intervention paying particular attention to children in situations of social risk. The term social risk denotes children "who are demonstrably endangered and in need of non-punitive measures because of the effects of their circumstances and situation on health, safety, education ... as determined by a competent authority", and it is that concept which underpins the guidelines. Social risk can be produced by factors related to possible inherent characteristics of children, such as mental disabilities; by the relationship between the child and the family; and by the socio-economic circumstances in which the child lives. In many cases children at social risk are affected by the interplay of all those factors; the more adverse the factors, the greater the chance that the child will drift towards delinquent activities.

51. The guidelines recommend that States pay particular attention to the children of families who are affected by rapid or uneven economic and social change. Such change can disrupt the child-rearing and nurturing capacity of families, and States are recommended to design innovative and socially constructive modes for the integration of such children. In particular, the guidelines recommend that prevention programmes should give priority to children who are at risk through being abandoned, neglected, exploited and abused.

52. The advantage of an approach based on social risk is that it places emphasis on social and personal factors and changes the focus of intervention, previously concerned

with defining morality, to directly confronting the issues while allowing society to tolerate a degree of youthful deviance. An approach based on social risk also regards the consequences of economic restructuring programmes. The impact of the debt crisis on social policies and community life cannot be underestimated.¹² Its effect on daily life distorts priorities and inhibits development in the area of crime prevention. In the regions of Africa, Asia and the Pacific, child crime and delinquency are primarily urban phenomena. Within Africa, they are often attributed to hunger, poverty, malnutrition and unemployment, which are linked to the marginalization of children in already severely disadvantaged segments of society. According to a study conducted by the Latin American Institute for the Prevention of Crime and the Treatment of Offenders, in 18 States of the region, 89 per cent of the cases in the child justice system were characterized by very low family income. All of this, as Viccica observes, has been set against "a general tendency to inflate and overreact to the delinquency 'problem' in order to extend and maintain this net of control".

53. The Riyadh Guidelines encourage the development of policies applying to the population as a whole by recommending the development of social welfare programmes, particularly in education, labour and health, and encouraging the adoption of specific juvenile justice legislation. They importantly advocate a multidisciplinary and inter-sectoral approach to the prevention of child crime.

54. The Riyadh Guidelines recommend to States that children should have an active role and partnership within society (guideline 3). They recommend that children should be accepted by States as full and equal partners in the integration process, and entitled to participate in crime prevention policies (guideline 9(h)). The participation of children in the formulation and implementation of prevention policies will assist both in making the policies relevant and in reducing the risk of indoctrination. Provided the participation of children is effective, it also ought to make such policies more attractive.

55. The guidelines recognize that if a State labels a child as a delinquent or deviant, the labelling can unwittingly contribute to a child's anti-social behaviour (guideline 5(f)). Youthful behaviour does not always conform to social norms and can often disappear with the transition into adulthood. The guidelines aim at preventing the stigmatization and marginalization of children whose behaviour does not conform to prevailing social norms, not only through the avoidance of labelling, but by recommending a wide range of measures, including recommendations to the media and the abolition of status offences. However, the guidelines also recognize the risk that the identification of a child as being at social risk may become a self-fulfilling form of stigmatization.

56. The underlying principle of the Riyadh Guidelines is that the prevention of child crime should utilize both the child's family and the school. States are recommended to develop community-based interventions and programmes to assist in the prevention of child crime. The intervention of institutions or agencies should only be utilized as a means of last resort. The principal aim of the guidelines is to help socialize and integrate children through the family and through the active involvement and support of the community.

5. *Guidelines for Action on Children in the Criminal Justice System*

57. The Guidelines for Action on Children in the Criminal Justice System were drafted by an expert group meeting held in Vienna in 1997 in order to assist States in the implementation of the provisions of the Convention on the Rights of the Child, the Beijing Rules, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Riyadh Guidelines.

58. Although the Guidelines for Action make clear that responsibility for action lies with the States parties to the Convention on the Rights of the Child (guideline 6), the guidelines also emphasize that to ensure effective use of the Guidelines for Action, improved cooperation between Governments, United Nations bodies and members of civil society is essential.

59. The Guidelines for Action are divided into the following areas: measures of general application; specific targets; measures to be taken at the international level; mechanisms for the implementation of technical advice and assistance projects; further considerations for the implementation of country projects; and plans concerned with child victims and witnesses. The Guidelines for Action also emphasize the following: the importance of a rights-based orientation; a holistic approach to implementation; the integration of services on an interdisciplinary basis; equitable application and accessibility to those in greatest need; accountability and transparency of all actions; proactive responses based on effective preventive and reintegrative measures; and the utilization of adequate resources (human, organizational, technological, financial) and information.

60. The Guidelines for Action stress the importance of the principle of non-discrimination, including gender sensitivity, upholding the best interests of the child, the right to life, survival and development and the duty of States to respect the views of the child. The guidelines also stress the need for partnerships between Governments, United Nations bodies, non-governmental organizations, professional groups, the media, academic institutions, children and other members of civil society.

6. *How the international instruments reinforce each other*

61. The links between the United Nations standards and norms in juvenile justice are emphasized in the texts of the instruments themselves. For example, the Riyadh Guide-

¹²A. D. Viccica, "The promotion and protection of children's rights through the development and recognition of an international notion of juvenile justice and its child-centred perspective in the United Nations", *Nordic Journal of International Law*, vol. 58, No. 1 (1989), p. 73.

lines refer to the Convention on the Rights of the Child, while the Beijing Rules, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Guidelines for Action on Children in the Criminal Justice System refer to all four instruments.

62. All of the instruments dovetail neatly into each other. In broad practical terms, criminal justice personnel should look: first, to the Convention on the Rights of the Child and then to the Riyadh Guidelines in seeking to prevent children from coming into conflict with the law; secondly, to the Convention and the Beijing Rules when dealing with children alleged as or accused of having come into conflict with the law; thirdly, to the Convention and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty for dealing with children found to be in breach of the criminal law.

63. With regard to child victims of crime and child witnesses, criminal justice personnel should look to the Convention on the Rights of the Child, the Guidelines for Action on Children in the Criminal Justice System and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

64. When considered all together, the instruments allow the most conducive norms to prevail and indicate that there should not be a duality between human rights and juvenile justice.

C. International umbrella principles

65. There are a number of fundamental principles that apply to each and every stage of the juvenile justice system. Called the international umbrella principles, they are drawn from the relevant international instruments. They ought to be taken into account by all individuals on a daily basis whenever a decision concerning juvenile justice is made.

66. The international umbrella principles are as follows:

(a) Juvenile justice legislation should apply to all those under the age of 18;¹³

(b) Juvenile justice is a part of the national development process of a State and as such should receive sufficient resources to enable juvenile justice to be organized in accordance with international principles;¹⁴

(c) The principle of non-discrimination and equality is applicable to juvenile justice, and this includes a prohibi-

tion on discrimination on account of the child and the child's family (article 2 of the Convention on the Rights of the Child);

(d) The guiding principle for any policy or action concerning juvenile justice is that the best interests of the child is a paramount consideration (article 3, para. 1, of the Convention);

(e) Delay in deciding matters relating to a child is prejudicial to the best interests of the child (article 37(d) and article 40, paras. 2(b)(ii) and 2(b)(iii), of the Convention);

(f) Every child shall be treated with humanity and with respect for the inherent dignity of the human person, taking into account the age of the child (article 37(c) of the Convention);

(g) At all stages, children should be treated in a manner that facilitates their reintegration into society and their assuming a constructive role in society (article 40, para. 1, of the Convention);

(h) Children are entitled to express their views freely in relation to criminal justice, and the views of the child should be given due weight in accordance with both the age and the maturity of the child (articles 12 and 13 of the Convention);

(i) Children have the right to seek, receive and impart information concerning the juvenile justice system in a form that is both accessible and appropriate to children (article 13 of the Convention and guideline 11(b) of the Guidelines for Action on Children in the Criminal Justice System);

(j) Juvenile justice should be organized in a manner consistent with children's rights to privacy, family, home and correspondence (article 16 of the Convention);

(k) If children are deprived of their family environment they are entitled to special protection and assistance (article 20, para. 1, of the Convention);

(l) No child shall be subject to torture or to other cruel, inhuman, degrading or harsh treatment or punishment (article 37 of the Convention and rule 87(a) of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty);

(m) At any stage of the juvenile justice process, children should not be unlawfully or arbitrarily deprived of their liberty (article 37(b) of the Convention);

(n) The arrest, imprisonment or detention of children should only be used as a measure of last resort and for the shortest appropriate period of time (article 37(b) of the Convention);

(o) Parents are to be notified of any arrest, detention, transfer, sickness, injury or death of their child (article 9, para. 4, of the Convention and rule 56 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty);

67. Other equally fundamental principles will be discussed in relation to the relevant stage of the juvenile justice process to which they are applicable.

¹³There is an evolving convergence setting 18 as the end of childhood: rule 11 (a) of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; article 6, para. 5, of the International Covenant on Civil and Political Rights; and article 37 (a) on the Convention on the Rights of the Child prohibiting the death penalty and life imprisonment without the possibility of release for crimes committed below the age of 18. Article 2 of the African Charter on the Rights and Welfare of the Child defines a child as any "human being below the age of 18 years".

¹⁴Rule 1.4 of the Beijing Rules states that "juvenile justice shall be conceived as an integral part of the national development process of each country".

D. Practical application of the international umbrella principles

68. The practical implications of the international umbrella principles are outlined below.

69. *Principle (a)*. Juvenile justice legislation should apply to all those under the age of 18.

70. There is an emerging and evolving standard that seeks to provide special protection and assistance and to apply the same juvenile justice principles to all children under the age of 18. The consequence of such a standard is that diversions, special child courts and other specific child-centred procedures would be made available to all children under the age of 18.

71. *Principle (b)*. Juvenile justice is a part of the national development process of a State and as such should receive sufficient resources to enable juvenile justice to be organized in accordance with international principles.

72. It is no longer permissible under international law to place juvenile justice at the bottom of the pile of resource allocation. States are under an immediate legal duty to ensure that the civil rights of children in criminal justice proceedings are fully protected, and that can only be done if sufficient resources are allocated, for example, to provide legal assistance for children.

73. Where children are deprived of their liberty, and therefore of their family, the State is under an additional duty to offer special protection and assistance, and that means allocating sufficient resources to ensure that the conditions of detention meet with international standards.

74. A well-resourced juvenile justice system operated in accordance with international law should not be regarded as a drain on national resources. A well-resourced criminal justice system for cases involving children is in the interest of the society at large, since it reduces the risk of reoffending.

75. *Principle (c)*. The principle of non-discrimination and equality is applicable to juvenile justice, and that includes a prohibition on discrimination on account of the child or the family of the child.

76. In international law, the definition of child is directly or indirectly related to age. The term juvenile does not necessarily correspond to the concept of child. Because of developments in international law, the time has come to question the rationale behind describing a young person in conflict with the law as a juvenile offender, while a person under 18 in need of State protection is described in terms of child welfare. The only acceptable justification for retaining the distinction between juveniles and children is that juvenility sometimes includes those over the age of 18, and some States wish to extend additional levels of protection to this age group. However, this can be done without retaining two separate terminologies for those under 18. It

is as if an inappropriate judgemental layer is added. When adults breach the law, they are simply adult offenders, and when those under 18 offend they should be referred to as child offenders without the need for an additional vocabulary. The distinction is an outmoded one resulting from differences in approaches between the civil and the criminal legal systems.

77. International law now merges what were once the punishment and rehabilitation functions of juvenile justice with the service provision and protection of child welfare. The unified approach based on child rights is the evolving normative standard to be applied to those under 18 and is consistent with the principle of non-discrimination.

78. One of the practical implications of the principle of non-discrimination for juvenile justice policy makers is that the term "juvenile" ought to be removed from legislation and replaced by the term "child". No statute should refer to "juvenile offenders", but instead ought to employ the neutral and non-stigmatizing terminology of juvenile justice and children in the criminal justice system.

79. The principle of equality also requires States to make special child facilities available to girls. In some States, because of a lack of facilities, girls are placed either with adults or in adult places of detention. Gender equality also extends to the age of criminal responsibility. When States, in accordance with international law, set an age of criminal responsibility, it must be the same age for boys as for girls.

80. The principle of equality also requires States to provide a level of juvenile justice services and personnel in rural areas equal to that which exists in urban areas.

81. *Principle (d)*. The guiding principle for any policy or action concerning juvenile justice is that the best interests of the child is a paramount consideration.

82. International human rights law assumes that it is in the best interests of the child if all of the rights set out in the Convention on the Rights of the Child and in the other relevant international instruments are implemented. In assessing the best interests of the child, there are a number of factors to be considered. They vary according to the specific factual situation, but at all times it is necessary to consider the opinions of the child and the child's family, the child's sense of time, the child's need for continuity and the human rights of the child.¹⁵ Specifically, the Committee on the Rights of the Child has called for the adoption of a child-oriented system for child criminal justice that "stresses the need for all actions concerning children to be guided by the best interests of the child as a primary consideration".¹⁶

¹⁵See Van Bueren, *The International Law ...*, pp. 45-51.

¹⁶See the general discussion on the administration of juvenile justice in "Committee on the Rights of the Child: report on the ninth session" (CRC/C/43), annex VIII, p. 64.

83. The Committee has also commented that insufficient attention has been paid to the best interests of the child in relation to detention and institutionalization.¹⁷

84. *Principle (e)*. Delay in deciding matters relating to a child is prejudicial to the best interests of the child.

85. The well-being of a child is consistent with issues being decided at a pace over and above that which is generally applicable to adults. Sufficient resources should be made available to ensure that children from the outset do not suffer "any unnecessary delay" (see rule 20 of the Beijing Rules) and should be brought "as speedily as possible for adjudication" (article 10, para. 2(b), of the International Covenant on Civil and Political Rights).

86. *Principle (f)*. Every child shall be treated with humanity and with respect for the inherent dignity of the human person, taking into account the age of the child.

87. Any action, practice or policy that violates this principle breaches international law. It is a broad principle that applies to all aspects of the juvenile justice system, and includes the imposition of any disciplinary measures, any measures that separate children from their families and the setting of the age of criminal responsibility.

88. *Principle (g)*. At all stages, children should be treated in a manner that facilitates their reintegration into society and their assuming a constructive role in society.

89. The concept of reintegration rejects the old assumption that the difficulties faced by children are necessarily individual. Reintegration concerns the social environment and the social relationships of the child.¹⁸ The assumption by children of a constructive role in society and their reintegration imply that children should not be isolated for treatment or stigmatized.

90. International law emphasizes that it is important for children to maintain frequent child and community contacts to reduce the risks of alienation and reoffending. Children should be assisted within the community to develop a sense of responsibility, which can only be accomplished if children are shown how to develop a sense of belonging.

91. *Principle (h)*. Children are entitled to express their views freely in relation to criminal justice, and the views of the child should be given due weight in accordance with both the age and the maturity of the child.

92. The right of children to freedom of expression is often overlooked in the juvenile justice process, but children do not lose their right to freedom of expression because they are alleged as, accused of or recognized as having infringed the criminal law.

93. The child's right to freedom of expression is applicable throughout the entire child justice system. It includes active participation by children in any prevention and reoffending programmes and the possibility for children to communicate freely with any inspection, complaints or monitoring body. In that way, society benefits not only from a child-centred criminal justice system, but also from one which is more accountable and effective.

94. *Principle (i)*. Children have the right to seek, receive and impart information concerning the juvenile justice system in a form that is both accessible and appropriate to children.

95. Information should be available in a form that the child is able to understand, and therefore the child's age and linguistic abilities have to be taken into account. In addition, appropriate information has to be given in cases where children have disabilities or are illiterate. This extends from the provision of information in police stations to the availability of information to children in prison.

96. *Principle (j)*. Juvenile justice should be organized in a manner consistent with children's rights to privacy, family, home and correspondence.

97. An essential element of the child's right to privacy is the non-stigmatization or non-labelling of the child. Society also benefits from this right of the child, as the avoidance of stigmatization reduces the risk of reoffending.

98. The right to family life also reduces the risk of reoffending, as close contact with and involvement of the family from the beginning gives children the necessary support and reduces the risk of feelings of isolation and alienation.

99. *Principle (k)*. If children are deprived of their family environment, they are entitled to special protection and assistance.

100. International studies have shown that children who are separated from their families are more vulnerable to abuse and neglect. It is essential to ensure sufficient resources, personnel and accountability to prevent such ill-treatment.

101. *Principle (l)*. No child shall be subject to torture or to other cruel, inhuman, degrading or harsh treatment or punishment.

102. Regardless of the reasons, torture and other cruel, inhuman or degrading treatment and punishment are absolutely prohibited. This includes whipping, beating and using force or threats to obtain information. Specific conditions may also amount to prohibited treatment, such as a lack of daylight, overcrowding, lack of food and water and the withholding of appropriate clothing.

103. *Principle (m)*. At any stage of the juvenile justice process, children should not be unlawfully or arbitrarily deprived of their liberty.

¹⁷"Committee on the Rights of the Child: consideration of reports submitted by States parties under article 44 of the Convention" (CRC/C/15/Add.66), para. 12.

¹⁸Geraldine Van Bueren, "Child-oriented justice: an international challenge for Europe", *International Journal of Law and the Family*, vol. 6 (1992), p. 387.

104. Deprivation of liberty is an intentionally broad concept and may include diversionary procedures. No matter how short the period, children cannot be deprived of their liberty unless it is in accordance with the law.

105. *Principle (n)*. The arrest, imprisonment or detention of children should only be used as a measure of last resort and for the shortest appropriate period of time.

106. One of the implications of this principle is that alternatives to arrest, such as a summons, may have to be found. The use of bail also has to be carefully considered. Children or their families are often unable to meet bail, and are deprived of their liberty as a consequence of their poverty, not because of any relevant factor in criminal justice.

107. *Principle (o)*. Parents are to be notified of any arrest, detention, transfer, sickness, injury or death of their child.

108. There is a strict duty on a State to ensure that notification of arrest, detention, transfer, sickness, injury or death occurs promptly. Such prompt notification is an essential element of an accountable system required by international law.

E. Practical training exercises

109. Suitable topics of discussion are as follows:

(a) How may labelling a child as a juvenile contribute to anti-social activity?

(b) How can resources in the area in which you work be better used to protect the rights of children in the criminal justice system?

(c) How can the dignity and humanity of children be better respected in the area in which you work?

(d) To what extent is the child's age taken into account in the area of criminal justice in which you work?

(e) Suggest ways in which a criminal justice system could better reintegrate children into society;

(f) Recommend measures and actions that could help reduce delays for children in the justice system;

(g) Are there any conditions or practices in your country that may risk giving rise to prohibited forms of treatment and punishment?

(h) What action would you recommend to avoid such treatments and punishments?

III. Preventing children from coming into conflict with the law

A. Sources of international human rights law

110. The principal international instruments providing detailed practical policies on preventing children from coming into conflict with the law are found in the Convention on the Rights of the Child and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines). Under guideline 8 of the latter instrument, States are recommended to implement the guidelines in the context of their particular economic, social and cultural conditions.

111. The Riyadh Guidelines focus on early protection and preventive intervention. They also pay particular attention to children in situations of social risk. The term "social risk" denotes children who are demonstrably endangered and in need of non-punitive measures because of the effects of their circumstances, including their health and education. Social risk may be produced by factors related to possible inherent characteristics of children, such as mental disabilities; by the relationship between the child and the family; and by the socio-economic conditions in which the child lives.

112. The guidelines emphasize that "young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control" (guideline 3 of the Riyadh Guidelines). The guidelines also stress that prevention is far more than simply countering negative situations; it is also necessary to promote the child's rights and well-being.

B. Three levels of prevention

113. The three levels at which intervention can be addressed are primary, secondary and tertiary.

1. Primary prevention

114. Primary prevention concerns the design and implementation of policies and practices aimed at the whole population. These entail the coordinated response of a number of relevant government agencies. The full implementation of the Convention on the Rights of the Child is one method of primary prevention.

2. Secondary prevention

115. Secondary prevention seeks to identify children at risk so that programmes may be provided that reduce the

risk of offending. The underlying premise of secondary prevention is that specific services targeted at specific children will have a preventive effect.

116. There are six stages in secondary prevention, as follows:

(a) *Identifying the problem.* Regular contact between youth workers, teachers, social workers and the police, in conjunction with parents, will identify new crime patterns, frequently before the courts do so and before they are reflected in official crime statistics, such as an increased use of certain narcotic drugs or the prevalence of particular forms of vandalism;

(b) *Locating the problem.* Much child crime is highly localized. It is therefore possible to circumscribe a specific problem in a particular locality, area or facility;

(c) *Identifying the children.* From an information base collected in accordance with human rights and data protection principles, a group of children at risk may be identified. Much childhood crime may be attributed to a relatively small proportion of children, and it is important that prevention programmes should focus on those children;

(d) *Setting the time-frame for action.* A well-designed strategy that involves youth workers, religious leaders, social workers and the police needs to be properly coordinated (guideline 9(b) of the Riyadh Guidelines). Clear time-frames for coordination and implementation of the strategy should be established at an early stage;

(e) *Monitoring.* A monitoring procedure needs to be established at an early stage to ensure that the programme is being implemented appropriately;

(f) *Follow-up.* Follow-up is necessary to ensure that the particular forms of behaviour either do not reoccur or do not continue in a modified form.

3. Tertiary prevention

117. Tertiary prevention is a term used to describe targeted measures for individual children to reduce recidivism. The approach of the Riyadh Guidelines is based on minimum intervention.

C. Situational crime prevention and time-frame for prevention

118. Situational crime prevention strategies remove the means to commit crime and diminish the rewards for crime. Situational crime prevention involves management of the

environment. Examples of such strategies include the improvement of the appearance of buildings and the neighbourhood, the immediate repair of any damage and restrictions on the use of and access to alcohol. However, different offences and different parts of the same offence may require different responses.

119. Situational crime prevention seeks to tailor preventive measures to meet specific local needs and concerns, without increasing the fear of crime among the local community and without demonizing the children. Local crime prevention councils could be established, made up of children, educational and social services, voluntary groups, community representatives, police and the judiciary. It is important that children themselves be involved in such groups. It is frequently forgotten that children may also be the victims of child crime. The councils are valuable, as they provide a means of communication and make possible a sharing of resources and skills.

120. Attention should be focused on improving social skills and social competence in general, as much as on anti-social activity. Short-term prevention programmes cannot tackle poverty, illiteracy, lack of shelter and malnutrition. However, this is not an excuse for doing nothing. Prevention programmes must be part of a wide range of systems providing services and rights.

D. International principles on preventing child crime

121. The international principles on preventing child crime are as follows:

(a) Intervention is a form of social control. If intervention at any level is needed, it should be the minimum necessary to protect the child;¹⁹

(b) Intervention should involve the voluntary maximum participation of children at all levels;²⁰

(c) Children should be liable only for the same offences as adults (guideline 56 of the Riyadh Guidelines);

(d) Children have the right to respect for family life (article 16 of the Convention on the Rights of the Child);

(e) States are under a duty to support the family (article 19 of the Convention);

(f) Education should be relevant and consistent with the child's dignity and with the ability and potential of the individual child (article 28, para. 2, of the Convention and guideline 31 of the Riyadh Guidelines);

(g) States in seeking to implement the child's right to freedom of expression should encourage the development of guidelines for the protection of children from material injurious to their well-being (article 17(e) of the Convention);

(h) The State is under a duty to provide special protection and assistance for children who live or work on the streets (guidelines 34 and 38 of the Riyadh Guidelines).

E. Practical application of the international principles on preventing child crime

122. The practical implications of the international principles on preventing child crime are outlined below.

123. *Principle (a)*. Intervention is a form of social control. If intervention at any level is needed, it should be the minimum necessary to protect the child.

124. The reasons for intervention in the form of institutionalization to prevent child crime are strictly limited. In general terms, intervention is only permitted if the child is in physical or psychological danger. Minimum intervention may mean continued but supervised access by the parents or, in extreme cases of immediate danger to the child, a minimum length of removal from the parent.

125. Research conducted in many States clearly establishes that children are best cared for by their own family in their own homes. This is because children removed from home and placed in institutional care are more likely to exhibit criminal conduct and be further disadvantaged in health, education and later employment. The efforts of government agencies and voluntary bodies should therefore be directed to assisting, advising and supporting families in discharging their responsibilities.

126. *Principle (b)*. Intervention should involve the voluntary maximum participation of children at all levels.

127. Under the Convention on the Rights of the Child, children have the right to participate in decisions affecting their own destiny. The weight placed on their contributions will vary according to the age and maturity of the child. This implies that children have the right to participate in crime prevention policies and processes, including recourse to community resources, child self-help and victim compensation and assistance programmes. Such participation in plans and programmes should be voluntary.

128. Preventive strategies should focus on giving children the strength to avoid negative peer group interaction, and should motivate them to take an interest in and develop responsibility for their neighbourhoods and communities. When the locale is strengthened, so is the ability of the family to prevent children from coming into conflict with the law. Positive alternatives need to be offered to avoid criminal gangs. It is in the interest of society if children's

¹⁹The restrictions on intervention are drawn from the strict limits placed on institutionalization in guideline 46 of the Riyadh Guidelines, rule 19.1 of the Beijing Rules and article 37(b) of the Convention on the Rights of the Child; from the abolition of status offences under rule 56 of the Riyadh Guidelines; and from the principle of proportionality found in rule 5.1 of the Beijing Rules.

²⁰Articles 12 and 13 of the Convention on the Rights of the Child enshrine the general principle of the child's right to participate in decisions and guideline 9(h) of the Riyadh Guidelines applies this specifically to the child criminal justice system. See also guideline 50.

organizations, run by both children and adults, are supported, and this includes financial support (see guideline 36 of the Riyadh Guidelines).

129. *Principle (c)*. Children should be liable only for the same offences as adults.

130. Offences that by definition can only be committed by a particular section of the community are called "status offences". Under the old approach,²¹ justice systems had jurisdiction over children for non-criminal behaviour such as truancy, running away from home and insubordination. The nature of status offences requires measures other than criminal actions. Running away, for example, may require crisis and family intervention, and may be caused by the behaviour of the parents rather than the child. Truancy may be a reaction to an inadequate school.

131. Status offences suffer from the additional disadvantage that children not only lose the freedom to engage in certain acts, but are stigmatized by labelling, which may, as a result of the action taken, lead to children being criminalized.

132. It is in the interest of society to abolish status offences, since they take up a significant proportion of court time, leaving the courts with less time to meet the more serious needs of children.

133. *Principle (d)*. Children have the right to respect for family life.

134. As recognized by the Riyadh Guidelines and by treaty law, the family is the central unit responsible for the primary socialization of children. Governments are under a duty to protect the integrity of the family unit. This implies that the relevant authorities are obliged to develop policies that minimize the disruption of family structures.

135. Children have the basic right to remain with their families, unless there are extreme and compelling reasons given by the authorities to justify removal. Such a decision should always be subject to review (article 25 of the Convention). The criteria authorizing official intervention in the form of removal should be strictly defined, with a heavy onus of proof on the intervening authority. It should be limited to the following situations: where a parent or a guardian has intentionally neglected or physically or sexually abused a child; or where a child has been abandoned or exploited.

136. When children are removed, international law requires that siblings should remain together, so that brothers and sisters can gain support and sustenance from each other.²² When children are removed from their

parents, the first consideration should be to place the children with other family members.

137. When the State intervenes, solely in accordance with international law, it accepts legal responsibility for the upbringing of the child. It is therefore a precondition of such intervention that the child is offered a better chance than the one the child would have received by remaining with the family.

138. *Principle (e)*. States are under a duty to support the family.

139. The family plays an essential role in the prevention of a child's criminal behaviour, particularly when the child is very young. It is therefore in the interest of society that social and other services support families. Such services should include a wide range of assistance, family counselling, nurseries and maternity and paternity leave. Support should also be given by the State to traditional indigenous forms of family support. Another aspect of the duty on the State to support the family is the inclusion within education of training in good parenting skills.

140. *Principle (f)*. Education should be relevant and consistent with the child's dignity and with the ability and potential of the individual child.

141. The Riyadh Guidelines presuppose a high moral purpose on behalf of the State and its agencies towards its citizens. Children are entitled as a matter of international law to receive education compatible with the ability and potential development of the child. Teachers therefore have the potential to make a lasting and positive impact on the development of children and the prevention of crime.

142. The physical punishment of children, frequent changes of staff, an authoritarian school or an irrelevant curriculum may contribute to truancy and drop-outs (article 21(e) of the Convention). It is in the interest of the community to ensure such factors are not present in schools, as successful schools can only function effectively with the cooperation of the students and the community.

143. Teachers may assist in early warning, identification, counselling and assistance. Specialized prevention programmes and educational material and approaches should be developed to assist children who are at social risk (guideline 24 of the Riyadh Guidelines). Educational programmes may also contribute to crime prevention by training in social skills, education about crime and drugs and their consequences, and providing information about the law and children's rights. This may also involve the families, the local community and the local police service.

144. Consideration should also be given to distributing child-friendly copies of the Convention on the Rights of the Child, accessible to different age groups, in schools (article 42 of the Convention and guideline 23 of the Riyadh Guidelines).

²¹The old approach is reflected in rule 3.1 of the Beijing Rules. This rule has now been superseded by guideline 50 of the Riyadh Guidelines, which calls for the abolition of child status offences.

²²*Olson v Sweden* (No. 1), judgement of the European Court of Human Rights, 1988, discussed in Van Bueren, *The International Law ...*, p. 83.

145. *Principle (g)*. States in seeking to implement the child's right to freedom of expression should encourage the development of guidelines for the protection of children from material injurious to their well-being.

146. Rather than focusing only on the negative influences of the mass media, the Convention on the Rights of the Child requires States to ensure that the mass media exert a positive influence on children (article 17 of the Convention). The approach of international human rights law is that the mass media should be encouraged to provide children with access to information and material from a diversity of national and international sources. Such sources should portray the positive contribution of children to society (guideline 41 of the Riyadh Guidelines). As the mass media is regarded as a potentially valuable provider of information, the Riyadh Guidelines urge that the media should be encouraged to disseminate information on the existence of services and opportunities for children. Hence the media may influence children to adopt behaviour patterns conducive to successful self-development and socialization.

147. The Riyadh Guidelines specifically urge the mass media to minimize the level of pornography, drugs and violence portrayed (guideline 43 of the Riyadh Guidelines). The media is not requested to avoid displays of violence and exploitation, since that would infringe the right to freedom of expression, but rather to "avoid demeaning and degrading presentations, especially of children, women and interpersonal relations" (guideline 43 of the Riyadh Guidelines). The Riyadh Guidelines also recommend that scientific information be disseminated by the mass media on behaviours and situations that may lead to the abuse, victimization or exploitation of children (guideline 49 of the Riyadh Guidelines).

148. The impact of the mass media on crime is complex. However, true presentations of youthful criminality can only be beneficial. Children of indigenous, migrant and refugee families are particularly vulnerable to destructive media portrayals (guideline 15 of the Riyadh Guidelines). Such presentations may be improved by increasing the contacts between media personnel, agencies, academia and non-governmental organizations. Such contact could include training courses, provided by non-governmental organizations, to sensitize journalists to child-oriented criminal justice.

149. *Principle (h)*. The State is under a duty to provide special protection and assistance for children who live or work on the streets.

150. Special facilities should be established to provide shelter for children who are either no longer able to live at home or who do not have homes. Special assistance should also be provided for children who find it difficult to attend school and for children who have dropped out of the educational system.

F. Practical training exercises

151. Suitable topics of discussion are as follows:

(a) Childhood behaviour does not always conform to social norms and values, but the failure to conform is often a part of the maturation and growth process and tends to disappear with the transition to adulthood. Do you agree? If you do agree, what are the implications for the organization in which you work?

(b) Consider the ways in which the agency or organization in which you work could contribute to a research programme into the causes and prevention of child crime. What information could your organization provide? What expertise is available within the organization? How would your organization cooperate with research carried out in your country?

(c) How would you design a training programme for media personnel at all levels to assist in preventing child crime? How should this media training programme be implemented?

(d) Information is being produced by the Government on alcohol, drug and substance abuse to be circulated to children and to the public generally. Various agencies and organizations are contributing information and advice. Discuss what information and advice your organization should include and how it should be presented;

(e) How can your organization help in the protection and assistance of children living or working on the streets to prevent them from coming into conflict with the law?

(f) How can families, schools (formal and informal) and social services assist in crime prevention strategies?

(g) Set out the areas in which you think better training is needed on child crime prevention. What type of training?

IV. Children accused of infringing the criminal law

A. Sources of international human rights law

152. The principal international instruments are the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). States members of the Organization of African Unity have also become parties to the African Charter on the Rights and Welfare of the Child.

153. The African Charter on the Rights and Welfare of the Child is the first regional treaty protecting the civil, political, economic, social and cultural rights of children in peacetime and in armed conflicts. Its provisions on juvenile justice, enshrined in article 17, apply to all children under the age of 18, regardless of the method of trial in peacetime or in armed conflicts.

154. The Beijing Rules provide guidance to States for the protection of children's rights through the development of a separate and specialized system of child criminal justice. The Beijing Rules were the first international legal instrument to perform that task. Unusually for an international instrument, the Beijing Rules are accompanied by a commentary explaining each of the rules. The six parts are as follows: general principles; investigation and prosecution; adjudication and disposition; non-institutional treatment; institutional treatment; and research, planning, policy formulation and evaluation.

155. The Beijing Rules are applicable to any child who, under the respective national legal system, may be dealt with for an offence in a manner different from that followed in cases involving an adult. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted later, tighten the definition to include all those under the age of 18, thus harmonizing the Beijing Rules with the Convention on the Rights of the Child.

B. Status of the Beijing Rules in international law

156. Adopted by a resolution of the General Assembly, the Beijing Rules are not binding per se. However, to assume that the rules are only recommendations would be misleading. Although the Beijing Rules predate the Convention on the Rights of the Child, some of its principles, such as the desirability of diversions and the establishment of authorities and agencies specifically applicable to children, have been incorporated into the Convention, and therefore have become immediately binding. It is also necessary to consider whether any of the rules enhance an

aspect of a binding treaty right. If it does, then this also transforms a non-binding rule into a binding duty on a State.

C. Age of criminal responsibility and exercise of discretion

157. Under article 40(3)(a) of the Convention on the Rights of the Child, States parties are required to establish a minimum age below which children cannot be held responsible for the alleged commission of an offence.

158. The Beijing Rules provide that the concept of criminal capacity is clearly defined, and that the age should not be fixed at too low a limit, bearing in mind the emotional, mental and intellectual maturity of the child (see rule 4.1 of the Beijing Rules). It should be borne in mind that a definition of age of criminal responsibility should be made within a framework of justice which takes into account the capacity and developmental abilities and contextual experience of the child. When establishing a minimum age of criminal responsibility, consideration has to be given to the fact that some misconduct by children may be linked to the failing of others.

159. The trend among States is to raise the age of criminal responsibility, so that in Ghana it has been recommended to raise the age from 7 to 14, and in Uganda from 7 to 12, while South Africa is considering raising the age of criminal responsibility, which is currently 7. In Egypt the age of criminal responsibility is 15, in Argentina it is 16, and in Brazil and Peru it is 18.

160. Traditional methods of determining age, such as those based on marriage, initiation rites and comparison with peers, may be part of the options but are not conclusive. A birth certificate is the most conclusive determinant of age. Therefore, a statutory age of criminal responsibility needs to be supported by effective registration of births (article 7 of the Convention and guideline 12 of the Guidelines for Action on Children in the Criminal Justice System).

161. The purpose of creating a flexible juvenile justice system consistent with human rights is to allow for the most appropriate action to be taken in each individual case. It allows for a positive creative approach to juvenile justice that enables the personnel involved, after consultation with the child and the child's family, to develop new approaches. The Beijing Rules envisage discretion being granted to criminal justice personnel at all stages of the proceedings, including the investigation, prosecution, adjudication and follow-up (rule 6 of the Beijing Rules).

162. In view of the varying needs of children, discretion may be exercised at all stages of the proceedings by juvenile justice personnel who have had special training. The discretion should always be exercised after consultation with the child and in a manner consistent with the rights of the child. This means that an exercise of discretion can never result in a breach of the child's rights under the Convention on the Rights of the Child.

163. To ensure that discretion is not abused, officials exercising such discretion have to be specially trained and must be individually accountable for their decisions. Discretion without follow-up and proper accountability risks leading to a violation of children's rights.

D. Diversions

164. Diversions are designed to remove children away from the formal criminal justice proceedings and direct them towards community support, both formal and informal. This practice, as noted in the commentary to the Beijing Rules, hinders the negative effects of subsequent proceedings.²³

165. Diversions can only be used where children admit to an offence or are found guilty of an offence. At no stage should children be pressured either into an admission of guilt or into accepting diversions. Diversionary measures can be used at two stages: at the outset to provide an alternative to judicial proceedings; and/or at a later stage as an alternative to institutionalization (article 40, paras. 3(b) and 4, of the Convention).

166. According to the Guidelines for Action on Children in the Criminal Justice System, a review of existing procedures should be undertaken and, where possible, diversions should be undertaken (guideline for action 15). Appropriate steps should be taken to make available a broad range of alternative measures at the pre-arrest, pre-trial, trial and post-trial stage. Whenever appropriate, mechanisms for the informal resolution of disputes should be utilized. In the various measures to be adopted, the family should be involved to the extent such involvement is beneficial to the child (guideline for action 15). States should ensure that the alternative measures comply with the human rights of the child.

1. Diversions from the formal juvenile justice system

167. The adoption of diversionary procedures is based on research which demonstrates that children are not necessarily deterred by appearing in court. Children who have committed an offence are best assisted by applying the principle of minimum intervention.²⁴

168. Diversions should be the central principle of any juvenile justice system. The possibility of diversion should be considered in every case and only rejected (or deferred as an alternative to institutionalization) in cases where the safety of the community requires that the case proceed through formal criminal justice procedures. It is essential to ensure that diversions are consistent with the human rights of the child, particularly their right to due process. Examples of diversion are set out below.

Mediation

169. State agencies may seek to develop systems of mediation in which the child and the victim are brought together and the child may make a direct apology.

Reparation

170. Schemes may also be introduced where reparation is made by the child to the victim either financially or through work. These may be combined with mediation schemes or stand independently.

Cautions

171. The term "caution" adopted by a number of English-speaking jurisdictions is in fact a misleading term. Caution connotes a warning, but formal cautions may only be imposed after an admission by the child of the offence. It is a fundamental principle that formal cautions may not be administered to a child who denies the offence. This has to be clearly explained to the child and his or her family.

2. Diversions from custody

172. Diversions away from custody are an important method of reducing reoffending, as research demonstrates that children in detention have significant rates of reoffending. By diverting children away from custody and permitting them to benefit from community-based services they are able to retain positive links with their family, school and community. Those positive links enhance the opportunities of the child for better socialization.

173. Deprivation of liberty as a sanction for children has been shown to have significant negative effects on child offenders and their social relationships. There is significant evidence suggesting that, with notable exceptions, the prospects of children adjusting in society are made worse by institutionalization.

174. Alternatives to institutionalization are also consistent with the needs of society, as both capital and maintenance costs of running an institution are high.

175. In general terms, diversions from custody may be divided into those which require supervision and control and those which do not require such supervision. Examples

²³See the commentary to rule 11 of the Beijing Rules.

²⁴Ibid.

of such diversions are set out below. The individual circumstances of the child will be taken into account in each case, including the seriousness of the child's offence, whether the child has a previous record, the age of the child, family circumstances, the presence of alcohol or drug problems, and disabilities.

Probation and suspended or conditional imprisonment with supervision

176. The child is found guilty of the offence but is given an opportunity of not serving the sentence under clear and specific conditions. The most common condition is that they should not commit an additional offence during the probationary period. The supervision of the child during this period may be minimal, moderate or intensive. Minimal supervision entails only a few contacts between the child and the supervisor to ensure that the child is abiding by the conditions of the probation or suspended sentence. Intensive supervision implies that the child is closely supervised in order to reduce the opportunities for reoffending and to assist the child in reintegrating into society.

177. In some States, a breach of a probation condition does not automatically lead to an end of probation. There may be judicial warnings, an amendment of the conditions or an extension of the period of supervision.

Community service

178. This sanction involves a specific number of hours of unpaid work for the benefit of the community. It ought not to interfere with the education of the child, and is usually undertaken in outside school hours. Community service also has the benefit of involving the local community in the reintegration of the child. The child criminal legislation will normally specify the types of offence for which community service is permitted. The free consent of the child must be given before community service can be authorized.

Youth contracts

179. The social services department considers a case after having been contacted by the police. After negotiations with the child and his or her family, it drafts a contract taking into consideration the wishes and circumstances of the child and creating as far as possible a coordinated approach. The draft includes a description of the conditions, duration, supervision arrangements and the consequences of any non-compliance during the contractual period. The draft is forwarded to the police for acceptance. The police may propose amendments. Once accepted by the police, it is signed by the child, the parents, the social services and then the police.

180. The signed contract is forwarded to the court, which fixes a date for the hearing when, according to the rules of conditional discharge, the child makes a full confession and the court agrees to the conditions of the contract. The youth

contract may cover the following:²⁵ employment or apprenticeship; participation in educational or training programmes; stipulation of residence; stipulation of leisure activities; treatment for alcohol or drug addiction; and payment of damages.

Group homes

181. Children are housed in small (10-30 bed) residential facilities with other children. They are located in the community and rely upon the staff working with the children to keep the children from running away, rather than upon physical security measures.

Group counselling

182. Children participate in group meetings with other children to improve their social skills and reduce their feelings of alienation.

Wilderness training

183. Based upon traditional and indigenous rites of passage, the training takes children away from home and exposes them to a period of physical and mentally challenging experiences. They seek to build the will to survive and the confidence of the child, and inculcate a sense of responsibility.

Conditional sentence without supervision

184. Some States recognize the possibility of conditional sentences being imposed but without supervision. These may be imposed for either a first offence or where there are mitigating circumstances for the commission of the offence. If, however, a child commits an additional offence during the term of the sentence, the court, as with supervised conditional sentences, may order that the conditional sentence be enforced.

Penal warnings

185. Penal warnings are used where the offence is not serious. They take various forms, including admonition, absolute discharge and conditional discharge. They also include release on bail after adjudication, so that the court may take into account the behaviour of the child during that period in deciding on the sentence.

Monetary payments

186. Monetary payments may involve minimal State intervention. Fines are the best-known and most common form of monetary sanction. They save money and labour

²⁵Nielsen, "Young offender ideologies and the Danish discourse", in T. Booth, ed., *Juvenile Justice in the New Europe*, Social Services Monographs 46-65 (University of Sheffield, Joint Unit for Social Services Research, 1991).

and are practical to manage and administer. They are also considered humane, causing a minimum of social disruption for children who can afford them. Fines, however, may create inequalities by discriminating against poor children, for whom the inability to pay may mean imprisonment.

Compensatory payments

187. Courts may issue compensation orders. They may be imposed as one of several terms of a conditional sentence. Restitution of the loss to the victim by the child is a method common to many customary and traditional justice systems. It is seen as an appropriate aim of criminal justice, and, although compensation is made to the individual victim, it is considered in the interests of society as a whole.

Personal reparation

188. Personal reparation is widely used in customary justice systems.

Reconciliation

189. Reconciliation may take place within traditional structures, such as in village courts in Papua New Guinea or the Lupong Tagapayapa in the Philippines.

Confiscation

190. Forfeiture of property derived from or used in the offence may be used as a sanction either alone or in combination with other sanctions. That trend is encouraged by the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.²⁶

E. Fundamental principles of diversion

191. The fundamental principles of diversion are as follows:

(a) Diversionary procedures may only be used in a manner consistent with the human rights of children (article 40, para. 3(b), of the Convention);

(b) Children should be dealt with in a manner appropriate to their well-being and proportionate to their circumstances and their offence (article 40, para. 4, of the Convention);

(c) A variety of dispositions should be made available as alternatives to institutional care (article 40, para. 4, of the Convention).

²⁶Official Records of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 25 November-20 December 1988, vol. I (United Nations publication, Sales No. E.94.XI.5).

F. Practical application of the fundamental principles of diversion

192. The practical implications of the fundamental principles of diversion are outlined below.

193. *Principle (a)*. Diversionary procedures may only be used in a manner consistent with the human rights of children.

194. Cautioning may only be considered where there is sufficient evidence to support a criminal prosecution in accordance with the national rules of criminal law. As the acceptance of a caution is an admission of guilt, it can only occur where a child admits an offence freely and without any pressure of any kind.

195. *Principle (b)*. Children should be dealt with in a manner appropriate to their well-being and proportionate to their circumstances and their offence.

196. The nature of the diversion and the length of time of the diversion should promote the well-being of the child and be proportionate to the offence. Much comparative information is available to States and agencies about diversions that promote the well-being of children.

197. *Principle (c)*. A variety of dispositions should be made available as alternatives to institutional care.

198. There is a wide range of alternative measures that States are constantly expanding to avoid institutionalizing children. The examples set out in the present manual may be used either alone or in combination with each other.

G. Additional principles relating to children accused of infringing the criminal law

199. Additional principles relating to children accused of infringing the criminal law are as follows:

(a) The principle of proportionality is applicable to all aspects of juvenile justice;²⁷

(b) The juvenile justice system should promote the well-being of the child and the child's reintegration and assumption of a constructive role in society (article 40, para. 1, of the Convention);

(c) If the child consents, the use of diversions is encouraged (article 40, para. 3(b), of the Convention);

(d) If a diversion is not appropriate, deprivation of liberty should only be used as a last resort and for the shortest appropriate period (article 37(b) of the Convention);

(e) Proceedings before any authority or agency should be conducted in a manner conducive to the best interests of the child and in a manner which allows the child to exercise

²⁷The principle of proportionality is a principle of international human rights law and is therefore applicable to juvenile justice.

the right to freedom of expression (article 3, para. 1, and article 12 of the Convention);

(f) All personnel dealing with juvenile justice should be specially trained and accountable for all of their actions and policies (rule 12 of the Beijing Rules and rule 85 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty);

(g) All children are entitled to benefit from all their civil rights (article 40 of the Convention and article 17 of the African Charter on the Rights and Welfare of the Child);

(h) The establishment of laws, procedures, authorities and institutions specifically applicable to the children is desirable (article 40, para. 3(b) of the Convention).

H. Practical application of the additional principles relating to children accused of infringing the criminal law

200. The practical implications of the additional principles relating to children accused of infringing the criminal law are outlined below.

201. *Principle (a)*. The principle of proportionality is applicable to all aspects of juvenile justice.

202. The principle of proportionality is a fundamental principle of international human rights law which applies to all State conduct and is therefore applicable to the entire child criminal justice system. The principle implies that the response to children alleged or accused of coming into conflict with the law has to be prompt, taking into account the gravity of the offence, the personal circumstances of the child and the needs of society. Proportionality is the guiding principle in sentencing. States are prohibited from imposing on anyone who has committed an offence under the age of 18 capital punishment or life imprisonment without the possibility of release (article 37(b) of the Convention). Judicial corporal punishment is also prohibited, as it constitutes a form of cruel, inhuman and degrading punishment.²⁸ States are under an immediate obligation to cease such practices.

203. *Principle (b)*. The juvenile justice system should promote the well-being of the child and the child's reintegration and assumption of a constructive role in society.

204. The Convention on the Rights of the Child, together with the Beijing Rules and the Riyadh Guidelines, stresses the approach to enabling a child to assume a constructive role in society by severely limiting the institutionalization of children. In order to ascertain what is consistent with the well-being of the child, before the competent authority makes a final disposition of the case, the background and circumstances in which the child lives, including his or her social and family background and educational experience, as well as the conditions under which the offence was committed, should be properly investigated and presented to the

court (rule 16 of the Beijing Rules). To facilitate that process, some States use special social services or personnel attached to the court or board, while others use probation officers. As noted in the commentary to Beijing Rule 16, that rule requires that adequate social services should be available to deliver social inquiry reports.

205. *Principle (c)*. If the child consents, the use of diversions is encouraged.

206. Diversions are encouraged by international law to overcome the negative effects of formal criminal justice. However, if the children assert their innocence, no pressure of any kind may be exerted over children to persuade them to consent to diversions.

207. *Principle (d)*. If diversions are not appropriate, deprivation of liberty should only be used as a last resort and for the shortest appropriate period.

208. The limitation on deprivation of liberty applies equally to pre-trial detention. Pre-trial detention may only be used after proper consideration of all the alternatives, including close supervision and placement with a family or in an educational setting or home. Alternatives to arrest, such as the service of a summons, also have to be considered. Bail cannot be imposed in such a way or at such a level that poor children and their families are unable to benefit from it.

209. International law also makes it very clear that deprivation of liberty cannot be used as a substitute for the provision of social welfare; child victims cannot therefore be deprived of their liberty.

210. *Principle (e)*. Proceedings before any authority or agency should be conducted in a manner conducive to the best interests of the child and in a manner which allows the child to exercise the right to freedom of expression.

211. Such a principle implies more than simply making legislative provision for child participation. The environment has to be made sufficiently child-friendly, so that children feel safe in expressing themselves. The Committee on the Rights of the Child has commented that "children were seldom made sufficiently aware of their rights, including the right to assistance from legal counsel".²⁹ Juvenile justice personnel need to undergo special training so that children are able to benefit fully from a child-centred freedom of expression. Such training should include the factors covered in the good practice guidelines at the end of the present manual.

212. *Principle (f)*. All personnel dealing with juvenile justice should be specially trained and accountable for all of their actions and policies.

213. An important feature of the training is its frequency in the form of professional education, in-service training, refresher courses and other appropriate modes of instruc-

²⁸See, for example, *Tyrer v United Kingdom*, Judgement of the European Court of Human Rights, 25 April 1978, discussed in Van Bueren, *The International Law*, pp. 185-187.

²⁹"Committee on the Rights of the Child: report on the tenth session" (CRC/C/46), para. 220.

tion. The Committee on the Rights of the Child has suggested that a larger part of the education and training should be devoted to an understanding of international standards on juvenile justice.³⁰ Child justice personnel should also reflect the community served by them. Women and minority groups should be fairly represented at all levels.

214. The African Charter on the Rights and Welfare of the Child requires that in order to protect children from torture and degrading treatment and punishment and all forms of abuse while the child is in the care of the State, the State ought to establish "special monitoring units to provide necessary support for the child and for those who have the care of the child" (article 16, para. 2). Such a monitoring role is performed in a number of States by a children's rights commission or by a commissioner, as in New Zealand and Norway.

215. *Principle (g)*. All children are entitled to benefit from all their civil rights.

216. The civil rights of the child in criminal justice are sometimes referred to as due process rights, and they represent the minimum requirements under international law for a fair trial and a fair juvenile justice system. The standards are drawn from the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI)) and the African Charter on the Rights and Welfare of the Child.

217. All children accused of a crime should be presumed innocent, and children cannot be alleged as or accused of having committed a breach of the criminal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed. Children have the right to be notified clearly, promptly and directly of any charges in a language which they can understand and in a manner appropriate to their age. Children also have the right to remain silent and the right to legal representation.³¹ In addition to legal representation, children have the right to the presence of a parent or guardian.

218. As stressed in the Guidelines for Action on Children in the Criminal Justice System, priority must be given to setting up agencies and programmes to provide legal and other assistance to children, if needed free of charge (guideline 16 of the Guidelines for Action).

219. The child's right to privacy is applicable to the entire juvenile justice system. Records of child offenders should be confidential, only accessible to the child, the child's family and those concerned with the disposition of the case. If a child is subsequently the subject of adult proceedings, the previous records relating to child offences may not be used. Those rights begin from the moment a

child has any contact with a State agency or authority, and continue throughout the juvenile justice process.

220. Children also have the right to have their case determined without delay by a competent independent and impartial hearing or trial. At trial, children have the right to have adverse witnesses cross-examined and to obtain the participation of favourable witnesses under conditions of equality. Children are also entitled to the free assistance of an interpreter if the child cannot understand or speak the language used (article 40, para. 2(b)(vi), of the Convention).

221. *Principle (h)*. The establishment of laws, procedures, authorities and institutions specifically applicable to children is desirable.

222. The principle extends from the police to child lawyers, and from children's courts to specially trained members of the judiciary. The good practice guidelines at the end of the present manual should assist in achieving the stated goals.

223. Police officers should receive specialized training. In large cities, special police units should be established.

224. With regard to children's courts, the crucial question is how can courts be transformed to create the type of environment that gives reality to the Convention on the Rights of the Child and to the other international instruments. According to the Guidelines for Action on children in the Criminal Justice System, States should establish children's courts and special procedures designed to take into account the specific needs of children. As an alternative, regular courts should incorporate such procedures as appropriate.

225. The high caseloads of lawyers affect many aspects of child criminal justice. They may result in lengthy delays for the child, delays which may result in more time in detention and more stress within the child's family.³² The longer the time from arrest to disposition, the more detrimental the consequences to the child.

226. Lawyers with many cases find it difficult to meet their clients and to listen to them and learn about the child's background. Large caseloads are also detrimental to the quality of representation received by the child. One of the most severe consequences of high caseloads is the distrust engendered among children. Children receive the distinct impression that lawyers do not care about them and are not dedicated advocates on their behalf. Caseloads and guidelines for child advocates must be clearly established and a mechanism for enforcing the limits assured.

227. The shortage of specially trained child advocates is reflected in the limited availability of specially trained

³⁰"Committee on the Rights of the Child: eighth session; consideration of reports submitted by States parties under article 44 of the Convention" (CRC/C/15/Add.35), para. 18.

³¹See article 14, para. 3(d) of the International Covenant on Civil and Political Rights and article 17, para. 2(c)(iii), of the African Charter on the Rights and Welfare of the Child.

³²Bernadine Dohrn, "Legal representation of youth in delinquency proceedings", paper presented to the Law Commission of South Africa at a workshop held at Gordon's Bay, November 1997.

lawyers and the limited choice of lawyers available to children, particularly in rural areas. The training of lawyers is therefore a high imperative. To overcome that shortage, the problems of children must be given greater visibility in university curricula, not only in law but in other relevant disciplines, and child-centred subjects must be recognized as equally rigorous and intellectually challenging.

I. Restorative justice

228. Retributive justice asks the question: How do we punish the offender? Restorative justice asks: How do we restore the well-being of the child, the victim and the community?

229. There are different models of conferencing operating in different jurisdictions. Conferences have been referred to as family group conferences, family conferences, effective cautioning conferences, community accountability conferences and diversionary conferences.³³ Restorative justice in the form of community conferencing allows for the participation of the child and stresses the centrality of the family, the victim and the community.

230. The New Zealand model of conferencing was strongly influenced by traditional Maori concepts of conflict resolution and is used for all medium-serious and serious offending except murder and manslaughter. It operates on two levels: first as an alternative to court process; and secondly as a mechanism for making recommendations to judges before sentencing.

231. Conferences are generally made up of children who have committed the offence, members of the child's family and whoever the family invites, the victims, their support person, a police representative and the mediator of the process. In some jurisdictions, a lawyer³⁴ and/or a social worker is present.

232. The aim of the conference is to formulate a plan on how to deal with the offending. This has the following three main aspects:

(a) Ascertaining whether or not the child admits the offence. Conferences can only proceed where the child admits the offence;

(b) Information-sharing among all the parties at the conference about the nature of the offence, the effects of the violence on the victims, the reasons for the offending and any prior offending by the child;

(c) Deciding the outcome or recommendation. In some jurisdictions, the family and those invited by the family are entitled to deliberate in private during the conference and then make proposals to the conference as a whole.

233. The eventual sanction is usually agreed to by all the parties and is meant to take into account the views of the victims and the need to make the child accountable for his or her offending. In some jurisdictions, there is no limit placed on the sanctions, as long as they are agreed to by all the parties. Sanctions can include an apology, community work, reparation or involvement in some programme. In other jurisdictions, strict limits are placed on the sanctions to ensure that children are not worse off than they would have been had the case gone to a court.³⁵

234. Conferences may take longer to reach decisions than courts. There are differences in the way the conferences are organized. In some jurisdictions conferencing is managed by the police, in some by the courts, in some by social welfare and voluntary organizations. Conferences, however, share a number of common features, in particular the following:

(a) Involving those most affected by the offending, specifically the offender, the family of the offender and the victim;

(b) Decision-making by agreement;

(c) The comparative informality of the process;

(d) The use of a facilitator;

(e) Holding the offender accountable for his or her actions;

(f) Making amends to the victim by seeking to heal the damage caused.

235. Through conferencing, families are enabled to participate, and this is one of the reasons why families prefer the process of family group conferences to court processes. Research has demonstrated the greater support available to them at conferences in contrast to the stress accompanying a court appearance. As well as feeling more comfortable at family group conferences, families understood more about what had happened and believed them to be a more realistic forum for decision-making.³⁶ Victims also feel involved by being present.

236. Conferencing, unlike the majority of court structures, has shown an ability to be responsive to different cultural practices. Cultural practices, however, should only be reflected where they correspond to the philosophy of juvenile justice. Conferences, therefore, should not be punitive, retributive, gender-discriminatory, patriarchal or hierarchical.

³³Allison Morris, "Legislating for the effective involvement of young people, families, victims and the community in the juvenile justice system", paper presented to the Law Commission of South Africa at a workshop held at Gordon's Bay, November 1997.

³⁴In South Australia, where conferences operate as alternatives to courts, the young person is entitled to be advised by a lawyer, but the lawyer cannot speak for the young person. In New Zealand, youth advocates (lawyers) can attend family group conferences if requested by the child or young person, under section 324, para. 3(a), of the Children, Young Persons and their Families Act 1989.

³⁵In South Australia, a limit of three months for any diversion is set by section 8, para. 6(b) of the Young Offenders Act 1993. There is a limit of 75 hours for any community work agreed to as part of diversion, under section 8, para. 1(b) of the Young Offenders Act 1993.

³⁶Morris, "Legislating for the effective involvement of young people ...", 1997.

J. Practical training exercises

237. Suitable topics of discussion are as follows:

(a) How does the criminal justice system within which you work ensure that reactions to children alleged as or accused of having committed a crime are always proportionate to the circumstances of the child and the offence? Suggest improvements which can be made to ensure greater proportionality;

(b) Four important rights for children suspected of a crime are the right to remain silent, the right to privacy, the right to legal counsel, and the right to the presence of parents or guardians at all stages in the proceedings. How does the criminal justice system guarantee these rights? Does it place any limitations on these rights? Recommend improvements to the system to ensure that these rights are fully respected;

(c) In the area in which you work, how would you begin to develop special juvenile justice procedures, authorities and institutions?

(d) State X does not have a national plan for addressing child crime. Children who are accused of offences are dealt with largely at the discretion of the arresting police officer, and of the judge in the case. Some child offenders are diverted away from the formal justice system into family group conferences and counselling. On other occasions child offenders are dealt with in the same way as adult offenders. The system is unpredictable. Within your working group or panel, examine the requirements of the international standards for the administration of child criminal justice, the purposes of a juvenile justice system, prevention and early intervention strategies and alternative dispositions to institutionalizing children. The working group or panel should produce a written framework for a national plan on juvenile justice for State X.

V. Children deprived of their liberty

A. Sources of international human rights law

238. The principal international instruments regulating the deprivation of liberty for children are the Convention on the Rights of the Child, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the African Charter on the Rights and Welfare of the Child.

239. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty are intended to counteract the detrimental effects of deprivation of liberty by ensuring respect for the human rights of children. They serve as a comprehensive, internationally accepted framework within which States can regulate the deprivation of all those under 18. The rules apply to all those under 18 regardless of the method of trial or hearing (rule 11(a)).

240. The rules define "deprivation of liberty" as any form of detention or imprisonment or the placement in a public or private custodial setting from which a person under the age of 18 is not permitted to leave at will, by order of any judicial, administrative or other public authority (rule 11(b)). The rules are applicable to all forms of deprivation of liberty in whatever type of institution the deprivation of liberty occurs.

241. The rules begin with a number of fundamental principles, the first of which states that the juvenile justice system should uphold the rights and safety of children and promote their physical and mental well-being (rule 1). The rules not only apply to child justice institutions, but also to any deprivation of liberty on the basis of a child's health or welfare. They begin from the premise that the care of children deprived of their liberty is a social service of great importance.

242. A major part of the rules seek to regulate the management of child facilities, including their administration, the physical environment and services that they offer and the regulation of disciplinary procedures (rules 19-80). Compliance with the rules and the Convention on the Rights of the Child is through regular, independent and unannounced inspections (rule 72) and an independent complaints procedure.³⁷ The rules conclude with provisions on the appointment and training of specialized personnel (rules 81-87).

³⁷Rule 77 recommends the creation of an ombudsman.

B. Status of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty

243. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty per se are in the form of a non-binding recommendation. However, as with many of the Beijing Rules, many of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty have become binding by virtue either of being found in the Convention on the Rights of the Child, or because they are facets of rights enshrined in the Convention.

244. In addition, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty provide for monitoring. In order to ensure the most effective implementation, States should monitor the application of the rules and should also incorporate the rules into national legislation or, where appropriate, the relevant legislation should be amended. The national legislation should also provide effective remedies for breach of the rules (rule 7).

C. Principles concerning the deprivation of liberty of children

245. The principles concerning the deprivation of liberty of children are as follows:

(a) Deprivation of liberty should only be used as a measure of last resort, only for the shortest appropriate period of time and in a non-discriminatory manner (articles 2 and 37(b) of the Convention);

(b) Every child deprived of liberty shall have the right to prompt access to legal and other assistance (article 37(d) of the Convention);

(c) The establishment of small open facilities is encouraged to enable individualized treatment and to avoid the additional negative effects of deprivation of liberty (rule 30 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty);

(d) Deprivation of liberty should only be in facilities that are consistent with respect for the human rights and dignity of the child. Such facilities should guarantee meaningful activities and programmes promoting the health, self-respect and sense of responsibility of children (rule 12 of the United Nations Rules);

(e) Deprivation of liberty should be so organized as to respect the child's right to family life and in keeping with the aim of reintegration (guideline 20 of the Guidelines for Action on Children in the Criminal Justice System and rule 30 of the United Nations Rules);

(f) All children deprived of their liberty should be helped to understand their rights and obligations during detention and be informed of the goals of the care to be provided (rule 25 of the United Nations Rules);

(g) All personnel working with children deprived of their liberty should receive appropriate training (rule 85 of the United Nations Rules);

(h) All children should benefit from arrangements designed to assist them in reintegrating with society (article 40, para. 1, of the Convention);

(i) Children deprived of their liberty are entitled to the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health (article 24 of the Convention);

(j) The carrying and use of weapons by personnel in facilities where children are detained is prohibited (rule 65 of the United Nations Rules);

(k) The imposition of discipline should be consistent with upholding the dignity of the child (rule 66 of the United Nations Rules);

(l) All personnel working with children should be fully accountable for their actions (rules 72-78 of the United Nations Rules).

D. Practical application of the principles concerning the deprivation of liberty of children

246. The practical implications of the principles concerning the deprivation of liberty of children are outlined below.

247. *Principle (a)*. Deprivation of Liberty should only be used as a measure of last resort, only for the shortest appropriate period of time and in a non-discriminatory manner.

248. The expression "last resort" has been misunderstood as referring to children guilty of serious crimes, but the Committee on the Rights of the Child has commented that it means that deprivation of liberty can only be used if there is no other way of giving the child the necessary protection that he or she needs. The Committee has also observed that the phrase "shortest appropriate period of time" implies that "other measures than prison sentences should be sought".³⁸

249. In general, the detention of children under arrest or awaiting trial is a practice to be avoided and limited to very exceptional circumstances which should be strictly defined. This principle should be applied in a non-discriminatory manner (article 2 of the Convention), so that children who are without shelter should not be detained in penal institutions, including police lock-ups, because of a lack of suitable social welfare homes. A member of the Committee on the Rights of the Child has commented that "if children in need of protection were placed in a position where they were deprived of their liberty, they were in fact being deprived of the protection of the law".³⁹

³⁸"Committee on the Rights of the Child: sixteenth session: summary records of the 323rd meeting" (CRC/C/SR.323), para. 56.

³⁹"Committee on the Rights of the Child: sixth session: summary record of the 148th meeting: (CRC/C/SR.148), para. 38.

250. If, in exceptional circumstances and in accordance with international law, children are detained before trial, priority must be given to obtaining for them a speedy trial. The Committee on the Rights of the Child has expressed concern over the period of time that children in pre-trial detention may be kept in prison in isolation.⁴⁰

251. Children under arrest or awaiting trial are also entitled to continue their education⁴¹ or training, but they should not be required to perform work. Similarly, children under arrest or awaiting trial are also entitled to access to leisure.

252. The Convention on the Rights of the Child prohibits sentences of life imprisonment without the possibility of release (article 37(a)), and the Committee on the Rights of the Child has expressed concern that indeterminate sentencing breaches that principle.⁴²

253. Criminological research demonstrates that ethnic minority groups are overrepresented in prisons around the world. Children who are deprived of their liberty have little opportunity to protect their own culture, even though the right to culture continues when a child is deprived of liberty.

254. The principle of deprivation of liberty only as a measure of last resort and for the shortest appropriate period of time also implies that conditional release from an institution should be used to the greatest possible extent and at the earliest possible time. Where children have been released, they should be assisted and supervised by the appropriate authority and fully supported by the community.

255. *Principle (b)*. Every child deprived of liberty shall have the right to prompt access to legal and other assistance.

256. Every child is entitled to challenge the legality of the deprivation of liberty before the relevant competent, independent and impartial authority and to receive a prompt decision.

257. *Principle (c)*. The establishment of small open facilities is encouraged to enable individualized treatment and to avoid the additional negative effects of deprivation of liberty.

258. Children may only be separated to allow for the provision of the type of care best suited to their particular needs. In order to accomplish this goal, after admission, children should be interviewed to enable a determination to be made as to the most appropriate type of social care. Wherever specialized rehabilitative treatment is required,

⁴⁰"Committee on the Rights of the Child: ninth session: consideration of reports submitted by States parties under article 44 of the Convention" (CRC/C/15/Add.38), para. 11.

⁴¹The right to education under articles 28 and 29 of the Convention on the Rights of the Child continues to apply when a child is deprived of liberty.

⁴²"Committee on the Rights of the Child: twelfth session: consideration of reports submitted by States parties under article 44 of the Convention" (CRC/C/15/Add.55), para. 21.

the trained personnel should prepare a written, individualized treatment plan specifying the objectives.

259. Unless it is in the best interests of the child, children should be detained separately from adults (article 37(c) of the Convention). An exception may be made if it is in the best interests of the child and the non-separation is under controlled conditions as part of a special programme.

260. The number of children detained in either open or closed facilities should be as small as possible and sufficiently small to enable individualized treatment and integration into the social, economic and cultural environment of the community. In order to be as similar as possible to life outside the facilities and to develop the child's sense of responsibility, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty encourage the provision of open facilities with minimal security measures or none at all.

261. Where children are moved to and from facilities, it should only be in conveyances with adequate ventilation and light. At no time should children be subjected to hardship or humiliation, including the use of chains.

262. *Principle (d)*. Deprivation of liberty should only be in facilities that are consistent with respect for the human rights and dignity of the child. Such facilities should guarantee meaningful activities and programmes promoting the health, self-respect and sense of responsibility of children.

263. As a precondition to children being deprived of their liberty, they should not be detained in any facility without a valid commitment order, nor in any institution that does not maintain a proper register. That is the starting point for ensuring that all detention facilities for children should be managed in a manner consistent with the human rights of the child. Without a proper register, there is no accountability.

264. The protection of the human rights of the child covers the right not to be detained arbitrarily. In every place where a child is detained, a complete and secure record of information should be kept, including information on the identity of the child, the fact, reasons and authority for the commitment, the day and hour of admission, transfer and release, and details of notification to parents and guardians.

265. Respect for the human rights of children requires that all reports on children should be placed in confidential files that are only accessible to authorized persons. The reports should also be classified in such a way as to be easily accessible. Where possible, children should have the right to contest any fact or opinion in their file so as to allow rectification.

266. Food should be suitably prepared and sufficient to satisfy the standards of hygiene and health and, as far as possible, the religious and cultural requirements of the child. Clean drinking water must be available.

267. Every child must be provided with clean bedding and sufficient sanitary installations in accordance with local and national standards. Clothing must be suitable for the climate and must not be degrading or humiliating.

268. If children so wish, they are entitled to participate in or organize their own religious services. They also have the right to possess and retain the necessary books and items of religious observance. Similarly children are entitled to decline all forms of religious participation, including religious services and education.

269. Children are not permitted to exercise disciplinary functions over other children.

270. The human rights of children have to be protected, whether the deprivation of liberty results from a welfare or a criminal procedure. The Committee on the Rights of the Child has expressed concern that deprivations of liberty in social care institutions should also "be regularly monitored by a judge or an independent body".⁴³

271. *Principle (e)*. Deprivation of liberty should be so organized as to respect the child's right to family life and in keeping with the aim of reintegration.

272. Because of the emphasis placed by international law on family life, detention facilities should be decentralized to enable easy access to and contact with family members and to allow for integration into the community (rule 30 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty).

273. The design of detention facilities and of the general physical environment should be in keeping with the aim of reintegrating children and of the child's assuming a constructive role in society. Children have the right to have their privacy and leisure respected, and this includes the need for sensory stimuli and leisure-time activities (rule 32 of the United Nations Rules), as well as the right of children to retain their own personal effects. The rules emphasize the positive effects of constructive leisure and recreation. Facilities in which children are deprived of their liberty should ensure that suitable time is allocated for daily exercise in the open air, whenever weather permits. In addition, time should be allocated for daily leisure activities.

274. The facilities should also foster children's skills to assist them in developing their potential to make constructive contributions to society. The purpose of education is to prepare the child for release, and therefore the provision of education must avoid the risk of stigmatization. As far as possible, the education of children deprived of their liberty should take place in the community outside the detention facilities in programmes integrated with the educational system of the State (rule 38 of the United Nations Rules). When educational certificates are awarded, they should not in any way indicate that the children have been deprived of their liberty.

⁴³"Committee on the Rights of the Child: third session: consideration of reports submitted by States parties under article 44 of the Convention" (CRC/C/15/Add.5), para. 14.

275. Children are entitled to receive vocational training to prepare them for suitable employment (rules 42 and 43 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty). They are also entitled to choose the type of work that they wish to undertake. Wherever possible, children should have the opportunity to work within the local community in non-exploitative activities and conditions.

276. When deprived of their liberty, children do not forgo the right to fair remuneration for their work (rules 45 and 46 of the United Nations Rules). At no time should the rights and best interests of the child be subordinated for the purpose of making a profit for the facility or for a third party.

277. The child's family should be informed of the state of health of the child and of any changes that occur. The director of the facility should immediately notify the child's family in case of illness requiring the transfer of the child.

278. Children should be informed as soon as possible of the death, serious illness or injury of any immediate family members, and be entitled to visit the family member or attend the funeral.

279. If a child dies in detention or within six months of release, there should be an independent inquiry, the report of which should be made available to the family (rules 57 and 58 of the United Nations Rules). Family members should be entitled to be informed of the death and to inspect the death certificate.

280. *Principle (f)*. All children deprived of their liberty should be helped to understand their rights and obligations during detention and be informed of the goals of the care to be provided.

281. In order for children to be aware of their entitlements, they should be provided with a copy of the facility's rules describing their rights in a language and manner that they can understand. The information should also include the identity and addresses of the competent authorities to receive complaints and the names and addresses of public and private bodies that provide legal assistance. For children who are illiterate or who cannot understand the information in written form, the information should be conveyed in a manner enabling full comprehension (rule 24 of the United Nations Rules).

282. *Principle (g)*. All personnel working with children deprived of their liberty should receive appropriate training.

283. Adequate remuneration should be provided to attract personnel capable of providing children with positive role models. All personnel should conduct themselves at all times in such a way as to gain the respect of the children. Personnel should also seek to minimize the differences between life inside and life outside the facility.

284. The rules place much emphasis on the training and skills of the personnel, as the proper management of the facilities depends on the integrity, humanity and profes-

sional ability of the staff. To be effective, personnel should receive appropriate training, which includes training in child psychology, child welfare and human rights.

285. Personnel are prohibited from inflicting torture or other cruel, inhuman, degrading or harsh treatment or punishment.⁴⁴ Personnel should respect the child's right to privacy and protect children from any form of abuse, neglect or exploitation.

286. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty should serve as guidance for all personnel in their actions and policies, and copies of the rules should be made available to all personnel in their national languages.

287. *Principle (h)*. All children should benefit from arrangements designed to assist them in reintegrating with society.

288. Contact with the wider community is an integral part of the child's right to fair and humane treatment and is essential to prepare the child for release. Children should be allowed to communicate with their families, friends and representative organizations.

289. Every child is entitled to receive regular and frequent visits, in principle once a week and not less than once a month. All visits should respect the child's right to privacy. Children should be permitted to leave the facilities for visits to their families, and with special permission, to leave the detention facilities for educational, vocational or other important reasons.

290. Every child should have the right to communicate in writing or, where appropriate, by telephone at least twice a week with the person of the child's choice, unless in the best interests of the child that choice is legally restricted. To increase their contact with the community, children should be given the opportunity to keep themselves regularly aware of the news.

291. All children should benefit from arrangements designed to assist them in returning to the community, including early release and special courses. Children should be provided with suitable shelter, clothing, employment and sufficient means to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and have access to juveniles while they are detained. The competent authorities should also seek to reduce the prejudice against children who have been deprived of their liberty.

292. *Principle (i)*. Children deprived of their liberty are entitled to the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.

⁴⁴See article 37(a) of the Convention on the Rights of the Child and rule 87(a) of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

293. The right of the child to the highest attainable standard of health continues while the child is in the care of the State. When a child is admitted into any institution and deprived of his or her liberty, any details of known physical and mental health problems should be recorded. Upon arrival, children are entitled to medical examinations to record evidence of prior ill-treatment and to identify any physical or mental condition requiring medical treatment. Throughout the period of deprivation of liberty, all children are entitled to adequate preventive and remedial health care. The best method is to provide medical care through community health facilities and services in order to avoid stigmatization.

294. Medicines should only be administered for necessary treatment on medical grounds, and when possible after the informed consent of the child. The administering of medicines to elicit information or confessions or as a punishment or means of restraint is prohibited in all facilities. Experimental use of drugs on and treatments involving children is also prohibited.⁴⁵

295. Facilities should adopt specialized drug abuse prevention and reintegration programmes. Children who are mentally ill should be treated in specialist institutions.

296. *Principle (j)*. The carrying and use of weapons by personnel in facilities where children are detained is prohibited.

297. Facilities include parts of facilities, so that if children are temporarily detained in special areas within police stations, police personnel are prohibited from carrying weapons in those areas.

298. Instruments of restraint and force may be used only in exceptional circumstances and only as explicitly authorized and specified by law and regulations. Such instruments should not cause humiliation or degradation. If such an instrument is used, the director of the facility should immediately consult medical and other relevant personnel and report to the higher administrative authority (rule 64 of the United Nations Rules).

299. *Principle (k)*. The imposition of discipline should be consistent with upholding the dignity of the child.

300. All disciplinary procedures and measures should be consistent with upholding both the dignity and the rights of children. States should adopt clear legislation concerning the following: conduct constituting a disciplinary offence; the type and duration of disciplinary sanctions that may be imposed; and the authorities competent to impose sanctions and consider appeals.

301. No child should be disciplined except in accordance with the terms of the law and the regulations in force, and only after being clearly informed of the alleged infraction.

Children should also have proper opportunities to present their defence, including the right of appeal to a competent impartial authority. Complete records accessible to the child and the child's representatives should be kept of all disciplinary proceedings. Torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment, placement in a dark cell, closed or solitary confinement, reduction of diet and the restriction of family contact are prohibited. Collective sanctions are also prohibited. Labour is to be regarded as an educational tool and not be imposed as a disciplinary sanction.

302. No child should be punished more than once for the same offence. Such punishments should be proportionate to the offence.

303. Children should not be responsible for disciplinary functions except in the supervision of specific social, educational or sports activities or in the development of self-government programmes.

304. *Principle (l)*. All personnel working with children should be fully accountable for their actions.

305. Qualified independent inspectors should be empowered to conduct regular inspections and to undertake unannounced inspections on their own initiative (rule 72 of the United Nations Rules). Qualified medical officers should participate in the inspection, and all the inspectors should have unrestricted access to everyone and to all the records (rule 73 of the United Nations Rules). The Committee on the Rights of the Child has stated that children were "often denied the right to lodge complaints when they were victims of violations of their fundamental rights, including in cases of ill-treatment and sexual abuse".⁴⁶ Any violation should be communicated to the competent authorities for investigation and prosecution.

306. Children should have the opportunity, without censorship and without entailing any adverse consequences of any kind, to complain to the director of the facility, to their authorized representatives, to the central authority or to the judicial authority, and they should be informed of the response without delay. States should also make efforts to establish an independent office to receive and investigate complaints made by children deprived of their liberty, with children being free to speak to them directly and confidentially without penalty (rule 77 of the United Nations Rules).

307. States should give positive consideration to requests from concerned humanitarian and human rights organizations for access to custodial facilities of any type.

308. In relation to children in the criminal justice system, "due account should be taken of concerns raised by inter-governmental and non-governmental and other interested parties, in particular systemic issues, including inappro-

⁴⁵It is a form of torture (see article 7 of the International Covenant on Civil and Political Rights).

⁴⁶"Committee on the Rights of the Child: report on the tenth session" (CRC/C/46), para. 220.

priate admissions and lengthy delays" (guideline 23 of the Guidelines for Action on Children in the Criminal Justice System).

E. Practical training exercises

309. Suitable topics for discussion are as follows:

(a) Are children detained awaiting trial in your country? For how long? What measures can you suggest to limit the number of children, and the length of time spent, in pre-trial detention?

(b) State X is reviewing its detention facilities. Within your working group or panel examine the requirements of the international standards for children deprived of their liberty, and provide a written framework setting out the design of, and the services provided by, such an institution;

(c) Within your working group or panel, draw up a timetable for a month showing how an institution depriving children of their liberty should be organized. Include food, exercise etc. in your plan;

(d) How would you establish an effective inspection and complaints body for children deprived of their liberty, and what powers ought it to have?

VI. Good practice guidelines

A. Good practice guidelines for child justice personnel, policy makers and the mass media

1. *Police*

1. Abandon outdated concepts that juvenile justice is an unimportant part of police work.
2. Enrol in specialized training on the effective and humane care of children accused of coming into conflict with the law.
3. Participate in child educational programmes which help prevent child crime and child victimization.
4. Try to get to know the children and their families in your area.
5. Be alert to places and adults presenting real criminal risks and to the presence of children in such places.
6. If children are sighted away from school during school hours, investigate and notify the family and the school authorities.
7. Promptly investigate any evidence of neglect or abuse of children in their homes, communities or police facilities.
8. Meet regularly with social workers and medical personnel to discuss child issues relating to your work.
9. Keep all records of children in separate and secure storage.
10. Report to superiors any information indicating that a colleague is breaching a child's rights.

2. *Police officers in supervisory positions*

11. Encourage the swapping of information with police forces in other States on alternatives to institutionalization.
12. Encourage the use of a variety of dispositions for alternatives to institutional treatment of children including care, guidance and supervision orders; counselling; probation; foster care; educational and vocational training programmes; and other appropriate and proportionate measures.
13. Assist in the development and implementation of community programmes for the prevention of child crime.
14. Establish expedited procedures, consistent with their human rights requirements, for bringing detained children before a court.
15. Develop non-stigmatizing strategies for protecting children in especially vulnerable circumstances, such as poverty, homelessness, abusive families or high crime areas.
16. Develop child-friendly interview techniques and procedures.
17. Begin to develop a special child unit for child crime and child victimization.

18. Establish independent and impartial child-centred procedures for direct complaints and communications to be made by children.

3. *Child advocates, including lawyers, paralegals and social workers*⁴⁷

19. The role of child advocates is to protect the rights of children in a manner which is consistent with the best interests of the child.
20. Child advocates should meet with the child as soon as possible after they have been assigned the case, and should spend sufficient time with the child to fully explain the law, the relevant procedures and the consequences of any decisions taken.
21. Child advocates should discuss matters in a manner appropriate to the child's age and maturity and should avoid jargon and pomposity.
22. Child lawyers representing a child should comply with the rules of professional conduct governing client confidentiality. Where child advocates are not lawyers, client confidentiality ought to be extended to them.
23. Child advocates should meet with the child on his or her own before a court hearing or a meeting with the police and at each and every stage of the process, whether diversionary or formal trial. Child advocates should check that the child fully understands all the information.
24. Child advocates should be readily available to the child and see and maintain contact with the child as a priority.
25. After consulting with the child and obtaining the child's permission, child advocates should take appropriate steps to consult with the family and with key professionals and agencies so that the child advocate is fully briefed and prepared about the child's current situation.
26. The child advocate should seek the child's views about bail conditions.
27. At no stage in diversions or formal procedures should a child advocate seek to pressurize a child who is maintaining his or her innocence into admitting an offence.
28. In States that have adopted family group conferences, child advocates should play a role in the family group conference that enables the child and the family to be the key decision makers.
29. In States that have adopted family group conferences, child advocates should withdraw during private family time.
30. Child advocates should attend all court hearings involving the child.
31. Child advocates should prepare the child for the possibility that the child may give evidence and help the child consider what he or she may say.
32. Child advocates should recognize that when children and their families identify with a culture that is different from that of the child advocate, the child advocate should act in a culturally appropriate and sensitive manner.

⁴⁷Based upon draft guidelines for best practice for youth advocates in Allison Morris, Gabrielle Maxwell and Paula Shepherd, *Being a Youth Advocate: An Analysis of their Role and Responsibilities* (Wellington, New Zealand, Institute of Criminology, Victoria University, 1997).

33. Child advocates should recognize the different roles and responsibilities of other professions in the juvenile justice system and seek to develop a cooperative working relationship with them.
34. Child advocates should have a good working knowledge not only of the domestic legislation, but also of international human rights law, particularly the Convention on the Rights of the Child and the child justice instruments.
35. Child advocates should undergo ongoing training to improve their skills and to update their knowledge.

4. Judicial personnel

36. Judicial personnel should be sensitive to the special needs of children as victims of crime and of children as witnesses.
37. Judicial personnel ought to ensure that their courts are child-friendly environments.
38. Judges need to acquire the necessary communication skills for speaking to and involving children. Avoid language that is too complex or questions that are too complicated and open-ended.
39. Judges ought to be familiar with the Convention on the Rights of the Child and the child justice instruments.

5. Institutional personnel

40. Ensure, unless it is in the best interests of a particular child not to do so, that children are separated from adult detainees.
41. Institutional personnel should ensure that complete and secure records are maintained on the child's identity, reasons for commitment, date and time of admission, transfer and release, including details of notification to parents, of the physical or mental condition of the children, and of the identity of the staff responsible for the care of the children.
42. Establish procedures for direct complaints and communications to be made by children to the director of the institution and to judicial authorities and social agencies.
43. Institutional personnel should establish close liaison and cooperation with child justice and other children's organizations and medical and social agencies.
44. Ensure that girls who are deprived of their liberty are not attended and supervised by male officers.

6. Policy makers, including politicians, civil servants and non-governmental organizations

45. Policy makers ought to consider child crime prevention strategies in a holistic manner. A holistic approach to child crime prevention includes reviewing national legislation and policies to ensure that they protect children against sexual exploitation and abuse. Policy makers need to consider:
 - (a) What structures exist and what functions they perform;
 - (b) What are their strengths and weaknesses;
 - (c) Whether the structures are available in both urban and rural areas;
 - (d) How they operate;
 - (e) Whether they can be created where they do not exist.

46. Policy makers ought to consider overcoming a number of obstacles that have been highlighted by child advocates as impeding good practice. These include information not being readily available, insufficient resources to support diversionary measures, insufficient remuneration for child advocates and not being notified of meetings sufficiently early to meet with children before court appearances.
47. To encourage those wishing to work in juvenile justice, information needs to be made available about selection and appointment of personnel.
48. Establish independent and impartial mechanisms for resolving complaints.
49. Review legislation to ensure that all status offences for children are abolished.
50. Consider methods consistent with the rights of the child to reduce the delays in cases that go to court.
51. Consider measures to make court proceedings more child-friendly.
52. Ensure that child-centred criminal justice is also applicable to witnesses.
53. Policy makers ought to consider that children are also sometimes the victims of crime and that the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power is equally applicable to children.
54. Ensure the creation of an independent mechanism, such as an ombudsman or commission for children, that is able to undertake research and advocate reform of the juvenile justice system. Such a mechanism ought to have unimpeded access to the juvenile justice institutions and their personnel. Sufficient time ought to be created on a regular basis in the national parliament for the reports of this independent mechanism to be properly discussed and considered.
55. Ensure the design and implementation of regular training programmes and training manuals on juvenile justice for police and other law enforcement officials, judges and magistrates, prosecutors, lawyers, administrators, prison officers, health personnel, social workers and peacekeepers.
56. Ensure the provision of information to children about their rights in juvenile justice.
57. Ensure that the form and style of legislation on juvenile justice is accessible. Accessibility of legislation is often achieved through a statement of clear principles together with non-technical language.⁴⁸
58. The Committee on the Rights of the Child has expressed its concern to all States parties that have made declarations or reservations to the Convention. Policy makers ought to consider the withdrawal of declarations and reservations to the Convention on lodged by a State.
59. Ensure, after consultation with non-governmental organizations and academics, that sufficient detail is given in the reports on the juvenile justice system submitted by States parties to the Convention on the Rights of the Child to the Committee on the Rights of the Child, and that follow-up is provided to any recommendations by the Committee.⁴⁹

7. Mass media

60. Ensure that the privacy of children is protected at all stages of the proceedings by ensuring that information leading to the identification of children is not disclosed.

⁴⁸Geraldine Van Bueren, *Legal Representation of Children in South Africa: A Report for the South African Law Commission* (Pretoria, 1997).

⁴⁹See "General guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention" (CRC/C.58) and the summary of discussions in document CRC/C/46, pp. 33-39.

61. Avoid demonizing children and seek balanced reporting so that children are not portrayed only as the perpetrators of crime.
62. Media personnel at all levels should receive training in human rights and the rights of the child so as to ensure that the mass media are more child-oriented.
63. Include information on the existence of services, facilities and opportunities for children in the mass media.

B. Good practice guidelines for conferencing⁵⁰

64. The professionals involved in conferencing should be trained in and committed to the international juvenile justice principles.
65. The child should be encouraged to seek legal advice about the appropriateness of admitting the offence and agreeing to any outcome, but lawyers should generally not speak in conferences.
66. Conferences should be arranged at a time and venue that suits the child, his or her family and the victim, rather than the professionals, and that encourages their full participation.
67. The child, his or her family and the victim should be briefed about the conferencing process and the part they will be expected to play.
68. The child and his or her family should be provided in advance of the conference with any information about community resources and community programmes that they may need to formulate a plan designed to deal with the offending.
69. Any support people desired by the child, his or her family and the victim should be entitled to attend the conference.
70. The views of the victim should be communicated to the conference participants if the victim chooses not to attend.
71. The child, his or her family and the victim should have the opportunity to speak at the conference.
72. The professionals attending the conference should provide information and support to the parties, but should otherwise adopt a low profile in the process, especially with regard to formulating the outcome or recommendation.
73. The participants should have available to them any information that may be required in order to reach decisions on how best to deal with the offence.
74. The child and his or her family should have private time together to discuss how best to deal with the offence.
75. Outcomes should be reviewed and monitored.
76. The individual or agency responsible for the review or monitoring should be agreed upon at the conference.

C. Good practice guidelines for involving children in court processes

77. Select people with specific qualities, such as an interest in children and a commitment to the international juvenile justice principles and their underlying objectives, to serve as court judges and lawyers representing children.
78. Train judges and lawyers in the principles and objectives underlying the international juvenile justice principles and in communicating and listening to children.

⁵⁰Based upon Morris, "Legislating for the effective involvement of young people ...".

79. Ensure the attendance of support people if desired by children.
80. Inform the child about the process and any part that he or she may play.
81. Clarify the role of lawyers representing children.
82. Consult children about the design of the courtroom, so as to create a courtroom environment in which they may feel comfortable.

D. Good practice guidelines for protecting the rights of child victims and child witnesses

83. States should ensure that child victims and witnesses are treated with compassion and respect for their dignity and provided with appropriate access to justice and fair treatment, restitution, compensation and social assistance.⁵¹
84. Police, lawyers, judges and other court personnel should receive training in dealing with cases where children are victims.
85. Specialized offices and units should be established to deal with cases involving offences against children.
86. A code of practice should be drafted for the proper management of cases involving child victims.
87. Child victims should have access to assistance that meets their needs, such as advocacy, protection, economic assistance, health and social services, and counselling.
88. Recovery services for child victims and witnesses should be family and community-based, without institutionalization.
89. Child victims should have access to fair and adequate compensation for torture or other cruel, inhuman or degrading treatment or punishment, including rape and other forms of sexual abuse, unlawful or arbitrary detention and miscarriages of justice.
90. Child victims should have legal representation and interpretation services.
91. The procedure and evidential requirements surrounding child witnesses should be reviewed to ensure that they are child-oriented and fully respect the rights of the child.
92. In accordance with international human rights law, the privacy of the child victim should be fully respected.
93. Police, prosecutors, judges and magistrates should apply more child-friendly practices, for example, in police operations and interviews of child witnesses.
94. Child victims should be informed of their role, of the timing and the progress of the proceedings, and of the disposition of their cases in a manner which the child understands.
95. The development of child witness preparation schemes should be encouraged to familiarize children with criminal justice procedures prior to their giving evidence.
96. Appropriate assistance should be provided to child victims and witnesses throughout the legal process.
97. On no account should child witnesses be detained in police stations or in any form of detention facility.

⁵¹See the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

E. Recommended additional reading relating to good practice

1. *Studies and international instruments*

Geraldine Van Bueren, *The International Law on the Rights of the Child* (The Hague, Kluwer, 1995).

"Protecting children against torture, cruel, inhuman and degrading treatment and punishment", in *Childhood Abused*, Geraldine Van Bueren, ed. (Dartmouth, England, Ashgate, 1998).

Geraldine Van Bueren, *International Documents on Children* (The Hague, Kluwer, 1998).

2. *Papers presented to the Law Commission of South Africa at a workshop held at Gordon's Bay, November 1997*

Bernadine Dohrn, "Legal representation of youth in delinquency proceedings—a comparative inquiry: South Africa and the United States" .

Allison Morris, "Legislating for the effective involvement of young people, families, victims and the community in the juvenile justice system".

Ann Skelton, "Developing a juvenile justice system for South Africa: international instruments and restorative justice".

VII. Model course outline

A. Programme of work

<i>Time</i>	<i>Activity</i>
Day one	
9-9.30 a.m.	Registration of participants; document distribution
9.30-10 a.m.	Opening addresses and explanation of the aims of the course
10-10.30 a.m.	Introduction of training team and participants
10.30-11 a.m.	Coffee break
11 a.m.-1 p.m.	Human rights standards in juvenile justice Presentations: 45 minutes each Children's rights as human rights International law on child criminal justice Questions: 30 minutes
1-2.30 p.m.	Lunch
2.30-5.30 p.m.	Umbrella principles and their practical application Presentation: 45 minutes Questions: 15 minutes Practical exercises: 1 hour Plenary reports and discussion: 1 hour
Day two. Preventing children from coming into conflict with the law	
9-11 a.m.	Presentations: 45 minutes each International law on crime prevention for children The three levels of prevention Questions: 30 minutes
11-11.15 a.m.	Coffee break
11.15 a.m.-1 p.m.	Presentation: 45 minutes International principles on preventing child crime Questions: 15 minutes Practical exercises: 45 minutes
1-2.30 p.m.	Lunch
2.30-4.30 p.m.	Plenary reports and discussion: 2 hours
Day three. Children accused of infringing the criminal law	
9-10 a.m.	Presentation: 45 minutes Human rights framework for children accused of infringing the criminal law Questions: 15 minutes
10-11 a.m.	Presentation: 45 minutes Fundamental principles of diversions and their application Questions: 15 minutes

<i>Time</i>	<i>Activity</i>
Day three. (continued)	
11-11.30 a.m.	Coffee break
11.30 a.m.-1 p.m.	Practical training exercises, plenary reports and discussion
1-2.30 p.m.	Lunch
2.30-4 p.m.	Presentations: 20 minutes each Children's courts Rights of children pre-trial Rights of children post-trial Questions: 30 minutes
4-4.15 p.m.	Coffee break
4.15-6 p.m.	Practical training exercises, plenary reports and discussion

Day four. Children deprived of their liberty

9-10.15 p.m.	Presentations: 30 minutes each Human rights framework for children deprived of their liberty Practical application of principles Questions: 15 minutes
10.15-10.30 a.m.	Coffee break
10.30 a.m.-1.30 p.m.	Practical training exercises, plenary reports and discussion
1.30-3 p.m.	Lunch
3-4 p.m.	Review, discussion of follow-up training and closure

B. Presentation of transparencies

A number of fundamental principles, called the international umbrella principles, apply to each and every stage of the juvenile justice system, and should be taken into account by all individuals on a daily basis whenever a decision concerning juvenile justice is made. The international umbrella principles are derived from the international instruments establishing the United Nations standards and norms in juvenile justice. The principles reflected in the transparencies are set forth below.

1. Day one: international umbrella principles

1. Juvenile justice legislation should apply to all those under the age of 18.
2. Juvenile justice is a part of the national development process of a State and as such should receive sufficient resources to enable juvenile justice to be organized in accordance with international principles.
3. The principle of non-discrimination and equality is applicable to juvenile justice, and this includes a prohibition on discrimination on account of the child and the child's family.
4. The guiding principle for any policy or action concerning juvenile justice is that the best interests of the child is a paramount consideration.
5. Delay in deciding matters relating to a child is prejudicial to the best interests of the child.
6. Every child shall be treated with humanity and with respect for the inherent dignity of the human person, taking into account the child's age.
7. At all stages, children should be treated in a manner that facilitates their reintegration into society.

8. Children are entitled to express their views freely in relation to criminal justice, and the views of the child should be given due weight in accordance with both the age and maturity of the child.
9. Children have the right to seek, receive and impart information concerning the juvenile justice system in a form that is both accessible and appropriate to children.
10. Juvenile justice should be organized in a manner consistent with children's rights to privacy, family, home and correspondence.
11. If children are deprived of their family environment, they are entitled to special protection and assistance.
12. No child shall be subject to torture or other cruel, inhuman, degrading or harsh treatment or punishment.
13. At no stage of the juvenile justice process should children be unlawfully or arbitrarily deprived of their liberty.
14. The arrest, imprisonment or detention of children shall only be used as a measure of last resort and for the shortest appropriate period of time.
15. Parents are to be notified of any arrest, detention, transfer, sickness, injury or death of their child.

2. Day two: international principles relating to the prevention of child crime

16. Intervention is a form of social control. If intervention at any level is needed, it should be the minimum necessary to protect the child.
17. Intervention should involve the voluntary maximum participation of children at all levels.
18. Children should only be liable for the same offences as adults.
19. Children have the right to a family life that is respected.
20. States are under a duty to support the family.
21. Education should be relevant to children and consistent with the child's dignity and with the ability and potential of the individual child.
22. States, in seeking to implement the child's right to freedom of expression, should encourage the development of guidelines for the protection of children from material injurious to their well-being.
23. The State is under a duty to provide special protection and assistance for children who live or work on the streets.

3. Day three: principles relating to children accused of infringing the criminal law

24. The principle of proportionality is applicable to all aspects of juvenile justice.
25. The juvenile justice system should promote the well-being of the child and the child's reintegration into and assumption of a constructive role in society.
26. If the child consents, the use of diversions is encouraged.
27. If a diversion is not appropriate, deprivation of liberty should only be used as a last resort and for the shortest appropriate period.
28. Proceedings before any authority or agency should be conducted in a manner conducive to the best interests of the child and in a manner that allows the child to exercise the right to freedom of expression.
29. All personnel dealing with juvenile justice should be specially trained and accountable for all their actions and policies.

30. All children are entitled to benefit from all their civil rights.
31. The establishment of laws, procedures, authorities and institutions specifically applicable to children is desirable.

4. Day four: principles concerning the deprivation of liberty of children

32. Deprivation of liberty should only be used as a measure of last resort, only for the shortest appropriate period of time and in a non-discriminatory manner.
33. Every child deprived of liberty shall have the right to prompt access to legal and other assistance.
34. The establishment of small open facilities is encouraged to enable individualized treatment and to avoid the additional negative effects of deprivation of liberty.
35. Deprivation of liberty should only be in facilities that are consistent with respect for the child's human rights and dignity. Such facilities should guarantee meaningful activities and programmes promoting the health, self-respect and sense of responsibility of children.
36. Deprivation of liberty should be so organized as to respect the child's right to family life and in keeping with the aim of reintegration.
37. All children deprived of their liberty should be helped to understand their rights and obligations during detention and be informed of the goals of the care to be provided.
38. All personnel working with children deprived of their liberty should receive appropriate training.
39. All children should benefit from arrangements designed to assist them in reintegrating with society.
40. Children deprived of their liberty are entitled to the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.
41. The carrying and use of weapons by personnel in facilities where children are detained is prohibited.
42. The imposition of discipline should be consistent with upholding the dignity of the child.
43. All personnel working with children should be fully accountable for their actions.

C. Post-course examination

Please circle the correct answer for each question.

1. The treaties discussed in this course may best be described as:
 - (a) Not legally binding but an ideal to work towards;
 - (b) Not legally binding but strongly persuasive;
 - (c) Legally binding on governments but not on child criminal justice personnel;
 - (d) Fully legally binding.
2. The various rules and guidelines discussed in this course have been developed:
 - (a) To complicate the work of juvenile justice personnel;
 - (b) To provide authoritative guidance for the implementation of international standards;
 - (c) To provide a theoretical framework for the study of children's rights;
 - (d) To undermine the family.

3. According to the international standards on juvenile justice, the purpose of the criminal justice system when dealing with children is:
 - (a) To satisfy society's need for punishment;
 - (b) To deter other children from committing crime;
 - (c) To facilitate the child's reintegration and assumption of a constructive role in society;
 - (d) To attempt to influence all families to exercise greater control over their children.
4. Children in detention may be subject to mild forms of torture:
 - (a) Under no circumstances;
 - (b) When there are exceptional circumstances, such as public disorder;
 - (c) When it is performed following superior orders;
 - (d) To obtain information about members of the child's family and their whereabouts.
5. Juvenile justice personnel who have reason to believe that a colleague has committed a violation of a child's rights should:
 - (a) Remain silent in order to preserve collegial loyalty;
 - (b) Refuse to cooperate with inquiries and investigations into the violation;
 - (c) Assist the colleague in covering up the violation;
 - (d) Report the violation within the chain of command or, if this is not effective, to a competent outside body.
6. The Riyadh Guidelines urge intervention in preventing child crime. Such intervention should:
 - (a) Be completely within the discretion of the intervening authority;
 - (b) Be on non-discriminatory grounds which are strictly defined;
 - (c) Be focused on poor children;
 - (d) Be focused on minorities.
7. If an intervention is planned it should:
 - (a) Be to the maximum extent possible;
 - (b) Involve placing a child in an institution;
 - (c) Immediately take the child away from the family;
 - (d) Be to the minimum extent necessary.
8. According to the Beijing Rules, diversions:
 - (a) Counteract the negative consequences of formal child justice and deprivation of liberty;
 - (b) Are a soft option;
 - (c) Do not have to be in accordance with children's human rights;
 - (d) Are of no concern to the child's family.
9. According to the Convention on the Rights of the Child, special child courts and personnel are:
 - (a) A waste of resources;
 - (b) Only desirable for the wealthiest of States;
 - (c) Desirable;
 - (d) A low priority.
10. According to international law, civil rights in criminal justice:
 - (a) Are applicable only to adults;

- (b) Are applicable only to boys;
 - (c) May be ignored at the discretion of the authorities;
 - (d) Are applicable to all children in the criminal justice system.
11. According to the Convention on the Rights of the Child and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, deprivation of liberty should be used:
- (a) At the discretion of the authorities;
 - (b) To teach children a lesson;
 - (c) As a measure of last resort and for the shortest appropriate period of time;
 - (d) To satisfy any public demand for retribution.
12. Children who are deprived of their liberty should be separated from adults:
- (a) Only if there are sufficient financial resources;
 - (b) Always;
 - (c) As a general rule, unless it is in the child's best interests;
 - (d) At the discretion of the authorities.
13. Children who are deprived of their liberty:
- (a) Forego their rights to health and education;
 - (b) Are entitled to both education and the highest attainable standards of health;
 - (c) Are entitled to the highest attainable standards of health;
 - (d) Are entitled to both education and the highest attainable standards of health only if the State regards them as important.

D. Post-course evaluation

In order that we may know your impressions and assessment of the course you have just completed, and to respond to your concerns in our ongoing development and improvement of training activities, we would appreciate your answering a few brief questions. Thank you in advance for your cooperation.

1. How satisfied are you with the presentation of international standards in this course?
- (a) Very satisfied;
 - (b) Satisfied;
 - (c) Unsatisfied.

Please comment.

2. How satisfied are you with the degree to which the means for practical implementation of those standards in your work was addressed?
- (a) Very satisfied;
 - (b) Satisfied;
 - (c) Unsatisfied.

Please comment.

3. How satisfied are you with regard to the structure of the course?
- (a) Very satisfied;
 - (b) Satisfied;

(c) Unsatisfied.

Please comment.

4. How satisfied are you with regard to the expert presentations?

(a) Very satisfied;

(b) Satisfied;

(c) Unsatisfied.

Please comment.

5. How satisfied are you with regard to the practical training exercises?

(a) Very satisfied;

(b) Satisfied;

(c) Unsatisfied.

Please comment.

6. How satisfied are you with regard to the plenary discussions?

(a) Very satisfied;

(b) Satisfied;

(c) Unsatisfied.

Please comment.

7. How satisfied are you with the materials provided?

(a) Very satisfied;

(b) Satisfied;

(c) Unsatisfied.

Please comment.

8. Have you, during this course, acquired the necessary knowledge and skills:

(a) To apply children's rights standards in your work?

(b) To pass on the information received to your colleagues?

9. In your opinion what is the best method of training those working in juvenile justice in children's rights?

10. What additional comments would you like to offer?

كيفية الحصول على منشورات الأمم المتحدة

يمكن الحصول على منشورات الأمم المتحدة من المكتبات ودور التوزيع في جميع أنحاء العالم . استعلم عنها من المكتبة التي تتعامل معها أو اكتب إلى : الأمم المتحدة ، قسم البيع في نيويورك أو في جنيف .

如何购取联合国出版物

联合国出版物在全世界各地的书店和经售处均有发售。 请向书店询问或写信到纽约或日内瓦的联合国销售组。

HOW TO OBTAIN UNITED NATIONS PUBLICATIONS

United Nations publications may be obtained from bookstores and distributors throughout the world. Consult your bookstore or write to: United Nations, Sales Section, New York or Geneva.

COMMENT SE PROCURER LES PUBLICATIONS DES NATIONS UNIES

Les publications des Nations Unies sont en vente dans les librairies et les agences dépositaires du monde entier. Informez-vous auprès de votre libraire ou adressez-vous à : Nations Unies, Section des ventes, New York ou Genève.

КАК ПОЛУЧИТЬ ИЗДАНИЯ ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ

Издания Организации Объединенных Наций можно купить в книжных магазинах и агентствах во всех районах мира. Наводите справки об изданиях в вашем книжном магазине или пишите по адресу: Организация Объединенных Наций, Секция по продаже изданий, Нью-Йорк или Женева.

COMO CONSEGUIR PUBLICACIONES DE LAS NACIONES UNIDAS

Las publicaciones de las Naciones Unidas están en venta en librerías y casas distribuidoras en todas partes del mundo. Consulte a su librero o diríjase a: Naciones Unidas, Sección de Ventas, Nueva York o Ginebra.