Analysis of the Draft Code of Children for the Kyrgyz Republic

Promoting the Rule of Law
ANALYSIS OF THE DRAFT CODE OF CHILDREN FOR THE KYRGYZ REPUBLIC

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Analysis of the Draft Code of Children for the Kyrgyz Republic*

I. Introduction

This report analyzes the draft law dealing with the protection of children of the Kyrgyz Republic entitled “The Code of Children” (“draft Kyrgyz Code”). The draft law is assessed in terms of its compliance with international standards regarding the protection of children, as set forth in the United Nations Convention on the Rights of the Child,¹ the United Nations Guidelines for the Prevention of Juvenile Delinquency,² the United Nations Standard Minimum Rules for the Administration of Juvenile Justice,³ the United Nations Rules for the Protection of Juveniles Deprived of their Liberty⁴ as well as in other relevant international documents. Specific recommendations have been suggested for modification of the draft law based on these standards.

Overall, the draft Kyrgyz Code represents a very good start on complying with the many international standards to which Kyrgyzstan is a party. The authors have chosen to model much of their legislation on the United Nations Convention on the Rights of the Child (“CRC”), which is the central authority on children’s rights and should be the guiding instrument for any country that is drafting or revising its law on the protection of children. The major issues that need to be addressed further in the draft Kyrgyz Code are: children’s health, children in the labor market, adoption, refugee children, children with special needs, and other additional rights of the child. While it is important to delineate these and other legal issues in legislation, it is also vital to establish enforcement mechanisms for such provisions. Consequently, the drafters of the Kyrgyz Code should focus more on juvenile justice administration and the government's responsibility to enforce the laws that it has enacted.

II. International Standards

Over sixteen years ago, the United Nations adopted the CRC. The Republic of Kyrgyzstan became a State Party to this ground breaking treaty in 1994 and is legally bound by its provisions.⁵

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The CRC is a unique human rights treaty in that it protects not only the child’s political and civil rights but also extends protection to the child’s economic, social, cultural and humanitarian rights. The authors of the draft Kyrgyz Code should be commended for modeling many of the provisions on the CRC. The majority of the comments included in this assessment will be guided by the CRC.

On February 12, 2003, the Republic of Kyrgyzstan acceded to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and is therefore legally obligated to define and prohibit such acts. These issues are also addressed in Articles 34-36 of the CRC. Several months later, on August 13, 2003, the Republic of Kyrgyzstan became a State Party to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts. Under this protocol, States Parties are required to ensure that members of their armed forces under the age of 18 do not take direct part in hostilities nor are they compulsorily recruited into the armed forces. While these protocols may have been addressed in other Kyrgyz legislature and, consequently, will not be discussed at length in this assessment, the draft Kyrgyz Code could be an appropriate place to codify such important internationally recognized issues.

The drafters may also wish to consider other non-binding documents as they revise and perfect the draft Kyrgyz Code. The United Nations Guidelines for the Prevention of Juvenile Delinquency (“The Riyadh Guidelines”) present an outline of social policy designed to prevent juvenile delinquency. These recommendations contain innovative proposals regarding issues related to family, education, community, mass media, social policy and legislation which support the child’s human dignity. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) provide a model for the development of juvenile justice systems. The Beijing Rules seek to promote the welfare of juveniles to the greatest extent before the onset of delinquency in order to obviate the need to subject them to punitive measures imposed by the state. Lastly, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (“The Havana Rules”), deal with youth placed in detention, focusing on their reintegration into society and their right to adequate treatment and contact with their families.

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7 See CRC, supra note 1, arts. 34-36.
9 See CRC Protocol on Armed Conflicts, supra note 8, arts. 1-2.
10 See generally The Riyadh Guidelines, supra note 2.
11 See generally The Beijing Rules, supra note 3.
12 See generally The Havana Rules, supra note 4.
III. Drafting Issues

The authors of the draft Kyrgyz Code have chosen to define “child” as a physical person under eighteen years of age in accordance with Article 1 of the CRC.\textsuperscript{13} While the CRC leaves room for flexibility on the issue of the age of eighteen as the end of childhood, the draft Kyrgyz Code is clear that this statute will protect a child until his/her eighteenth birthday and not earlier. A lower threshold of fourteen years of age, for example, would not be consistent with new scientific research cited by an expert indicating that adolescent brains remain in development until roughly the age of twenty-four.

However, defining “childhood” as “the legal status of persons who have not acquired discretion” in the draft Kyrgyz Code (Article 2, 3\textsuperscript{rd} paragraph) without setting a specific age is problematic. Such a definition is vague and suggests that the draft Kyrgyz Code makes a legal distinction between “child” and “childhood.” Even though Article 2 defines “child” as a person under eighteen years of age, some judges and lawyers may conclude that the protections summarized in Article 1 and detailed throughout the draft Kyrgyz Code do not apply to those above the age of fourteen, reasoning that children at that age have acquired “discretion” because they are permitted to work (Article 37), may enter into contracts (Article 41), and have reached the age of culpability (Article 45). The code could be improved by eliminating this confusion and by redrafting or even omitting the definition of childhood altogether.

The protections delineated in the CRC are applied in “the best interests of the child.” This principle is introduced in Article 3 of the CRC\textsuperscript{14} and reiterated numerous times throughout its provisions, which implies that “the best interests of the child” is the standard by which compliance of States Parties will be measured. However, this tenet does not guarantee that a child’s best interests will always triumph. Rather, the principle assures that the child’s interests will be given due weight in every circumstance and decision affecting the child.

Reflecting the CRC’s emphasis on this principle, the first section of Article 3 of the draft Kyrgyz Code should identify “the rights and best interests of the child” as a primary consideration. This clarification, at the beginning of the code, would support language later used in Articles 23 and 24. Additionally, Article 6(1) of the draft Kyrgyz Code should state that “[t]he goals of the State policy in the field of the protection of the rights and best interests of the child shall include….” The 3\textsuperscript{rd} paragraph of the same Article 6(1) should read, “implementing and promoting… [to]…guarantee equal rights and freedoms and meet the best interests of the child.” The consistent use of the “best interests of the child” phrase will aid in making this the legally recognized standard of care to which Kyrgyz social welfare institutions, courts, administrative offices and legislative bodies are held and, thus, the code will conform with international standards.

The draft Kyrgyz Code omits to define the terms “neglect” and “abuse” although these words are used throughout its provisions. It is important to have such terms clearly defined as their prevention is one of the goals outlined in paragraph 6 of Article 3 in the draft Kyrgyz Code. Furthermore, the Family and Child Support Department in Article 15 of the code is created for the purpose of identifying cases involving child neglect among other things. Removing children from

\textsuperscript{13} See CRC, supra note 1, art. 1.
\textsuperscript{14} See id. art. 3.
their homes and stripping parents of their parental rights are very serious issues so the basis for such governmental acts must be extremely clear. The drafters may also want to review the language of Article 19 of the CRC more closely as they rewrite the definition section of the draft Kyrgyz Code to include the terms “neglect” and “abuse.”

Another potential source of confusion is the use of the term “deals” in Articles 40 and 41 of the draft Kyrgyz Code. “Minor domestic deals” is a vague term and may be construed to authorize the employment of children under the age of fourteen as domestic workers. It is unclear what children less than fourteen or between fourteen and eighteen are empowered to do or are protected against in the field of labor. Clarification of the term “deals” and the legal capacity of children would be helpful.

The overall structure of the draft Kyrgyz Code was somewhat confusing, with legislation relating to different agencies grouped together while the rights and guarantees of the child were addressed in a later section. The drafters may want to consider grouping the provisions relating to each agency’s jurisdiction with the provisions that set forth the goals of the agency and the child protections that it is assigned. Not only would the code read better thematically but it would give the drafters the opportunity to clarify which agency or entity is charged with the enforcement of the different rights of the child.

IV. Health of Parent and Child

The draft Kyrgyz Code focuses on the rights, liberties, and lawful interests of the child in various areas such as health, education and labor laws. However, the importance of the family in preserving and protecting the child’s rights cannot be overlooked. When considering the child’s needs, it is essential to also consider the family’s needs and how best to maintain a functioning family unit. The principle of protecting family unity is expressed in the preamble of the CRC, which states, “[c]onvinced that the family...[is] the fundamental group of society and the natural environment for the growth and well being of all it members and particularly children, [it] should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.”

In consideration of this fundamental principle, the drafters may wish to include additional provisions to the set of goals of the Family and Child Support Department described in Article 15 of the draft Kyrgyz Code. In reviewing Article 18(2) of the CRC, the objective is to render “…appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities....” The CRC recognizes that parents often need assistance in the care of children, including financial, psychological, educational, and medical aid. There is a well documented relationship between the stress of poverty and the breakdown of the family unit. As an example of assistance, an expert describes programs that offer respite, a break from daily duties, which result in fewer incidents of neglect and abuse of children in the home, especially of children with special needs. The drafters may want to consider amplifying the scope of the code to address the need for assistance to the parents in order to guarantee the implementation of rights that are currently set forth in its provisions.

15 Id. preamble.
16 Id. art. 18(2).
Expert commentators felt that Article 25 of the draft Kyrgyz Code, which provides state financial support to disadvantaged families in order to meet children’s needs, does not rise to the level of the standards enunciated in the CRC. Article 18(2) of the CRC requires “…that States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.” Article 18(3) of the CRC continues the concept of appropriate assistance to parents by specifically including child-care services that would allow parents to work in order to support their families. Such measures would be helpful to parents trying to satisfy the requirements of the draft Kyrgyz Code to provide optimal care for their children (Article 24).

Article 24 of the CRC enumerates a clear summary of the child’s health care rights. Article 10 and Article 36 of the draft Kyrgyz Code include many of these measures and expand, in a positive manner, on the protection of those rights. The drafters may also want to compare the African Charter on the Rights and Welfare of the Child (“African Charter”), which includes a similar list of basic health care rights in Article 14.

Article 34(1) of the draft Kyrgyz Code tracks the language of Article 6 of the CRC and identifies the child’s inherent right to life. The drafters may choose to use the language of Article 24(1) of the CRC to further protect the right to life by expanding upon the right to health care already contained in Article 34(1) of the draft code. The authors could add the following language to Article 34(2): “…the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.” Such language would help explain what the right to health care actually entails.

While Article 36(1) of the draft Kyrgyz Code includes many of the measures included in the CRC’s Article 24 on the health of children, commentators recommend the specific inclusion of Article 24(3) of the CRC in the draft Kyrgyz Code. Article 24(3) indicates that “States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.” The Committee on the Rights of the Child, which monitors States Parties’ compliance with the standards of the CRC, has shown special interest in eradicating practices such as early marriage, honor killings and female circumcision generally found in countries with predominant Muslim populations in various parts of the globe. These are three examples of harmful traditional practices as defined by the Committee that might not necessarily apply in Kyrgyzstan, however, the drafters should take this overall concept into consideration.

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17 Id.
18 Id. art. 18(3).
19 See id. art. 24.
21 See CRC, supra note 1, art. 6.
22 Id. art. 24(1).
23 Id. art. 24(3).
While the draft Kyrgyz Code speaks generally of “ensuring coordination with ministries and … legal entities with the aim of protecting the rights and interests of the child in the medical care sphere” (Article 9, paragraph 12), the CRC creates a far more specific right of the child “who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.” The drafters may choose to follow the example of the CRC, which empowers the child with a defined legal right of review of treatment when dealing with the medical system.

V. Labor and the Child

Article 10 of the draft Kyrgyz Code sets forth the goals of a special state agency for labor, employment, and social security with regard to the protection of the rights and interests of the child. These goals are broadly delineated. The drafters may want to complement the goals outlined in this article with the language of the CRC, which creates a specific right of the child, “… to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.” It is commendable that Article 38 of the draft Kyrgyz Code deals with the prohibition of child labor using language similar to the CRC, but attention is called to Article 32(2)(c) of the CRC, which provides for penalties and sanctions to ensure effective enforcement of child protections in the labor market. The specificity of a goal of the state agency for labor, employment and social security to protect children from exploitation and hazardous work together with provisions for effective enforcement of those goals would strengthen that state agency’s mandate.

Commentators expressed confusion regarding Article 37(3) of the draft Kyrgyz Code, which states that the minimum age of employment shall be fourteen years of age. The Kyrgyz Republic ratified the 1973 International Labour Organization Minimum Age Convention in 1992 and, thus, adopted the minimum age of sixteen for the purposes of employment. The minimum age of fourteen given here is in conflict with Kyrgyzstan’s commitment with the ILO treaty. However, the mere fact that a minimum age was specified in the code is in compliance with CRC Article 32(2)(a) which requires States Parties to provide for a minimum age for admission to employment.

More clearly defined provisions in Article 37(4) of the draft Kyrgyz Code would be pertinent to realistically ensure every child’s right to receive vocational training from the age of fourteen, if they should so desire. A useful addition to this clause might be the qualification that such vocational

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25 CRC, supra note 1, art. 25 (emphasis added).
26 Id. art. 32(1).
27 See id. art. 32(2)(c).
30 See ILO Convention No. 138, supra note 28, art. 3(3).
31 See CRC, supra note 1, art. 32(2)(a).
training is free to the child or that the child is to be provided with financial support if s/he cannot afford such training, as stated in Article 28(1)(b) of the CRC.\textsuperscript{32}

\textbf{VI. Adoption}

While there is a great deal of social science research that supports the notion embodied in the CRC and the African Charter that the unity of the family is always the goal in protecting the rights of children, there are instances where concerted efforts and reasonable amounts of resources are expended to effect reunification without success. In those cases, adoption should be considered.

Consistent with Article 21 of the CRC,\textsuperscript{33} Article 22(9) of the draft Kyrgyz Code regards adoption as “the most favorable form of placement for children left without parental care.” The drafters should consider expanding Article 22(9) to include important policy goals for adoption, such as placement preferences. Relatives could receive preferential placement and the right to adopt related children. Another preference could be close family friends since, after relatives, children often feel least abandoned if placed with a family friend or member of the immediate community (except in abuse cases necessitating total physical separation from parental contact). Experts noted that language was also needed in Article 22(9) to address the recruiting and supporting of prospective Kyrgyz adoptive parents.

While Article 22(4) of the draft Kyrgyz Code includes a provision “taking into account ethnic, religious, cultural, national and linguistic background of the child” for the child care plan, such qualifying language would also be appropriate for decisions involving adoption as well and should be included in Article 22(9) of the draft Code.

Article 28 of the draft Kyrgyz Code is presumably the section where the adoption procedure will be laid out in detail in the future. At the moment, Article 28 speaks only of “the best interests of the child” and forbids the separation of brothers and sisters in adoption proceedings. While sibling unity is an important principle, commentators believe that separation of siblings should not be unilaterally prohibited. Experts indicate that there should be flexibility in cases, where, for example, an older sibling does not want to be adopted but a younger sibling does want a new family. Often, older children will prefer guardianships or transitional care because they remember the attachments they had with their parents, but younger children, who may not have had the same attachment or do not remember it, prefer to be adopted. There are also times when one sibling is abusive to another. Consistent with the theme of family unity found in the CRC and other international documents, more flexible language might be appropriate. For example, Article 28 of the draft Kyrgyz Code could state that: “[b]rothers and sisters should not be separated except in extraordinary circumstances where the best interest of the children so merits.” This tenet would also be consistent with the policy expressed in connection with the child care plan delineated in Article 22(4) of the draft Kyrgyz Code.

The CRC also requires States Parties to consider inter-country adoption as an alternative where adopting parents would come from another state to remove and raise the child outside of Kyrgyzstan. This would occur only in circumstances where the child cannot be placed for adoption

\textsuperscript{32} See id. art. 28(1)(b).
\textsuperscript{33} See id. art. 21.
or foster care or otherwise be cared for in the country of origin. The drafters may want to rephrase Article 22(9) of the code in order to more clearly acknowledge the fact that the Kyrgyz Republic should follow this aspect of the treaty.

In addition, the authors of the draft Kyrgyz Code may choose to be guided by the 1993 Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption ("Hague Convention on Intercountry Adoption"). This convention gives preference to intercountry adoption over any form of temporary care available within the child's country of origin, including foster or institutional care. The Hague Convention on Intercountry Adoption emphasizes "the advantage of a permanent family," and gives that placement priority over less permanent or institutional options, even when the adopting couple does not share the child's cultural background. This placement preference need not conflict with language such as that used in Article 22(4) of the draft Kyrgyz Code which takes into account the ethnic, religious, cultural, national and linguistic background of the child when it comes to establishing a child care plan. Rather, the drafters could provide that no child can be denied an adoptive placement due to differences in the ethnic, religious, cultural, national and linguistic background of the prospective adoptive parents. Otherwise, minority children run the risk of much greater waiting periods for an adoptive home.

The Hague Convention on Intercountry Adoption clearly acknowledges that children do best when raised in permanent, private families because it recognizes that institutional and transitory foster home alternatives do not provide what parentless children most need and deserve (i.e., to be raised in a family home by parents). While the goal of the convention is not to promote the widespread adoption of children across borders, it does ensure that when such adoptions occur, they meet certain standards that protect the best interests of the child as well as his/her fundamental rights as recognized by international law. Furthermore, this instrument seeks to discourage child abduction, the sale of children and child trafficking.

VII. Refugee Children

Commentators noted that the language of Article 27 of the draft Kyrgyz Code is more restrictive in granting refugee status to children than Article 22 of the CRC. While the code grants refugee status to children whose head of the family has been granted such status by the Kyrgyz Republic, as long as they live together, Article 22(1) of the CRC requires that States Parties "...ensure that a child who is seeking refugee status or who is considered a refugee ... shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and

34 See id. art. 21(b).
36 Id. preamble.
37 See id. art. 2.
38 See id. preamble.
39 See id. art. 1(a).
40 See id. art. 1(b).
41 See CRC, supra note 1, art. 22.
humanitarian assistance in the enjoyment of applicable rights set forth in the [CRC] and in other international human rights or humanitarian instruments to which the said States are Parties." The CRC considers the child independently from his/her parents or others that might accompany him/her when granting him/her protections as a refugee. The draft Kyrgyz Code is narrower and ties such protections to the parents of the child.

Furthermore, the language of Article 27 of the draft Kyrgyz Code does not address the future of refugee children who are orphaned or abused and neglected by parents who can no longer care for them. Since these children will live in the Kyrgyz Republic and will be schooled there, they will not have another country to call “home.” Many of these children will arrive in Kyrgyzstan too young to have known their country of birth. It behooves the Kyrgyz drafters to identify a route through which refugee children, without parents, can become citizens. The drafters may wish to review Article 23 of the African Charter, which extends broad protections to refugee children and which clearly addresses the issue of parentless children in this situation.

VIII. Children with Special Needs

Presumably Article 29 of the draft Kyrgyz Code which is entitled “Special Needs Children” remains to be written. Commentators urged the drafters to review Article 23 of the CRC on the rights of the mentally or physically disabled child. The commentators would like to see more specificity in the areas of education as well as aid for adoptive parents of children with special needs such as health and respite/financial assistance. Since special needs children have greater requirements than normal children, adoptive parents should be given greater incentives to adopt such children as well as greater resources to raise them.

When the Kyrgyz drafters complete their work on Article 29 of the code, they may choose to also revise the language of Article 25(1) which states that each orphaned or uncared for child shall be provided with “equal financial support” as other impoverished children. While such equality is a laudable goal, the reality is that some children have far greater needs than others due to mental, physical, or developmental disabilities. Accordingly, language mandating additional financial support for special needs children could be included in Article 25 of the code.

Article 31 of the draft Kyrgyz Code seems to contemplate a choice when it comes to the type of education for children with special needs. This is compatible with Article 23(3) of the CRC, which deals with the disabled child and requires a State Party to “...ensure that the disabled child has effective access to and receives education [and] training … conducive to the child’s achieving the fullest possible social integration and individual development ….” Children with special needs can be “mainstreamed,” integrated into general classrooms with special accommodations, or they can be sent to special schools and classrooms. Children and parents may desire the right to choose which type of educational placement would best suit their particular needs; language in Article 31 of the draft Kyrgyz Code should reflect that right.

42 Id. art. 22(1) (emphasis added).
43 See African Charter, supra note 20, art. 23.
44 See CRC, supra note 1, art. 23.
45 CRC, supra note 1, art. 23(3).
IX. Additional Rights of the Child

The child’s right to education is an internationally recognized, fundamental human right. Article 30 of the draft Kyrgyz Code delineates this notion in a broad sense but experts urge review of Article 28 of the CRC which takes a more expansive view of the education options that should be made available to children.\(^46\)

Proposed Article 55 of the draft code on “The Protection of the Child against Information, Propaganda and Campaigning Material Injurious to his or her Health, Moral and Spiritual Development” is somewhat unclear. Accordingly, the drafters may wish to refer to Article 17 of the CRC for guidance on the topic of the child’s access to information and mass media.\(^47\) Otherwise, the language of this provision could be used to promote censorship or stifling of the child’s right to expression which would be in conflict with Articles 13 and 14 of the CRC, addressing the child’s right to freedom of expression and the child’s right to freedom of thought,\(^48\) as well as with Article 19 of the draft Kyrgyz Code.

It is encouraging to note that the Kyrgyz drafters have chosen to include the child’s right to freedom of expression in Article 19 of the draft Kyrgyz Code. However, questions remain as to the limitations placed on that freedom, in contrast to the expansive language of Article 13 of the CRC.\(^49\) The drafters could include additional specific rights as delineated in the CRC such as freedom of thought, conscience and religion,\(^50\) freedom of association and peaceful assembly,\(^51\) the right to privacy,\(^52\) and the right to access information.\(^53\)

X. Juvenile Justice

In general, the principles of the sections of the draft Kyrgyz Code addressing juvenile delinquents adhere to the currently accepted tenets of juvenile justice theory and to provisions that appear in international documents concerning this subject. The draft Kyrgyz Code has a preference for rehabilitation, bans capital and corporal punishment, sets a proper upper and lower age for juvenile delinquency jurisdiction, and treats adolescence as a time of cognitive and social development rather than as a time when the developmental process is completed. Nonetheless, the operative provisions of the draft code sometimes fall short of these normative goals. In addition, there could be circumstances where the draft code permits interpretations that may result in treatment that is at odds with such principles. Thus, the authors need to include in the draft Kyrgyz Code the detailed procedures that are required to advance their goals.

The concept of preventing juvenile delinquency is an important one and is missing from Section 3 of the draft Kyrgyz Code. While Article 15 of the code describes prevention as one of the

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\(^{46}\) See id. art. 28.
\(^{47}\) See id. art. 17.
\(^{48}\) See id. arts. 13-14.
\(^{49}\) See id. art. 13.
\(^{50}\) See id. art. 14.
\(^{51}\) See id. art. 15.
\(^{52}\) See id. art. 16.
\(^{53}\) See id. art. 17.
functions of the Family and Child Support Department, prevention is too critical to be grouped in a list of other tasks without also being specifically delineated in the delinquency section of the code. The first principle of The Riyadh Guidelines is the belief that “[t]he prevention of juvenile delinquency is an essential part of crime prevention in society.”\(^{54}\) Paragraph 10 of the Riyadh Guidelines outlines some of the measures that can be taken to prevent juvenile delinquency such as introducing adolescents to vocational training, the labor market, and volunteerism.\(^{55}\) Effective delinquency prevention programs benefit both society and children and they should be included in the draft Kyrgyz Code.

The aim of Articles 46(2) and 46(3) of the draft Kyrgyz Code to protect the absolute rights of juvenile suspects and their confidentiality during criminal proceedings is a positive step. However, without spelling out more clearly which rights are deemed “absolute” and how broadly confidentiality is to be enforced, authorities within various court systems in Kyrgyzstan may interpret these provisions as they see fit. The result will be an uneven application of the law from province to province and tribunal to tribunal. Abuses may even occur.

If the rights of juvenile suspects “deemed absolute” (Article 46(2)) are described in other Kyrgyz laws, they need to be clearly referenced here. If they are not referenced or clearly stated in the draft Kyrgyz Code, juvenile suspects, their parents, guardians or legal representatives will not know their entitlements to a proper search and seizure or how an arrest is to be properly conducted. They will not know, for example, what rights a child has during a police investigation, whether a parent may be present during an interrogation, whether that child has the right to counsel or the right to remain silent when dealing with investigators.

In addition, the extent of the child’s rights during a trial or any other judicial proceeding are not included in the draft Kyrgyz Code, leaving citizens and practitioners to wonder what they are. The Beijing Rules list the procedural rights that should be accorded to children.\(^{56}\) The CRC also recognizes the rights of children who are criminally accused in Article 40.\(^{57}\) Since these rights are deemed absolute, the draft Kyrgyz Code should list each one of them individually tracking the mentioned international documents. If these rights are not set forth clearly, then every agency, tribunal or government official can interpret Article 46 of the draft Kyrgyz Code as they see fit.

The necessity for a clear mandate giving children the right to counsel is imperative. This right is established as one of the “essential elements for a fair and just trial and [is] internationally recognized in existing human rights instruments.”\(^{58}\) Paragraph 15 of the Beijing Rules clearly states that the right to counsel is a guaranteed right at all stages of proceedings for juveniles.\(^{59}\) This principle is also confirmed in the legally binding CRC, which states that every child has the right “to

\(^{54}\) The Riyadh Guidelines, supra note 2, para. 1.
\(^{55}\) See id. para. 10.
\(^{56}\) See The Beijing Rules, supra note 3, paras. 7,9,13,15.
\(^{57}\) See CRC, supra note 1, art. 40.
\(^{58}\) The Beijing Rules, supra note 3, para. 7, commentary.
\(^{59}\) See id. para. 15.
have legal or other appropriate assistance in the preparation and presentation of his or her defence." The Kyrgyz Code is incomplete without providing for the child’s right to representation.

Article 46(3) of the draft Kyrgyz Code makes the hearing of juvenile cases confidential but no section of the code addresses the confidentiality of court and social agency records. Closing a hearing alone will not protect the child’s rehabilitative interests. The confidentiality of juvenile delinquency records must also be protected. In some cases, juvenile records need to be shared with other agencies. For example, if education is part of the child’s rehabilitation plan, at least some members of the child’s educational circle need to know what his/her juvenile delinquency records contain. This is not true, however, for everyone in the educational system. Nor is it true for the general public. Once juvenile court and social records become public, the child can be branded as a delinquent and his/her rehabilitation is hampered. The Beijing Rules recognize that such stigmatization can occur and provide that no identifying information of a juvenile offender may be published. In addition, the CRC confirms the importance of the issue of confidentiality in Article 40(2)(b)(vii). It is also necessary to prescribe sanctions against those who violate confidentiality and to create a right of the child to have his/her delinquency records expunged or erased after a period of rehabilitation.

Missing entirely from the draft Kyrgyz Code is the concept of diversion that is found in Article 40(3)(b) of the CRC as well as in paragraph 11 of The Beijing Rules. Both of these international documents have a preference for the concept of diversion, which is an accepted way to deal with juveniles without resorting to a formal trial. Diverting children from the juvenile justice system is currently an essential part of many nations’ delinquency laws. Diversion permits the early removal from the system of an offender whose life history suggests that the commission of the offense was an aberration that is not likely to be committed again.

Diversion can be accomplished in connection with offenses that are related to school or family matters (non-serious offenses) and that can be handled by an administrative body, peer court, after-school program, community service, deterrence programs, and other restorative justice types of programs. In addition to avoiding the stigma of conviction and sentencing that can follow a child throughout his/her lifetime, diversionary programs create a positive atmosphere at all stages of the proceedings. This positive approach to non-serious offenses is consistent with CRC Article 40(1), which indicates that every child who is criminally accused has the right “to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth.” Through a graduated system of punishment, children and their parents are properly given notice of possible consequences for any future offenses. The setting of clear limits, the use of graduated consequences and the involvement of the parents to oversee the follow-through on the part of the juvenile offender can help prepare the adolescent for the adult world.

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60 CRC, supra note 1, art. 40(2)(b)(ii).
61 See The Beijing Rules, supra note 3, paras. 8, 21.
62 See CRC, supra note 1, art. 40(2)(b)(vii).
63 See id. art. 40(3)(b).
64 See The Beijing Rules, supra note 3, para. 11.
65 CRC, supra note 1, art. 40(1).
Articles 47, 48, and 52 of the draft Kyrgyz Code, which concern sanctions and restraint upon the juvenile’s liberty, require further elaboration. Article 47(1), for example, addresses the imposition of a sentence on a juvenile that “shall be based… on circumstances of [the child’s] life and upbringing, level of mental development and other personal qualities as well as the influence from seniors.” A more detailed list of considerations would be beneficial in achieving the code’s goals. Possible criteria that may be used in evaluating the possible outcome following an offense are:

- the nature of the offense
- the age of the juvenile
- the history of abuse and neglect by the parents
- the prior record of the child for out-of-control or delinquent behavior
- the parents’ cooperation with the child’s school
- the child’s functioning at school
- the nature of the home environment
- agencies that have been or are now available to be involved in assisting the family
- resources and strengths of the juvenile and the family.

One of the sanctions that a Kyrgyz court will be able to use with a juvenile offender is “the temporary restraint of the child’s liberty” as specified in Article 48 of the draft Kyrgyz Code. This can be a useful sanction as long as there are time limits placed on the duration of this punishment. The Beijing Rules also contemplate this type of sanction but with safeguards: “[r]estrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum.”66 The addition of similar language to the draft Kyrgyz Code, specifically limiting the duration of any such restraint, will bring this sanction into compliance with internationally accepted principles of juvenile punishment.

Article 47(2) of the draft Kyrgyz Code views imprisonment as a last resort, consistent with CRC article 40(4),67 paragraph 17(1)(c) of the Beijing Rules,68 paragraph 1 of The Havana Rules69 and paragraph 46 of The Riyadh Guidelines.70 The drafters have expressed a preference for correction of the juvenile by imposing the supervision of the Family and Child Support Department. This position is consistent with the “principle of proportionality” which is discussed in paragraph 5 of the Beijing Rules71 and has gained acceptance in many countries around the world. The

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66 The Beijing Rules, supra note 3, para. 17(1)(b).
67 See CRC, supra note 1, art. 40(4).
68 See The Beijing Rules, supra note 3, para. 17(1)(c).
69 See The Havana Rules, supra note 4, para. 1.
70 See The Riyadh Guidelines, supra note 2, para. 46.
71 See The Beijing Rules, supra note 3, para. 5, commentary.
commentary portion of paragraph 5 discusses the personal circumstances that should be considered in balance with the gravity of the offense:

The individual circumstances of the offender (for example, social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reactions (for example, by having regard to the offender’s endeavor to indemnify the victim or to her or his willingness to turn to wholesome and useful life).\textsuperscript{72}

The principle of proportionality expressed in paragraph 5 of the Beijing Rules, “call[ing] for no less and no more than a fair reaction in any given case of juvenile delinquency and crime”\textsuperscript{73} should be part of the doctrine of the juvenile justice section in the draft Kyrgyz Code.

The draft Kyrgyz Code sets forth an ascending series of sanctions for the commission of crimes by juveniles and reserves imprisonment for serious crimes. The drafters may choose to review paragraph 18 of The Beijing Rules, which details a more ample list of various disposition measures with the goal of “avoid[ing] institutionalization to the greatest extent possible.”\textsuperscript{74} Article 40(4) of the CRC also suggests a variety of dispositions “to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstance and the offence.”\textsuperscript{75}

The concept of proportionality should be interpreted to impose serious punishment for serious crimes and minimal punishment for minimal crimes. The draft Kyrgyz Code does not suggest which crime deserves which punishment. It would behoove the drafters to prescribe limitations on the lengths of sanctions and set forth the sanctions for particular crimes to make the process more transparent and even handed as well as to bring it into line with international standards.

Another omission from the draft Kyrgyz Code is a comprehensive set of rules concerning the detention of children pending adjudication. Children who are charged with a crime should maintain a presumption of innocence until proven guilty according to CRC Article 40(2)(b)(i)\textsuperscript{76} as well as paragraph 17 of The Havana Rules.\textsuperscript{77} The Havana Rules further indicate that:

Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.\textsuperscript{78}

\textsuperscript{72} \textit{Id.}
\textsuperscript{73} \textit{Id.}
\textsuperscript{74} \textit{See id.} para. 18.
\textsuperscript{75} \textit{CRC, supra} note 1, art. 40(4).
\textsuperscript{76} \textit{See id.} art. 40(2)(b)(i).
\textsuperscript{77} \textit{See} The Havana Rules, \textit{supra} note 4, para. 17.
\textsuperscript{78} \textit{Id.}
The treatment of children during the pre-trial period is a major concern of any juvenile delinquency code, as seen in paragraph 13 of The Beijing Rules.\(^79\) This provision calls for the incarceration of juveniles separate from adults, services within juvenile detention facilities, the shortest possible detention and entitlement to “all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.”\(^80\) Juveniles under detention pending trial are also entitled, \textit{inter alia}, to be protected against arbitrary arrest or detention and have the right to a speedy trial; rights delineated in the International Covenant on Civil and Political Rights (“ICCPR”).\(^81\) The drafters should consider including a section dealing with the detention of children pending adjudication in the draft Kyrgyz Code in order to better conform to international principles.

The drafters also need to address the physical environment of any children whose liberty is temporarily restrained, whether before or after adjudication. Such restraint should take place in small family and group type structures, not in large institutions. Large children’s institutions have proven little better than prisons at rehabilitating children. The draft Kyrgyz Code should also ensure that juvenile offenders are housed separately from youths who are being protected by the Family and Child Support Department due to abuse, neglect and abandonment. The Beijing Rules provide a guide for the Kyrgyz drafters on dealing with the issues of children temporarily deprived of their liberty.\(^82\)

The draft Kyrgyz Code recognizes that only children who commit or have committed “major offenses” should be imprisoned (Article 53). If the code continues to permit imprisonment, only a few specific crimes should be listed as “major offenses.” If the term “major crimes” is not specifically defined and limited, the discretion given to the individual judge will result in an inconsistent application of the law. Moreover, the definition of “major crimes” needs to exclude property crimes. Most children who commit property crimes can be rehabilitated. Placing such offenders in prisons will not accomplish that goal.

Currently, it is generally accepted that imprisonment is not good for children. In addition, children mixed with adults in prisons are assaulted, raped and literally driven crazy by their association with adult offenders. Experts noted that the suicide rate for children in the United States prisons is seven times higher than for those outside prison. They also noted that recidivism rates for children imprisoned with adults in the United States is higher than that for children placed in juvenile facilities for the same crimes. Imprisoning juveniles with adult convicts harms the child and ultimately will harm society when the child is released. The drafters are strongly urged to carefully consider the use of imprisonment for juveniles and ensure its consistency with the CRC.\(^83\)

\(^79\) See The Beijing Rules, \textit{supra} note 3, para. 13.


\(^81\) \textit{See} International Covenant on Civil and Political Rights, Dec. 19, 1966, arts. 9, 10(2)(b), 999 U.N.T.S. 17, \textit{available at} \url{http://www1.umn.edu/humanrts/instree/b3ccpr.htm} [hereinafter ICCPR].

\(^82\) See The Beijing Rules, \textit{supra} note 3, paras. 26-29.

\(^83\) \textit{See} CRC, \textit{supra} note 1, art. 40.
Beijing Rules, the Havana Rules, the ICCPR and the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Should the draft Kyrgyz Code continue to permit imprisonment, the authors will need to clarify the physical environment of the “prison.” Children’s prisons should have small living units with rehabilitative programs. They should not be the large institutions with barred cells that typically characterize prisons today. The kinds of rehabilitative programs to which the imprisoned children are entitled should also be specified in law. Moreover, these prisons should be run by a juvenile justice administrative body rather than by the Republic’s penal administration. Penal administrators have no special expertise concerning children’s development or the kind of programs necessary for their rehabilitation.

Restraint of a juvenile as a sanction is an option that has been considered at length by a multitude of international documents. For example, The Beijing Rules specify the treatment objectives for those children placed outside of their homes. The Havana Rules are dedicated entirely to the “minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.” These two documents would serve the Kyrgyz drafters well as a model for creating the provisions necessary to protect children who are imprisoned.

Article 57 of the draft Kyrgyz Code addresses the rehabilitation of juveniles who have been convicted in a court of law. The drafters may wish to consider paragraph 8 of The Havana Rules, which also addresses this topic. To accomplish positive reintegration into society, appropriate educational and social services need to be provided to children while they are in state custody. Projects such as the Independent Living Skills Program, which is being implemented in the United States, could be a useful model whereby children are taught life skills such as how to balance a checkbook, open a bank account, look for a job, create a resume, use a computer, speak with adults and interact in social settings. Transitional housing may be very important to these young adults. While Article 42 of the draft Kyrgyz Code ensures housing for all children, it is unclear what will happen to children who reach the age of eighteen and have no family, let alone those who have been subjected to the juvenile justice system. Transitional housing, with appropriate transitional services, would help these young adults become responsible members of Kyrgyz society. This kind of transitional service is consistent with Article 39 of the CRC, calling for:

> [A]ll appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or

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84 See The Beijing Rules, supra note 3, para. 19.
85 See generally The Havana Rules, supra note 4.
86 See ICCPR, supra note 81, arts. 9-11.
88 See The Beijing Rules, supra note 3, paras. 26-29.
89 The Havana Rules, supra note 4, para. 3.
90 See id. para. 8.
armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.\textsuperscript{92}

Furthermore, this type of transitional service complies with The Beijing Rules, which call for “the well being of the juvenile…[and] a meaningful life in the community…..”\textsuperscript{93}

A final comment in connection with the juvenile delinquency section of the draft Kyrgyz Code relates to the structure of juvenile justice administration. It is unclear whether the Ombudsman (Article 11), the Commission for Children (Article 14) or the Family and Child Support Department (Article 15) have a role in delinquency adjudication, and whether the Family and Child Support Department is involved in fact finding even, although it seems to make recommendations on placement. The Commission also seems to have the final word on placement. If these groups are not going to be involved in delinquency adjudication, the forum for such prosecutions needs to be established and its powers and limitations specifically defined. The Commission for Children, as currently structured in the draft code, is not adequate to make final decisions on placements since it is not a standing body. The drafters may want to consider creating a separate structure to deal with the administration of juvenile justice.

\textbf{XI. Government Responsibilities and Enforcement Issues}

It is uncertain whether children will be able to legally enforce their rights under the draft Kyrgyz Code. For example, Article 15 of the draft Kyrgyz Code, which creates of the Family and Child Support Department, is unclear on the matter. Article 15(4), speaks of “legal guardians” in paragraph 7 while a “child’s representative” is mentioned in paragraph 16. Furthermore, Article 19(2), which deals with the child's freedom of expression, speaks of “legal representatives” of the child as well as “individuals that contribute to ensuring the exercise of the rights of the child ex officio.” None of these terms are defined in the definitions section of the draft Kyrgyz Code (Article 2), thus, it is confusing as to how the child is to exercise his/her rights through these various individuals and who exactly represents what rights.

In addition to defining the different terms of a child’s representatives, the drafters may want to consider how such a representative becomes appointed. In the current draft Kyrgyz Code, there is no clear method for appointing such a representative. Nor is it clear what types of cases would merit a representative. In the United States, most indigent parents have the right to a free, court appointed counsel in abuse or neglect cases. When a child is accused of a crime, s/he has the constitutional right to an attorney. Nearly every state requires that a lawyer or a guardian \textit{ad litem} (or both) be appointed for a child in abuse or neglect proceedings as well as termination of parental rights cases. None of these crucial representation issues are clear in the draft Kyrgyz Code. Additionally, the drafters may want to consider what role any guardian or representative of the child will play. Will their role be to represent the child’s best interests in accordance with Kyrgyz law or will they represent the child’s wishes?

Article 14 of the draft Kyrgyz Code creates a Commission for Children tasked with giving final approval on very important decisions of the Family and Child Support Department, such as

\textsuperscript{92} CRC, \textit{supra} note 1, art. 39.
\textsuperscript{93} The Beijing Rules, \textit{supra} note 3, paras. 1(1)-(2).
whether a child may be adopted or institutionalized. The same concern relating to lack of representation applies to this article. The child should have the right to representation in the face of such critical decisions as well as the right to participate in the hearing of the Commission that will affect his/her ultimate placement or liberty. While Article 14(6) of the draft code states that “[a]ny decision by a Commission for Children may be challenged in court,” it is unclear who would bring such a challenge, particularly if the child has never been represented before the Commission.

In addition to the uncertainty about representation of the child before the Commission for Children, it is unclear why the Commission will not be a standing body, given the importance of its decisions as the ultimate arbiter of a child’s life. Justice delayed can be justice denied to a youngster spending the final days of his childhood in a legal limbo, perhaps deprived of a home or the love of an adoptive family. Placement decisions need to be made rapidly, and a group meeting periodically cannot fulfill its functions in a timely manner. “Sitting from time to time” (Article 14(2)) is an unacceptable standard for a Commission whose work is so vital to children in difficult family situations.

Article 14(3) of the draft Kyrgyz Code specifies who will serve on the Commission of Children. The list of representatives covers a broad spectrum of the political institutions in Kyrgyzstan. The drafters should consider including language establishing a set of standards for appointment to the Commission. These representatives should be chosen for their education and work on behalf of children including, for example, social workers trained in child and family relations, juvenile mental health experts, and child development experts. Experts noted with approval the concept of having NGO representatives join in the work of the Commission for Children as it is stated in Article 14(3). This provision is in conformity with the recommendation of the Committee on the Rights of the Child towards independent national children’s rights bodies to involve NGOs in their efforts.

The inclusion of Article 16, paragraph 2 in the draft Kyrgyz Code which paraphrases Article 3(2) of the CRC, ensuring the child’s care while taking into account the rights and duties of the parents, is commendable. The drafters may want to consider tracking the language of Article 3(1) of the CRC more closely as it speaks of the universally accepted standard, “the best interests of the child,” in connection with all actions undertaken by public and private social welfare institutions, courts, and administrative or legislative bodies. Using such well recognized language in Article 16 of the draft Kyrgyz Code would strengthen the notion of the government’s responsibility in all actions on behalf of children.

The formation of an Ombudsman in Article 11 of the draft Kyrgyz Code is a helpful step in protecting children in Kyrgyzstan. Additional language creating a legal obligation on the part of the Ombudsman to refer cases where children’s rights have been violated to the public prosecutors as well as to the courts will strengthen this excellent concept.

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95 See CRC, supra note 1, art. 3(2).

96 Id. art. 3(1).
The responsibilities of parents to care for their children is outlined in Article 24 of the draft Kyrgyz Code, which is a much more detailed version of Article 18(1) of the CRC. However, the vague language of Article 24, paragraph 2, which states that violations of the rights of children by the parents (or guardians) “...shall be punishable as prescribed by the legislation of the Kyrgyz Republic,” is problematic. Punishment of the parent by incarceration or monetary fine may further victimize the child by removing the parent from the child or restricting the financial means with which the parent can provide for the child. It was suggested that punishment be developed in cooperation with the child in question, using a restorative justice model. In this model, punishment is appropriate to the violation and serves to right the wrong in a way that can truly make the child victim whole or more complete. Examples of restorative justice “punishments” include but are not limited to:

- requiring rehabilitative efforts
- involving the perpetrator of injustice in the treatment of the victim or in making a benefit to the victim
- engaging the perpetrator and the victim and the family in rehabilitative services.

Restorative justice takes family matters out of the zone of being only a “private family issue” while also focusing the benefit back to the family.

XII. Family and Child Support Department

Article 22 is a very lengthy section of the draft Kyrgyz Code addressing “The Protection of the Rights of the Child.” The guidelines expressed in Article 22(1) of the code delineate the responsibilities of the Family and Child Support Department requiring it, inter alia, to conduct assessments, develop programs, make decisions and render final approval of actions designed to protect the rights of the child.

It is commendable that the drafters listed the factors to be considered when dealing with minority children as it relates to the child care plan in Article 22(4) of the draft Kyrgyz Code. The goal of including such language is to avoid the possibility of bias and prejudice in the implementation of the assessment and child care plan. Experts noted that historically, minority families tended to be separated from their children at greater rates than other families since differences in culture and religion were seen as detrimental to the child. This attitude did not take into account the well being of the child within that particular family and social system, which was different but not necessarily negative.

Article 15(4) of the draft Kyrgyz Code, which sets forth the goals of the Family and Child Support Department, should reflect this same sensitivity by including a clause dealing with the rights of minority children. In addition, it may be helpful for the drafters to include within Article 15 of the draft Kyrgyz Code a requirement or policy that officials serving in a decision-making capacity

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97 See id. art. 18(1).
98 For more information on restorative justice and specific programs, the reader should refer to www.restorativejustice.org.
relating to children be from diverse ethnic groups within the Republic, as well as from varied professional backgrounds.

Looking at Article 22 of the draft Kyrgyz Code as a whole, it would seem useful to include as a guiding principle the preference of keeping the family together. This is consistent with the CRC’s and African Charter’s emphasis on the respect for the family unit.99 “The family shall be the natural unit and basis of society. [I]t shall enjoy the protection and support of the State for its establishment and development.”100 With this standard clearly enunciated, the drafters may wish to add a policy whereby resources could first be used for services designed to keep the family together when intervention is necessary or assistance is requested. For example, services could be offered to parents to teach them parenting skills or to provide substance abuse counseling. Parents could choose treatment programs where their children could live with them, receiving safe housing, education and the right to continue their relationship rather than the parent serving jail time when, for example, drug charges are the issue.

However, there are instances when a child must be removed from his/her home for his/her own safety, even after appropriate services have been provided. To address cases of domestic violence and other family troubles, the drafters may want to create more detailed placement preferences in Article 22(4) of the draft Kyrgyz Code. The emphasis on maintaining unity among siblings (Article 22(4), paragraph 3) is consistent with the goal stated in the preamble of the CRC “[r]ecognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.”101 It therefore follows that the first preference for placement should be among relatives of the child, if deemed safe. As a second preference, non-related extended family members should be considered as well as members of the child’s immediate community. Such placements are deemed to ensure the least detriment to the child and are more desirable than placing the child in foster care. These preferences should be specified in detail in clearly delineated provisions in Article 22 of the draft Kyrgyz Code.

Experts concurred in the drafters’ choice to consider foster placement as preferable to institutional care in Article 22(4), paragraph 2, of the draft Kyrgyz Code. Institutional care should be a last resort, used only when other options, including adoption, are not feasible.

Article 22(7) of the draft Kyrgyz Code addresses domestic violence as well as other forms of mistreatment of the child. This provision is consistent with Article 19(1) of the CRC which requires States Parties to protect the child’s person from all forms of physical or mental violence, injury, abuse, neglect, negligent treatment, maltreatment, or exploitation (including sexual abuse) while in the care of the parents.102

However, the drafters may want to specifically provide for situations where children witness violence being inflicted upon another family member, such as their mother; conduct which is known as intimate partner violence. Children who live in a household where intimate partner violence is

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99 See CRC, supra note 1, arts. 9-10; see also African Charter, supra note 20, arts. 18-19.
100 African Charter, supra note 20, art. 18(1).
101 CRC, supra note 1, preamble.
102 See id. art. 19(1).
occurring, including children who witness it first hand or who experience the aftermath of such violence, should be specifically protected. In determining whether removal of the child from the home is appropriate in such cases, the drafters may want to include detailed guidelines for the Family and Child Support Department in its decision making process. Removal of the child from the home should not be automatic. Removal from the home can cause more harm to the child (e.g., separation anxiety from the victim of the violence, bonding trauma) as opposed to letting the child stay in the home with the victim parent while removing the perpetrator of the violence. There may be instances where the child suffers less by remaining in the home and the Family and Child Support Department should have the flexibility to make such a choice.

Article 19(2) of the CRC includes measures to provide necessary support for the child as well as those who care for him/her in cases of child mistreatment. In exceptional circumstances, where the Family and Child Support Department removes a child from home in accordance with Article 22(7) of the draft Kyrgyz Code, the drafters need to indicate what services are available from the state to support the child and parents as well as the steps each parent needs to take to be reunified with the child. Consequently, the drafters should track and expand upon the language in CRC Article 19(2).

While Article 23 of the draft Kyrgyz Code gives the child the right to live with his parents unless removal is necessary for the child’s benefit, the code does not address the process of reunification with the family when separation is required. To meet international standards, the drafters should review Articles 9 and 10 of the CRC which specify the rights of the child to maintain contact with the family and to be reunified, if possible, with them. Should the Kyrgyz drafters decide to include a more substantial provision on reunification in Article 23 of the code, they would want to make it clear that efforts towards reunification need not negate the consideration of other options. Concurrent planning can be provided whereby efforts are made to reunify children with their families while appropriate family member and community member placements are researched and even adoptive parents are considered to ensure a speedy, yet responsible, resolution to each child’s case.

XIII. Conclusion

The Kyrgyz drafters are to be congratulated on an important first effort in writing the Code on Children. The adoption of the final legislature will be a valuable step in protecting, nurturing and caring for the children of Kyrgyzstan. The draft code demonstrates the recognition of the Kyrgyz people that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection before as well as after birth.” By aspiring to meet

103 See id. art. 19(2).
104 Id.
105 See id. arts. 9-10.
international standards, the drafters are acknowledging the significance, as well as contributing to, the developing of jurisprudence on the rights of the child.

While deficiencies have been identified in the draft Kyrgyz Code, the critique has been done in a spirit of collaboration with the goal of extending and amplifying the rule of law in the Republic. Most of the deficiencies identified in the draft code relate to the omission of important structural and procedural elements that are necessary for the successful administration of child welfare and juvenile justice systems. However, the draft law stands as testament to the Kyrgyz people's recognition that, “in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration.”108 Such recognition is a hallmark of modern society. Further revision of this draft will lead to a code that will successfully implement the will of the Kyrgyz nation and protect their most precious resource, the Kyrgyz children.

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108 CRC, supra note 1, preamble.
Appendix A

Biographical Statements of Experts Assessing the Draft Law
Biographical Statements of Experts Assessing the Draft Law

Michael Bochenek

Michael Bochenek is the Deputy Director of Human Rights Watch. Prior to this position, Mr. Bochenek was counsel to the Children’s Rights Division of Human Rights Watch which he joined in 1998. As Deputy Director, Mr. Bochenek is responsible for the division’s work in the United States and Latin America. He has investigated and written of detention conditions for youth, child labor, the death penalty and juvenile offenders, the treatment of migrant children, discrimination against gay and lesbian students and the use of children as soldiers. Before joining the staff of the Children’s Rights Division, Mr. Bochenek was the legal director of the Immigration Project of the Northwest Communities Education Center in Granger, Washington from 1996 to 1998. He served as the Leonard H. Sandler Fellow at Human Rights Watch’s Americas Division in Washington, D.C. from 1995 to 1996. Mr. Bochenek is a graduate of the Columbia University School of Law.

Howard Davidson

Howard Davidson is the Director of the American Bar Association Center on Children and the Law and has held that position since its establishment in 1978. Mr. Davidson has been involved with the legal aspects of child protection for over thirty years. The Center on Children and the Law provides - nationally and at the state and county level - extensive training, technical assistance and consulting, and publications development for child welfare agencies, juvenile (dependency) courts, and programs that provide legal representation in these cases. Mr. Davidson has served as Chair of the U.S. Advisory Board on Child Abuse and Neglect. He is the author of many legal articles on child maltreatment. Mr. Davidson is a 1970 graduate of the Boston College School of Law.

Wallace J. Mlyniec

Wallace J. Mlyniec is the Lupo-Ricci Professor of Clinical Legal Studies and former Associate Dean for Clinical Education and Public Service Programs at Georgetown University Law Center (GULC). Professor Mlyniec served as Clinical Coordinator for 1986 to 1989 and as Dean of the Georgetown University Law Center from 1989 to 2005. During that period, he was responsible for the operation of the largest in-house clinical program in America. For this work, Professor Mlyniec has received many awards.

Professor Mlyniec is the Director of the Juvenile Justice Clinic at Georgetown. The GULC Juvenile Justice Clinic and its staff seeks to expand the legal rights of children and to insure that children are protected from maltreatment by their parents or by the government. Professor Mlyniec is also the author of several books and many articles on children’s rights, family law, and criminal justice.

Amy Pincolini–Ford

Amy Pincolini–Ford is an Information Specialist with the Resource Center on Domestic Violence: Child Protection and Custody, a project of the Family Violence Department of the National Council of Juvenile and Family Court Judges (NCJFCJ). Ms. Pincolini–Ford received a BA in English, with an emphasis on writing, from the University of Nevada, Reno in 1997. In 2000, she received a JD from California Western School of Law with a family law specialization. Prior to
joining the NCJFCJ, Ms. Pincolini–Ford clerked for a United States Magistrate Judge in the US District Court, District of Nevada as well as practiced law with a local law firm in the areas of divorce and custody.

Wendy M. Seiden

Wendy Seiden is an attorney and Director of Advocacy for Children, Youth & Families, a private juvenile law and public policy office in San Francisco, where she specializes in juvenile and domestic violence issues. Ms. Seiden represents children and parents in foster care proceedings and also represents children and youth in high-conflict custody proceedings, immigration matters, special education hearings, and school discipline matters. Ms. Seiden is an Adjunct Professor at Golden Gate University School of Law, where she teaches *Children and the Law*. After graduating from Harvard Law School in 1993, Ms. Seiden spent a year as a Rotary Ambassadorial Scholar, working with children from the Romani community in Sevilla, Spain. Ms. Seiden has also lived and worked with communities in Costa Rica and recently won the Rotary Alumni Global Service to Humanity Award.
Appendix B

United Nations Convention on the Rights of the Child
United Nations Convention on the Rights of the Child

PREAMBLE

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and
Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

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

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

Article 3

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

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.
Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

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

Article 6

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

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

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

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

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. 4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

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

**Article 13**

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

**Article 14**

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

**Article 15**

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

**Article 16**

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.
Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

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

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

Article 20

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

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

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

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable
rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

**Article 23**

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

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

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

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

**Article 24**

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

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.
Article 27

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

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

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

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

Article 28

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

   (a) Make primary education compulsory and available free to all;

   (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

   (c) Make higher education accessible to all on the basis of capacity by every appropriate means;

   (d) Make educational and vocational information and guidance available and accessible to all children;

   (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

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

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.
Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

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

Article 34

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

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Article 35

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

Article 36

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

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

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

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

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

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

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

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

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

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

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

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

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

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

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

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

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

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

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

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.
Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

   (a) Within two years of the entry into force of the Convention for the State Party concerned;

   (b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.
Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

**Article 50**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

**Article 51**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

**Article 52**

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

**Article 53**

The Secretary-General of the United Nations is designated as the depositary of the present Convention.
Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.
Appendix C

United Nations Guidelines for the Prevention of Juvenile Delinquency

(The Riyadh Guidelines)
United Nations Guidelines for the Prevention of Juvenile Delinquency
(The Riyadh Guidelines)

I. FUNDAMENTAL PRINCIPLES

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.

2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.

3. For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control.

4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.

5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:

(a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;

(b) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;

(c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;

(d) Safeguarding the well-being, development, rights and interests of all young persons;

(e) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;

(f) Awareness that, in the predominant opinion of experts, labelling a young person as "deviant", "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons.
6. Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.

II. SCOPE OF THE GUIDELINES

7. The present Guidelines should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Declaration of the Rights of the Child and the Convention on the Rights of the Child, and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), as well as other instruments and norms relating to the rights, interests and well-being of all children and young persons.

8. The present Guidelines should also be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. GENERAL PREVENTION

9. Comprehensive prevention plans should be instituted at every level of Government and include the following:

(a) In-depth analyses of the problem and inventories of programmes, services, facilities and resources available;

(b) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;

(c) Mechanisms for the appropriate co-ordination of prevention efforts between governmental and non-governmental agencies;

(d) Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;

(e) Methods for effectively reducing the opportunity to commit delinquent acts;

(f) Community involvement through a wide range of services and programmes;

(g) Close interdisciplinary co-operation between national, State, provincial and local governments, with the involvement of the private sector representative citizens of the community to be served, and labour, child-care, health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime;

(h) Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes;

(i) Specialized personnel at all levels.
IV. SOCIALIZATION PROCESSES

10. Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processes.

A. Family

11. Every society should place a high priority on the needs and well-being of the family and of all its members.

12. Since the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. Adequate arrangements including day-care should be provided.

13. Governments should establish policies that are conducive to the bringing up of children in stable and settled family environments. Families in need of assistance in the resolution of conditions of instability or conflict should be provided with requisite services.

14. Where a stable and settled family environment is lacking and when community efforts to assist parents in this regard have failed and the extended family cannot fulfil this role, alternative placements, including foster care and adoption, should be considered. Such placements should replicate, to the extent possible, a stable and settled family environment, while, at the same time, establishing a sense of permanency for children, thus avoiding problems associated with "foster drift".

15. Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous, migrant and refugee families. As such changes may disrupt the social capacity of the family to secure the traditional rearing and nurturing of children, often as a result of role and culture conflict, innovative and socially constructive modalities for the socialization of children have to be designed.

16. Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and child care, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities.

17. Governments should take measures to promote family cohesion and harmony and to discourage the separation of children from their parents, unless circumstances affecting the welfare and future of the child leave no viable alternative.
18. It is important to emphasize the socialization function of the family and extended family; it is also equally important to recognize the future role, responsibilities, participation and partnership of young persons in society.

19. In ensuring the right of the child to proper socialization, Governments and other agencies should rely on existing social and legal agencies, but, whenever traditional institutions and customs are no longer effective, they should also provide and allow for innovative measures.

B. Education

20. Governments are under an obligation to make public education accessible to all young persons.

21. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:

(a) Teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child's own and for human rights and fundamental freedoms;

(b) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;

(c) Involvement of young persons as active and effective participants in, rather than mere objects of, the educational process;

(d) Undertaking activities that foster a sense of identity with and of belonging to the school and the community;

(e) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences;

(f) Provision of information and guidance regarding vocational training, employment opportunities and career development;

(g) Provision of positive emotional support to young persons and the avoidance of psychological maltreatment;

(h) Avoidance of harsh disciplinary measures, particularly corporal punishment.

22. Educational systems should seek to work together with parents, community organizations and agencies concerned with the activities of young persons.

23. Young persons and their families should be informed about the law and their rights and responsibilities under the law, as well as the universal value system, including United Nations instruments.
24. Educational systems should extend particular care and attention to young persons who are at social risk. Specialized prevention programmes and educational materials, curricula, approaches and tools should be developed and fully utilized.

25. Special attention should be given to comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons. Teachers and other professionals should be equipped and trained to prevent and deal with these problems. Information on the use and abuse of drugs, including alcohol, should be made available to the student body.

26. Schools should serve as resource and referral centres for the provision of medical, counselling and other services to young persons, particularly those with special needs and suffering from abuse, neglect, victimization and exploitation.

27. Through a variety of educational programmes, teachers and other adults and the student body should be sensitized to the problems, needs and perceptions of young persons, particularly those belonging to underprivileged, disadvantaged, ethnic or other minority and low-income groups.

28. School systems should attempt to meet and promote the highest professional and educational standards with respect to curricula, teaching and learning methods and approaches, and the recruitment and training of qualified teachers. Regular monitoring and assessment of performance by the appropriate professional organizations and authorities should be ensured.

29. School systems should plan, develop and implement extracurricular activities of interest to young persons, in co-operation with community groups.

30. Special assistance should be given to children and young persons who find it difficult to comply with attendance codes, and to "drop-outs".

31. Schools should promote policies and rules that are fair and just; students should be represented in bodies formulating school policy, including policy on discipline, and decision-making.

C. Community

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

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

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

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

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

37. Youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs. These organizations should encourage youth to organize collective and voluntary projects, particularly projects aimed at helping young persons in need of assistance.

38. Government agencies should take special responsibility and provide necessary services for homeless or street children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons.

39. A wide range of recreational facilities and services of particular interest to young persons should be established and made easily accessible to them.

D. Mass media

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

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

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

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

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

V. SOCIAL POLICY

45. Government agencies should give high priority to plans and programmes for young persons and should provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse prevention and treatment, ensuring that such resources reach and actually benefit young persons.
46. The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Criteria authorizing formal intervention of this type should be strictly defined and limited to the following situations: (a) where the child or young person has suffered harm that has been inflicted by the parents or guardians; (b) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians; (c) where the child or young person has been neglected, abandoned or exploited by the parents or guardians; (d) where the child or young person is threatened by physical or moral danger due to the behaviour of the parents or guardians; and (e) where a serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and neither the parents, the guardians, the juvenile himself or herself nor non-residential community services can meet the danger by means other than institutionalization.

47. Government agencies should provide young persons with the opportunity of continuing in full-time education, funded by the State where parents or guardians are unable to support the young persons, and of receiving work experience.

48. Programmes to prevent delinquency should be planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly.

49. Scientific information should be disseminated to the professional community and to the public at large about the sort of behaviour or situation which indicates or may result in physical and psychological victimization, harm and abuse, as well as exploitation, of young persons.

50. Generally, participation in plans and programmes should be voluntary. Young persons themselves should be involved in their formulation, development and implementation.

51. Government should begin or continue to explore, develop and implement policies, measures and strategies within and outside the criminal justice system to prevent domestic violence against and affecting young persons and to ensure fair treatment to these victims of domestic violence.

VI. LEGISLATION AND JUVENILE JUSTICE ADMINISTRATION

52. Governments should enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons.

53. Legislation preventing the victimization, abuse, exploitation and the use for criminal activities of children and young persons should be enacted and enforced.

54. No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.

55. Legislation and enforcement aimed at restricting and controlling accessibility of weapons of any sort to children and young persons should be pursued.

56. In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized
if committed by an adult is not considered an offence and not penalized if committed by a young person.

57. Consideration should be given to the establishment of an office of ombudsman or similar independent organ, which would ensure that the status, rights and interests of young persons are upheld and that proper referral to available services is made. The ombudsman or other organ designated would also supervise the implementation of the Riyadh Guidelines, the Beijing Rules and the Rules for the Protection of Juveniles Deprived of their Liberty. The ombudsman or other organ would, at regular intervals, publish a report on the progress made and on the difficulties encountered in the implementation of the instrument. Child advocacy services should also be established.

58. Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system.

59. Legislation should be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.

VII. RESEARCH, POLICY DEVELOPMENT AND CO-ORDINATION

60. Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an intradisciplinary basis, interaction and co-ordination between economic, social, education and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.

61. The exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at the national, regional and international levels.

62. Regional and international co-operation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision makers should be further developed and strengthened.

63. Technical and scientific co-operation on practical and policy-related matters, particularly in training, pilot and demonstration projects, and on specific issues concerning the prevention of youth crime and juvenile delinquency should be strongly supported by all Governments, the United Nations system and other concerned organizations.

64. Collaboration should be encouraged in undertaking scientific research with respect to effective modalities for youth crime and juvenile delinquency prevention and the findings of such research should be widely disseminated and evaluated.

65. Appropriate United Nations bodies, institutes, agencies and offices should pursue close collaboration and co-ordination on various questions related to children juvenile justice and youth crime and juvenile delinquency prevention.
66. On the basis of the present Guidelines, the United Nations Secretariat, in co-operation with interested institutions, should play an active role in the conduct of research, scientific collaboration, the formulation of policy options and the review and monitoring of their implementation, and should serve as a source of reliable information on effective modalities for delinquency prevention.
Appendix D

United Nations Standard Minimum Rules for the Administration of Juvenile Justice

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

PART ONE

GENERAL PRINCIPLES

1. Fundamental perspectives

1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.

1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.

1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

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

1.6 Juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

Commentary

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

Rules 1.1 to 1.3 point to the important role that a constructive social policy for juveniles will play, inter alia, in the prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of social justice for juveniles, while rule 1.6 refers to the necessity of constantly improving juvenile justice, without falling behind the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services.
Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular rules necessarily to be different from the manner adopted in other States.

2. Scope of the Rules and definitions used

2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:

(a) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult;

(b) An offence is any behaviour (act or omission) that is punishable by law under the respective legal systems;

(c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.

2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

(a) To meet the varying needs of juvenile offenders, while protecting their basic rights;

(b) To meet the needs of society;

(c) To implement the following rules thoroughly and fairly.

Commentary

The Standard Minimum Rules are deliberately formulated so as to be applicable within different legal systems and, at the same time, to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders. The Rules are always to be applied impartially and without distinction of any kind.

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

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

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

3. Extension of the Rules

3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.

3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

Commentary

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

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

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

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

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

4. Age of criminal responsibility

4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

Commentary

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

Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.

**5. Aims of juvenile justice**

5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

*Commentary*

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

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

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

In essence, rule 5 calls for no less and no more than a fair reaction in any given cases of juvenile delinquency and crime. The issues combined in the rule may help to stimulate development in both regards: new and innovative types of reactions are as desirable as precautions against any undue widening of the net of formal social control over juveniles.

**6. Scope of discretion**

6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.
6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.

6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

Commentary

Rules 6.1, 6.2 and 6.3 combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing so that those who make determinations can take the actions deemed to be most appropriate in each individual case; and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. Accountability and professionalism are instruments best apt to curb broad discretion. Thus, professional qualifications and expert training are emphasized here as a valuable means of ensuring the judicious exercise of discretion in matters of juvenile offenders. (See also rules 1.6 and 2.2.) The formulation of specific guidelines on the exercise of discretion and the provision of systems of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context. Such mechanisms are not specified here, as they do not easily lend themselves to incorporation into international standard minimum rules, which cannot possibly cover all differences in justice systems.

7. Rights of juveniles

7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

Commentary

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

8. Protection of privacy

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

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

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

Rule 8 stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle. (The general contents of rule 8 are further specified in rule 21.)

9. Saving clause

9.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

Commentary

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

PART TWO

INVESTIGATION AND PROSECUTION

10. Initial contact

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

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

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

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

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

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

11. Diversion

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

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

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

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

Commentary

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

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

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

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

12. Specialization within the police

12.1 In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

Commentary

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

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

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance—social, educational, vocational, psychological, medical and physical—that they may require in view of their age, sex and personality.

Commentary

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

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

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

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

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

ADJUDICATION AND DISPOSITION

14. Competent authority to adjudicate

14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.

14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

Commentary

It is difficult to formulate a definition of the competent body or person that would universally describe an adjudicating authority. "Competent authority" is meant to include those who preside over courts or tribunals (composed of a single judge or of several members), including professional and lay magistrates as well as administrative boards (for example the Scottish and Scandinavian systems) or other more informal community and conflict resolution agencies of an adjudicatory nature.

The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as "due process of law". In accordance with due process, a "fair and just trial" includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defences, the right to remain silent, the right to have the last word in a hearing, the right to appeal, etc. (See also rule 7.1.)

15. Legal counsel, parents and guardians

15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

Commentary

Rule 15.1 uses terminology similar to that found in rule 93 of the Standard Minimum Rules for the Treatment of Prisoners. Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in rule 15.2 should be viewed as general psychological and emotional assistance to the juvenile—a function extending throughout the procedure.
The competent authority's search for an adequate disposition of the case may profit, in particular, from the cooperation of the legal representatives of the juvenile (or, for that matter, some other personal assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role, for instance, if they display a hostile attitude towards the juvenile, hence, the possibility of their exclusion must be provided for.

16. Social inquiry reports

16.1 In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

Commentary

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

17. Guiding principles in adjudication and disposition

17.1 The disposition of the competent authority shall be guided by the following principles:

(a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;

(b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;

(c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;

(d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

17.2 Capital punishment shall not be imposed for any crime committed by juveniles.

17.3 Juveniles shall not be subject to corporal punishment.

17.4 The competent authority shall have the power to discontinue the proceedings at any time.
Commentary

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

(a) Rehabilitation versus just desert;
(b) Assistance versus repression and punishment;
(c) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;
(d) General deterrence versus individual incapacitation.

The conflict between these approaches is more pronounced in juvenile cases than in adult cases. With the variety of causes and reactions characterizing juvenile cases, these alternatives become intricately interwoven.

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

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

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

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

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

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

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

18. Various disposition measures

18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

(a) Care, guidance and supervision orders;
(b) Probation;
(c) Community service orders;
(d) Financial penalties, compensation and restitution;
(e) Intermediate treatment and other treatment orders;
(f) Orders to participate in group counselling and similar activities;
(g) Orders concerning foster care, living communities or other educational settings;
(h) Other relevant orders.

18.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

Commentary

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

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

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

19. Least possible use of institutionalization

19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

Commentary

Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.

Rule 19 aims at restricting institutionalization in two regards: in quantity ("last resort") and in time ("minimum necessary period"). Rule 19 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress: a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to "open" over "closed" institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

20. Avoidance of unnecessary delay

20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

Commentary

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

21. Records

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.
21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

Commentary

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

22. Need for professionalism and training

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

Commentary

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

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

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

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

NON-INSTITUTIONAL TREATMENT

23. Effective implementation of disposition

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require.

23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

Commentary

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

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

24. Provision of needed assistance

24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

Commentary

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

25. Mobilization of volunteers and other community services

25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

Commentary

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

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

PART FIVE

INSTITUTIONAL TREATMENT

26. Objectives of institutional treatment

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical—that they may require because of their age, sex, and personality and in the interest of their wholesome development.

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do no leave the institution at an educational disadvantage.

Commentary

The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.

Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, violent and mentally ill young persons.

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

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

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


27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

Commentary

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

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

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

28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

Commentary

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

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

In the case of offenders conditionally released from an institution, assistance and supervision by a probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged.

29. Semi-institutional arrangements

29.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

Commentary

The importance of care following a period of institutionalization should not be underestimated. This rule emphasizes the necessity of forming a net of semi-institutional arrangements.

This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide guidance and structural support as an important step towards successful reintegration into society.
PART SIX

RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION

30. Research as a basis for planning, policy formulation and evaluation

30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.

30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.

30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.

30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

Commentary

The utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The mutual feedback between research and policy is especially important in juvenile justice. With rapid and often drastic changes in the life-styles of the young and in the forms and dimensions of juvenile crime, the societal and justice responses to juvenile crime and delinquency quickly become outmoded and inadequate.

Rule 30 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures and for planning within the broader context of overall development objectives.

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

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

United Nations Rules for the Protection of Juveniles Deprived of Their Liberty

(The Havana Rules)
United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (The Havana Rules)

I. FUNDAMENTAL PERSPECTIVES

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.

2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.

3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.

4. The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.

5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.

6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.

7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community,
that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons.

10. In the event that the practical application of particular Rules contained in sections II to V, inclusive, presents any conflict with the Rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

II. SCOPE AND APPLICATION OF THE RULES

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial.

16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.
III. JUVENILES UNDER ARREST OR AWAITING TRIAL

17. Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

(a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;

(b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;

(c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

IV. THE MANAGEMENT OF JUVENILE FACILITIES

A. Records

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.
B. Admission, registration, movement and transfer

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

(a) Information on the identity of the juvenile;

(b) The fact of and reasons for commitment and the authority therefor;

(c) The day and hour of admission, transfer and release;

(d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;

(e) Details of known physical and mental health problems, including drug and alcohol abuse.

22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

25. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.

26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

C. Classification and placement

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When
special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

D. Physical environment and accommodation

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

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, while bearing in mind local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.
34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.

36. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

E. Education, vocational training and work

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

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

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

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

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.
43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

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

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

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

F. Recreation

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

G. Religion

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.
H. Medical care

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testers in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

I. Notification of illness, injury and death

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify
immediately the family or guardian of the juvenile concerned, or other designated person, in case of
death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring
clinical care within the detention facility for more than 48 hours. Notification should also be given
to the consular authorities of the State of which a foreign juvenile is a citizen.

57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative
should have the right to inspect the death certificate, see the body and determine the method of
disposal of the body. Upon the death of a juvenile in detention, there should be an independent
inquiry into the causes of death, the report of which should be made accessible to the nearest
relative. This inquiry should also be made when the death of a juvenile occurs within six months
from the date of his or her release from the detention facility and there is reason to believe that the
death is related to the period of detention.

58. A juvenile should be informed at the earliest possible time of the death, serious illness or injury
of any immediate family member and should be provided with the opportunity to attend the funeral
of the deceased or go to the bedside of a critically ill relative.

J. Contacts with the wider community

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

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

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

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

K. Limitations of physical restraint and the use of force

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

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

I. Disciplinary procedures

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

   (a) Conduct constituting a disciplinary offence;

   (b) Type and duration of disciplinary sanctions that may be inflicted;

   (c) The authority competent to impose such sanctions;

   (d) The authority competent to consider appeals.

69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.
71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

M. Inspection and complaints

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.

74. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.

75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

78. Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.
N. Return to the community

79. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

80. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

81. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

83. To secure the foregoing ends, personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile detention facilities should be continually encouraged to fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.

84. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance cooperation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfillment of their duties.

85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.
86. The director of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis.

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

(a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;

(b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;

(c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;

(d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

(e) All personnel should respect the right of the juvenile to privacy, and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;

(f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.
Appendix F

The Code of Children for the Kyrgyz Republic
THE KYRGYZ REPUBLIC

THE CODE OF CHILDREN

SECTION I. GENERAL PROVISIONS

Chapter 1. Legislation covering the protection of the rights and interests of the child

Chapter 2. Goals of government bodies in the field of the exercise of the rights and interests of the child

Chapter 3. Specialized bodies for children's rights and lawful interests

SECTION 2. RIGHTS AND INTERESTS OF THE CHILD. GUARANTEES OF THEIR PROMOTION AND EXERCISE

Chapter 4. Legal status of the minors. Birth registration. Nationality

Chapter 5. Ensuring the exercise of the rights and interests of the child in the sphere of family legal relations

Chapter 6. Basic guidelines for promoting the rights and interests of the child in the sphere of education

Chapter 7. Basic guidelines for protecting the rights and interests of the child in health care

Chapter 8. Basic guidelines for the protection of the child's rights and interests in the field of social and labor relations

Chapter 9. Personal property and non-property rights of the child

SECTION 3. JUVENILE DELINQUENTS

Chapter 10. Juvenile justice
This Code establishes the basic guarantees of the rights, liberties and lawful interests of the child as provided for by the Constitution of the Kyrgyz Republic, Convention on the Rights of the Child and other laws and regulations of the Kyrgyz Republic as well as by relevant international agreements duly enforced for the sake of creating legal and socio-economic conditions needed to ensure the exercise of the rights, liberties and lawful interests of the child.

The Kyrgyz Republic recognizes childhood as an important stage in human life and sees it as a top priority to prepare the child to live a full life in society, foster in them a creative potential of social importance, form lofty moral qualities, patriotic and civic involvement in the community.

SECTION I. GENERAL PROVISIONS

Chapter 1. Legislation covering the protection of the rights and interests of the child

Article 1. Basic objectives of legislation in the field of the protection of the rights and interests of the child.

1. The objectives of this Code include the protection of the civil, political, economic, social and cultural rights and freedoms of the child.

2. The goals of this Code include regimentation of the rights and duties of the child, establishment of the principles and measures ensuring the protection of the child, formation of basic guarantees of the rights of the child, creation of relevant authorities and organizations designed to protect the rights and lawful interests of the child, identification of the jurisdiction granted to public and municipal authorities in the field of the protection and safeguarding of the rights of the child and coordination procedures.

Article 2. Definitions

For the purposes of this Code,

the term "State minimum welfare standards and major indices of the child's quality of life" means the minimum level of guaranteed access to free and preferential welfare services and payments expressed in norms and standards and funded from the consolidated national budget;

the term "welfare payment" means a standard monthly support for the needy families and citizens and a monthly social payment;

the term "childhood" mean the legal status of persons who have not acquired discretion;

the term "children in a critical situation" means children uncared for by the parents; mentally and/or physically retarded children; victims of armed and interethnic conflicts, environmental, man-made catastrophes, natural calamities; children coming from the families of refugees and displaced persons; children in extreme circumstances, victims of violence; children that serve their sentences in confinement in correctional colonies; children placed in specialized child-care and educational institutions; children from the needy
families; children whose life is objectively injured by circumstances and who cannot overcome such circumstances alone or with the help of the family;

the term "children uncared for by the parents" means children whose both parents have died, are recognized by the court of law as dead, were stripped of or restricted in the exercise of parentage by the court of justice, serve their sentences in confinement, are unable for health reasons to provide children with adequate upbringing or support, or who for no solid reasons refuse to take their children from maternity homes (wards) or other medical, educational, social welfare and other similar institutions;

the term "needy family" means a family whose per capita income is lower than the existing minimum consumption standard;

the term "moral damage" means moral or physical distress caused by unlawful actions of another person;

the term "guardian" means a person entrusted in the manner prescribed by law to discharge guardianship;

the term "guardianship" means a form of protection of the rights and interests of minor children and persons recognized by court as incapacitated (or partially competent);

the term "patronage" means providing upbringing and assistance for families and children who need government protection;

the term "patronage upbringing" means placing a child who needs government protection in the family of a patronage educator with the clear-cut discrimination of the rights and responsibilities for the protection of lawful rights and interests of that child among the parents or legal representatives of the child, special government agency for patronage upbringing and patronage educator.

the term "patronage educator" means an adult competent person who provides the child with upbringing and protects the child's rights and lawful interests.

the term "asylum" means a place where the child is temporarily kept for care and education purposes;

the term "child (children)" means a physical person (persons), who are under eighteen years of age;

the term "family" means a circle of persons united by property and personal non-property rights and duties stemming from marriage, kinship, adoption or any other form of child's placement for education purposes and encouraging the strengthening and consolidation of family relations;

the term "family-type children's home" means a form of upbringing and socio-governmental care for orphaned and uncared for children;
the term "social adaptation of the child" means an active process where a child in trouble gets adjusted to the existing social rules and behavior and overcomes the consequences of a psychological or moral trauma;

the term "social rehabilitation of the child" means initiatives designed to help the child recover social relationships and functions, provide the child with a better environment and get more care;

the term "social welfare facilities for children" means any organization regardless of its legal pattern or ownership that is entrusted to carry out social welfare initiatives for children (welfare support, domestic, medical, educational, psychological, legal and other assistance, social rehabilitation for children in trouble, etc.) as well as citizens engaged in entrepreneurial activities, on an individual level, designed to provide welfare support for children;

the term "active capacity" means the child's ability to acquire and exercise civil rights, create civil duties for themselves and fulfill them (civil capacity) through their own actions

the term "legal capacity" means the child's ability to exercise civil rights and duties that emerge after birth and terminate after death.

the term "children's centers" means open specialized children's institutions that are designed, according to the existing legislation and internal regulations and regardless of their organizational set-up, to educate and reeducate, provide social, financial and any other assistance for orphaned, homeless children and juvenile delinquents.

the term "social rehabilitation" means a government or non-governmental program of measures designed to ensure the early reintegration of a convict into everyday life.

the term "juvenile justice" means a program of measures targeting juvenile delinquents aged 14-18, which covers both justice administration and social rehabilitation procedures.

the term "foster home" means guardianship in effect until the child attains his or her majority;

the term "adoptive family" means adoption;

the term "investigation and assessment" –

the term "custody and guardianship" -

Article 3. Basic principles ensuring the exercise of the rights of the child, including those envisioned by the Convention on the Rights of the Child.

The Code of Children of the Kyrgyz Republic builds on the following principles:

- recognition that the rights and interests of the child shall be a top priority and should be legislatively codified;
- inadmissibility of discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status;

- ensuring first-priority protection for and care of children for the purpose of providing them with maximum welfare;

- respect for and guaranteeing of the rights and freedoms of the child as those of an equal member of society;

- the child's right to expression with regard to decisions affecting him or her with due account taken of his or her age and developing capabilities;

- providing children with protection against all kinds of physical or psychological violence, offence or abuse, careless, neglectful or rude treatment and any form of exploitation;

- respect for the rights and duties of parents or legal guardians who are responsible for bringing up a child in accordance with his or her developing capabilities;

- public (State) support for the family with a view to provide decent education for the child, protect his or her rights and interests and prepare him or her fully for living an individual life in society;

- promotion of public awareness and sensitivity of parents or legal guardians and society of children's rights and specific needs;

- decentralized facilities in charge of the protection of the child, introducing partnership between government and non-governmental organizations as far as the protection of the rights and interests of the child is concerned;

- promoting responsibility of central and local government officials as well as of individual citizens for the violation of the rights, freedoms and lawful interests of the child or doing harm to him or her;

- ensuring stable and continued guardianship, upbringing and education of a child with due account taken of the child's ethnic, religious and cultural origin while carrying out protective initiatives;

- ensuring that the State, society and family provide protection and safeguards for the rights and freedoms of the child;

- by all means ensuring that the child's parents or legal guardians provide proper education for the child while seeing to it that the child's interests should be given the top priority.
Article 4. Legislation and other acts containing legal rules for the protection of the rights and interests of the child

1. The legislation of the Kyrgyz Republic in the field of the protection of the rights of the child consists of the Constitution of the Kyrgyz Republic, Civil and Family Codes, this Code and other legislative acts adopted in the Kyrgyz Republic.

2. Should any international instrument ratified by the Kyrgyz Republic contain rules other than those envisioned by the legislation of the Kyrgyz Republic, the rules of the international instruments shall prevail.

Article 5. Scope of this Code

This Code will regulate relationships that arise from the implementation of fundamental rights, freedoms and lawful interests of the child in the Kyrgyz Republic and apply to the resident or non-resident citizens of the Kyrgyz Republic, foreign citizens and stateless persons.

Also, this Code will cover the activities of State and municipal authorities, legal entities and individuals that are engaged in the protection of the rights and interests of the child in the Kyrgyz Republic.

Chapter 2. Goals of government bodies in the field of the exercise of the rights and interests of the child

Article 6. State policy in the field of the protection of the rights and interests of the child

1. The goals of the State policy in the field of the protection of the rights and interests of the child shall include the following:

   - ensuring the exercise and protection of the rights and lawful interests of the child as provided for by the Constitution of the Kyrgyz Republic, Convention on the Rights of the Child and other duly enforced legislative acts of the Kyrgyz Republic and international agreements, taking provisions against their discrimination and ensuring restoration of their rights when abused;

   - making efforts to ensure that citizens make a conscious choice in favor of giving birth to healthy and welcome children by making their parents aware of their responsibility for giving birth to their children;

   - implementing and promoting in full scale reasonable gender development initiatives to preserve positive national traditions, guarantee equal rights and freedoms and meet the interests of the child;

   - regularly improving the existing legal framework that provides for the prerequisites and conditions facilitating the protection of the rights and interests of the child;
- contributing to the physical, intellectual, mental, spiritual and moral development of the child, fostering patriotic and civic attitudes as well as facilitating the release of the child's creative potential in the interests of society.

2. The central government and local self-government bodies shall view the State policy in the field of the protection of the rights and interests of the child as the top priority in their activities.

3. Initiatives designed to activate State policy in the interests of the child shall be funded within national and local budget limits as well as from other lawful extra-budgetary sources.

Article 7. Goals of the Government of the Kyrgyz Republic in the field of ensuring the full exercise and protection of the rights and interests of the child

The Government of the Kyrgyz Republic shall have the following powers in the field of the protection of the rights, freedoms and lawful interests of the child:

- building a uniform State policy in the field of the protection of the rights, freedoms and lawful interests of the child;
- opting for first-priority areas regarding the protection of the rights, freedoms and lawful interests of the child, his or her health and morals;
- adopting, within its jurisdiction, legal acts focusing on the protection of the rights, freedoms and lawful interests of the child;
- giving final approval to State minimum welfare standards and major indices of the child's quality of life with due account taken of regional differences in those indices;
- granting accreditation to children's rights organizations;
- establishing social guarantees and benefits with regard to providing rest and recreation for children;
- rendering financial, organizational, informational, methodological and other kinds of assistance to local self-government bodies;
- designating government bodies responsible for the implementation of State target programs in the field of the protection of the rights, freedoms and lawful interests of the child;
- exercising control over the activities of State authorities in the field of the protection of the rights and interests of the child;
- observing international commitments assumed by the Kyrgyz Republic regarding the protection of the rights of the child;
- providing State support for individuals and legal entities engaged in the protection of the rights, freedoms and lawful interests of the child.
Article 8. Goals of a special state agency for education with regard to the protection of the rights
and interests of the child

The goals of a special state agency for education shall include the following:

- ensuring that State policies with regard to the protection of the rights and interests of the
  child are pursued in educational institutions regardless of their departmental jurisdiction;

- drafting legal acts of the Kyrgyz Republic focusing on the protection of the rights, freedoms
  and lawful interests of the child in the sphere of education;

- drafting and adopting, within its jurisdiction, departmental in-house regulations of the
  Kyrgyz Republic in the sphere of education;

- developing State target programs with regard to the protection of the rights, freedoms and
  lawful interests of the child in the sphere of education to be followed by the implementation
  of the programs' initiatives;

- imposing State standards with regard to education and drafting comprehensive programs
  designed for any educational level;

- providing informational, scientific, methodological and regulatory support for the sphere of
  education;

- organizing a teachers' and pedagogical training system for educational institutions with a
  view of tightening control of providing quality educational services;

- supervising the quality of education through a system of certification and licensing;

- concluding international agreements focusing on education in regard to the protection of the
  rights and interests of the child;

- introducing a certification system for graduates of government and non-governmental
  educational institutions as well as for the institutions' teaching staff;

- imposing regulations covering the printed matter, audio- and video products and other
  goods that must be kept out of the child's reach.

Article 9. Goals of a special state agency for health care with regard to the protection of the rights
and interests of the child

The goals of a special state agency for health care shall include the following:

- carrying out initiatives aimed at promoting healthy life styles by providing the child with free
  medical aid, including disease preventive medical examinations, early disease detection and
  other recreational activities;
ensuring that State policies with regard to the protection of the rights and interests of the child are pursued in all medical institutions regardless of their departmental jurisdiction;

- providing equal opportunities with regard to getting free medical aid for any child residing in the Kyrgyz Republic;

- drawing up a list of guaranteed basic free medical aid, including disease preventive medical examinations, early disease detection and other types of medical care;

- drafting regulatory acts of the Kyrgyz Republic with regard to the protection of the rights, freedoms and lawful interests of the child in the sphere of medical care;

- developing and adopting, within its jurisdiction, in-house rules and regulations of the Kyrgyz Republic with regard to the promotion of healthy life styles;

- drafting State target programs aimed at the protection of the rights, freedoms and lawful interests of the child in the sphere of medical care to be followed by the implementation of the programs' initiatives;

- promoting public awareness of the sanitation and disease prevention methods with regard to the promotion of family planning and healthy life styles;

- supervising the quality and accessibility of medical care services offered to children by government and non-governmental medical institutions as well as by licensed individuals;

- putting in place programs designed to protect the rights and interests of children, and ensure the exercise of their right to living in conditions facilitating their physical, intellectual, spiritual and social development;

- taking adequate measures to reduce the disease and mortality rates;

- ensuring coordination with ministries and, State committees, administrative agencies, local self-government bodies and legal entities with the aim of protecting the rights and interests of the child in the medical care sphere;

- ensuring coordination with law-enforcement bodies with regard to the protection of the rights of the patient as far as maltreatment of children is concerned;

- promoting public awareness by distributing special literature, booklets and bulletins focusing on the protection of children's health;

- concluding international agreements covering medical care with regard to the protection of the rights and interests of the child;
Article 10. Goals of a special state agency for labor, employment and social security with regard to the protection of the rights and interests of the child

The goals of a special state agency for labor, employment and social security include the following:

- pursuing State policies aimed at the protection of the rights and interests of the child in the sphere of labor, employment and social security sphere;
- drafting regulatory acts of the Kyrgyz Republic with the aim of protecting the rights, freedoms and lawful interests in the sphere of labor, employment and social security;
- drafting and adopting, within its jurisdiction, in-house rules and regulations of the Kyrgyz Republic in the sphere of labor, employment and social security;
- developing target State programs aimed at the protection of the rights, freedoms and lawful interests of the child in the sphere of labor, employment and social security to be followed by the implementation of the programs' initiatives;
- ensuring the full exercise of the right to obtain free information from government and non-governmental social security services about opportunities, kinds, procedures and terms of getting social support;
- putting in place programs designed to promote children's awareness of their rights and duties, availability of State support in the sphere of social security and employment;
- concluding international agreements in the sphere of labor, employment and social security with regard to the protection of the rights and interests of the child.

Article 11. Goals of the Ombudsman with regard to the protection of the rights and interests of the child

The goals of the Ombudsman of the Kyrgyz Republic shall include the following:

- providing protection for children who were deprived of their rights, freedoms and lawful interests;
- addressing petitions and complaints concerning the cases where children were deprived of their rights and advising submitter(s) of the results obtained in the course of investigations based on such petitions and complaints that may be submitted both by children or other individuals;
- advising authorized government officials, including public prosecutors, of cases where children were deprived of their rights and lawful interests, and demanding that those cases be given immediate consideration;
- appealing to courts of justice to seek protection of a child's or children's rights and freedoms as well as participating in litigations by proxy in cases and according to procedures specified by law;
- ensuring that the fundamental rights and freedoms of the child be observed by relevant government authorities, including those engaged in investigations and local self-government bodies.

Chapter 3. Specialized bodies for children's rights and lawful interests

Article 12. The system of services for providing support with regard to protection of the rights and lawful interests of the child shall contain the following bodies

1. Specialized bodies for the protection of the rights and lawful interests of the child shall include the following institutions:
   - the special authority under the Government of the Kyrgyz Republic for the protection of the rights and interests of the child;
   - a commission for children;
   - a family and child support department.

2. All of the bodies stated above shall enjoy free access to children's institutions for inspection of compliance with the rights, freedoms and lawful interests of the child.

Article 13. Legal status and powers of the special authority under the Government of the Kyrgyz Republic for the protection of the rights and interests of the child

1. The basic goals of the special authority under the Government of the Kyrgyz Republic for the protection of the rights and interests of the child shall be as follows:
   - pursuing State policy with regard to the protection of the rights, freedoms and lawful interests of the child;
   - ensuring that all the subjects of the Kyrgyz Republic comply with State minimum welfare standards and major indices of the child's quality of life;
   - supervising the activities of child rights organizations;
   - drafting State minimum welfare standards and major indices of the child's quality of life;
   - promoting public awareness of the rights of the child and provisions of the UN Convention on the Rights of the Child;
   - addressing complaints and petitions about decisions made by a Commission for Children and submitted by any individual, including children.
Article 14. Structure, legal status and goals of a Commission for Children

1. Commissions for children shall be established:

   - under district administrations in respective districts;
   - under executive-administrative bodies of local self-government (city halls or city councils) in respective cities that have no districts;
   - under executive-administrative bodies of local self-government (city halls) in respective cities that are divided into districts.

2. A Commission for Children shall not be a standing body. It shall sit from time to time. The Commission's work will be supported by a standing Secretariat that will be set up by the respective self-government body. The Statute of the Commission for Children shall be approved by a respective body under which the Commission is created.

3. A commission for Children shall comprise representatives of the following institutions:

   - a judicial body;
   - a public prosecutor's office;
   - an interior State body;
   - an education State body;
   - a public health State body;
   - a labor and social security State body.

Representatives of non-governmental organizations may be invited to work with a Commission for Children.

4. The goals of a Commission for Children shall be as follows:

   - give final approval to decisions by a family and child support department affecting the child (leaving him or her with his or her family, placing him or her in an adoptive family or an open or close institution);
   - give final approval to decisions by a family and child support department with regard to its choice of a foster or an adoptive family;
   - supervise the activities of a family and child support department;
   - ensuring the release of a child unreasonably placed in an open or closed institution;
   - address petitions and complaints about actions of family and child support departments as well as about the quality of services provided for children or abuses of their rights;
5. A Commission for Children shall report on its activities quarterly to the special authority under the Government of the Kyrgyz Republic for the protection of the rights and interests of the child.

6. Any decision by a Commission for Children may be challenged in court.

Article 15. Structure, legal status and goals of a Family and Child Support Department

1. Family and Child Support Departments shall be established:
   - under district administration in respective districts;
   - under executive-administrative local self-government bodies (city halls, city councils) in respective cities that have no districts;
   - under district administration in respective cities that have division by districts.

2. A Family and Child Support Department shall be a subdivision of a respective body. The Statute of a Family and Child Support shall be approved by a respective body.

4. The goals of a Family and Child Support Department shall include the following:
   - putting in place juvenile delinquency prevention programs;
   - identifying cases involving neglect of the children by the parents or those involving children whose parents are unable to provide them with proper care and well-being;
   - investigation and assessment of cases involving the child in trouble;
   - providing a wide range of services aimed at the protection of the rights and lawful interests of the child in trouble, including prophylactic services, rehabilitation and reintegration in society;
   - giving a name, surname and patronymic to the child if both of his or her parents cannot be identified;
   - deciding on the best placement for an uncared for child based on the child's needs assessment;
   - selecting legal guardians, foster and adoptive families;
   - keeping record of childrens, who have legal guardians;
   - supervising the performance of foster and adoptive families to ensure that they fulfill their responsibilities;
   - providing assistance for legal guardians, foster and adoptive families;
informing children, employers, parents or their replacements of the legitimate use of child's labor;

taking steps to protect children's right to housing and wherever necessary provide them with housing;

exercising control over the conditions in which children live, receive upbringing and education in government boarding schools, hospitals, social security and other similar institutions;

addressing petitions from children, government officials and citizens with regard to cases where children are deprived of their rights and lawful interests;

representing children's interests in investigation institutions and public prosecutor's office;

appointing a child's representative to protect the child's rights and interests if there are differences between him or her and the parents;

appealing to courts of justice to seek stripping parents of the parentage or taking children away from them without the parents being stripped of parentage;

participating in judicial proceedings involving the stripping of parentage;

participating in the adoption procedure by producing a statement of the grounds for adoption.

SECTION 2. RIGHTS AND INTERESTS OF THE CHILD. GUARANTEES OF THEIR PROMOTION AND EXERCISE

Chapter 4. Legal status of the child. Birth registration. Nationality

Article 16. Exercise of the rights of the child

Government and non-governmental institutions shall do their utmost to ensure the best exercise of the rights and interests of the child.

Each child should be provided with such protection and care as is necessary for his or her well-being. With due account taken of the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her under the legislation of the Kyrgyz Republic.

Article 17. Right to a name and the right to acquire a nationality

Each child shall be registered immediately after birth.

Each child shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
The grounds and procedures for acquiring and changing a nationality of the child shall be subject to the Law of the Kyrgyz Republic "On the Citizenship of the Kyrgyz Republic".

The procedure for giving a name, surname and patronymic to the child, changing of a name, surname and patronymic of a child shall be subject to the legislation of the Kyrgyz Republic.

4. Special agencies of the Kyrgyz Republic shall ensure the exercise of the rights specified in paragraphs 1 and 2 of this Article.

5. A birth certificate and/or a passport shall be documents certifying the nationality of the child.

Article 18. Registration of the birth of the child

1. The birth of the child in a medical institution (maternity home) shall be confirmed by a medical note issued to the parents after the birth of the child.

The note of the birth shall be issued to the parents at the discharge from a medical institution.

2. Should the child is born outside a medical institution his or her birth shall be registered by a district (family) doctor within 10 days after the birth. Failure to meet this requirement by the parents or a doctor shall carry responsibility as provided for by the legislation of the Kyrgyz Republic.

Based on a written request of the parents or their representative, the head of the medical institution shall be duty bound to issue a medical note to confirm the birth of the child regardless of whether the mother of the child is a client of the medical institution or not.

3. Procedures for the registration of the child's birth, identification of his or her origins, as well as identification of fatherhood, making changes into the birth certificate shall be subject to a special Regulation approved as prescribed by the legislation of the Kyrgyz Republic.

Article 19. The right of the child to freedom of expression

1. The child shall have the right to freedom of expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds contributing to the social, spiritual and financial well-being of the child, his or her physical and mental health, either orally or in writing.

2. Legal representatives of the child as well as individuals that contribute to ensuring the exercise of the rights of the child ex officio shall provide information, explanations and advice for the child taking into account his or her age.

3. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order, or of public health or morals of the citizens of the Kyrgyz Republic.
Article 20. The right of the child to be heard

1. The child who is capable of forming his or her own views shall have the right to be heard on any issue affecting his or her interests.

2. The right to be heard includes the child's right to ask for and obtain any information, consultation, express his or her opinion, be informed of the consequences that may result from compliance with the child's will or opinion.

3. The child shall have the right to be heard either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of the Kyrgyz Republic.

Article 21. The right of the child to freedom of conscience and religion

1. The child shall have freedom to manifest any religion or none at all.

2. Nobody shall have the right to change or force the child to manifest a religion without the consent of the child as well as of his or her parent.

3. Freedom of conscience and freedom to manifest one's religion may be subject only to such limitations as are prescribed by law or based on a decision by a court of law and are necessary to protect public safety, order, morals, or the fundamental rights and freedoms of others.

Article 22. The protection of the rights of the child

1. The protection of the rights of the child that the family and child support department undertakes to ensure the exercise of the rights of the child shall include the following stages:

   - an all-round assessment of the situation;
   - developing program designed to protect the rights of the child;
   - decision making and giving final approval.

The procedures for the protection of the rights of the child shall be approved by issuing a special regulation subject to approval by a resolution of the Government of the Kyrgyz Republic.

2. The family and child support department shall make an all-round assessment of how well the exercise of the rights of the child is ensured and an assessment of the child's family within 30 days from the date when a request is submitted or the need to protect the rights of the child is identified.

3. A family and child support department official that is responsible for assessing shall draft a child care plan and decide the following matters:

   - whether the child needs assistance from the family and child support department;
   - whether the child may be brought back to the family or he/she needs foster placement;
- consider without delay guardianship for the child, foster placement, family-type home placement or adoption.

4. The child care plan shall be based on the following principles:

- the child should be placed on a permanent basis if it is found impossible for him or her to live on with the parents, guardians or custodians;
- foster placement shall be deemed as more preferable than placement in a suitable institution for the care of children;
- separation of brothers from sisters shall be allowed only in exceptional cases in the best interests of children;
- taking into account ethnic, religious, cultural, national and linguistic background of the child;
- information of any kind and decisions affecting the child shall be explained to him or her in a simple language in accordance with the age and maturity of the child;
- any decision shall be made as soon as possible and shall not be detrimental to the well-being and interests of the child.

5. A child-care plan shall be approved by a commission for children within at least ten days. If an family and child support department officer fail to comply with the requirements stated above the plan shall be returned for reworking.

6. If the parents refuse to give consent to the child's foster placement the family and child support department shall file a suitcase against them seeking to restrict or withdraw parentage.

7. In exceptional cases where there is an immediate threat to a child's life and health (physical or mental violence, maltreatment or exploitation, etc.) the family and child support department shall take urgent measures to protect the child's rights and make a decision as to the child's foster placement. The family and child support department shall write a report to inform, within 24 hours, a public prosecutor and commission for children of measures taken. Within at least 3 days, the family and child support department shall develop a Protection Plan and send the files to the commission for children and then to a court of justice.

8. Foster placement procedures shall be subject to a special regulation that shall be approved by a resolution of the government of the Kyrgyz Republic.

9. Adoption shall be deeded as the most favorable form of placement for children left without parental care.

Adoption shall apply only to children and with the sole aim of promoting their best interests in accordance with the legislation of the Kyrgyz Republic and opportunities enabling one to provide worthy physical, mental, spiritual and moral development for a child.
Chapter 5. Ensuring the exercise of the rights and interests of the child in the sphere of family legal relations

Article 23. The rights of the child to have family legal relations

1. The child shall have the right to live in a family environment, know both his or her parents, enjoy their care and live together with them except when separation from one or both parents is necessary for the benefit of the child.

2. The child shall not be separated from his or her parents except when it is determined, in accordance with this Code and the legislation of the Kyrgyz Republic, that such separation is necessary for the best interests of the child.

3. The child shall have the right to know and maintain contact with both parents even if the latter live separately, are divorced or when the child is placed outside his or her family except if it is contrary to the child's best interests.

Article 24. Responsibilities of parents or the holders of parental responsibility or other family members

Parents and the holders of parental responsibility shall create conditions conducive to the fullest possible development, upbringing, education of the child, including his health in order to become fully prepared to live an individual life in society. Both parents shall be equally responsible for the upbringing of the child and taking care of him or her, providing financial support and housing.

Violation of the rights and infringement on the lawful rights and interests of children by their parents or the holders of parental responsibility in whose custody he or she is as well as neglect of the child's health shall be punishable as prescribed by the legislation of the Kyrgyz Republic.

If a child's parents die, or they are stripped of parentage, or the parentage is restricted, or the parents are recognized as incapacitated, sick, absent for a long time, or if they evade upbringing of their child or evade protection of their child's rights and interests including cases where they refuse to take their children from child-care facilities, medical institutions, social security services and other similar institutions, including other situations where children are left uncared for, the protection of the rights and interests of the child shall be entrusted to the family and child support department and commission for children, that shall act in accordance with the legislation of the Kyrgyz Republic in the best interests of the child.

Parents (guardians and custodians) shall have the right and responsibility for a child's upbringing, providing him or her with access to education, guiding his or her actions in a manner consistent with the child's age and capacities.

Parental responsibilities may not come into conflict with the interests of children. The best interests of the child will be parents' basic concern.

The exercise of parental responsibilities may not be injurious to children's physical or mental health as well as to their moral development. Upbringing methods may not include neglect or cruel, rude, degrading treatment, insults or exploitation of children.
Article 25. Providing State (financial) support for needy families by meeting children's needs

1. Any child, who does not receive adequate support from his or her parents or legal representatives shall be provided with state assistance. Its size and provision terms and conditions shall be specified by laws and other regulatory acts.

Orphaned or uncared for children shall be placed in the custody of the State as prescribed by law. Each child, whatever a guardianship type, shall be provided with equal financial support.

2. The State shall provide additional benefits for orphanned, disabled, uncared for children as well as for children in the areas of hostilities, interethnic conflicts, natural disasters, epidemics, environmental disasters, children of refugees and displaced persons.

Article 26. The legal status of child refugees

The Kyrgyz Republic guarantees that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Code and in other international human rights instruments to which the Kyrgyz Republic is a Party.

Article 27. Granting refugee status to refugee children

If refugee status has been granted to the head of the family in the Kyrgyz Republic on the grounds set forth in the Law On Refugees the refugee status shall be applicable to his children provided they live together.

Children shall have the right to reunification with his or her parents in the Kyrgyz Republic and obtaining refugee status.

The child enjoying refugee status in the Kyrgyz Republic shall have the same rights and responsibilities as the citizens of the Kyrgyz Republic.

In cases where the parents or the holders of parental responsibility cannot be found special agencies of the Kyrgyz Republic located in the area where the refugee child is shall take measures to look for his/her parents or relatives and shall provide financial, medical and other assistance.

Article 28. Adoption

Adoption procedures shall be subject to the legislation of the Kyrgyz Republic in the best interests of the child. Brothers and sisters may not be separated.

Article 29. Special needs children

The Kyrgyz Republic shall take every measure to the promotion and protection of the rights of special needs children.
Chapter 6. Basic guidelines for promoting the rights and interests of the child in the sphere of education

Article 30. The protection of the child's right to compulsory free education at school

1. The child shall have the right to receive free education at standard government schools.

2. The State guarantees that general primary education shall be compulsory, free and accessible and that general secondary education shall be free as prescribed by law in the Kyrgyz Republic.

Article 31. The right to education with regard to physically handicapped and mentally retarded children and children with special needs.

1. Physically handicapped and mentally retarded children and children with special needs shall have the guaranteed right to receive free education at general government schools as well as primary vocational education in a manner appropriate to their physical condition and capacities.

2. Physically handicapped and mentally retarded children and children with special needs, who are unable to receive education at government general schools without special preference shall be provided with special conditions like organizing special groups, classes or institutions to offer them healthcare, education, vocational training, rehabilitation and social reintegration as prescribed by law in the Kyrgyz Republic.

Article 32. The rights and responsibilities of children's parents (or the holders of parental responsibility)

1. Parents (or the holders of parental responsibility) shall be free to choose forms of education and types or kinds of institutions of learning taking into account the child's wish and capacities.

2. Administrative action may be taken against parents (or the holders of parental responsibility) neglecting their duty to provide general secondary education for children in accordance with law in the Kyrgyz Republic.

Article 33. The rights and duties of educational institutions

1. Any educational institution, in areas accessible to children and parents (or the holders of parental responsibility), shall post its rules and regulations, and lists of officers at special government agencies and local self-government bodies supervising that institution and their contact details.

2. Educational institutions may not infringe on the rights, liberties and lawful interests of children.

Restrictions imposed on children with regard to his or her entering a government educational institution other than those specified by law shall be unacceptable.

Government educational institutions may not introduce compulsory charges in monetary terms or in kind.
3. An educational institution shall enforce discipline and order based on pedagogical methods with due respect for students' rights, freedoms and dignity that leave no room for humiliation or insult.

4. Educational institutions may not apply corporal punishment of any kind to children.

If any person is found to apply such punishment he/she and the head of that educational institution shall be brought to responsibility as prescribed by law in the Kyrgyz Republic.

To be assigned to the section "Protection" (Article 55. The protection of the child against information, propaganda and campaigning material injurious to his or her health, moral and spiritual development

1. The State shall provide children with access to information and material from various sources and shall encourage the spread by mass media of information and material contributing to the moral and spiritual development of the child.

2. Central government and local self-government bodies shall take measures for the protection of children from information and propaganda and campaigning material injurious to his or her health, moral and spiritual development, including one containing elements of interethnic or social strife, advertisements of strong drinks and tobacco goods as well as promoting ethnic, social, racial and religious inequality, or printed matter, audio and visual products containing violence and cruelty, pornography, drug addiction, toxicomania and bad social behavior.

Selection criteria and restrictions on the distribution of printed matter, audio and video products that are not recommended for children under 16 shall be determined by the Government of the Kyrgyz Republic.

3. Table, computer and other intellectual games designed for children shall be assessed by legal, psychological, pedagogical and social experts in the manner specified by the government of the Kyrgyz Republic.

Chapter 7. Basic guidelines for protecting the rights and interests of the child in health care

Article 34. Ensuring the child's right to health care

1. The child shall have the inherent right to life and health care.

2. The child's right to health care and healthy life style arises from the child's birth and continues throughout his or her life regardless of whether children live in their own family, a child-care facility or in a correctional institution serving their term for committing a crime, whether they are recognized as mentally and physically healthy or found to be under special disability.
Article 35. The responsibilities of parents or the holders of parental responsibility for providing children with appropriate health care

1. Parents or the holders of parental responsibility shall be responsible for providing children with adequate health care.

2. Parents or the holders of parental responsibility, who deliberately do not seek medical aid or refuse from it thereby doing harm to the child's health, shall be brought to responsibility in the manner specified by herein.

Article 36.

1. Special government agencies for health care in cooperation with local self-government bodies shall take measures to:

   - protect children's health through a system of follow-up examinations since infancy or early childhood;
   - reduce children mortality rates;
   - offer mothers relevant health care services during antenatal and post-natal periods;
   - provide information for parents on children's health and nutrition standards, the advantages of breast feeding and the need to meet hygienic and sanitary standards in the children's environment;
   - promote public awareness and services in the field of disease prevention and family planning;
   - develop and distribute children's health care programs via educational institutions, including those focusing on reproductive health, sexual education, combating narcomania, strong drinks and smoking and other information of this kind;
   - prevent infectious and dangerous infectious diseases;
   - prevent malnutrition among children;
   - prevent traumatism and promote healthy life styles.

2. Special government agencies for health care in cooperation with local self-government bodies, in the manner envisioned by law in the Kyrgyz Republic, shall take measures designed to provide children with free, accessible and qualified medical assistance, including disease prevention examinations, diagnostics and recreational services, regular medical check-ups, rehabilitation of disabled children and children suffering from chronic diseases and provide children with facilities in sanatoria and health resorts.
Chapter 8. Basic guidelines for the protection of the child's rights and interests in the field of social and labor relations

Article 37. The protection of the child's rights and lawful interests in the field of career guidance, training and employment

1. The child shall have the right to professional training and employment appropriate to his or her age, health condition and his or her level of education and professional training.

2. A minimum age for admission to employment, the hours and terms of employment, the rights and responsibilities of the child with regard to labor offences shall be subject to the Labor Code of the Kyrgyz Republic.

3. A minimum age for admission to employment shall be the age of 14.

On attaining the age of 14, the child shall have the right to sign labor contracts with the written consent of one of his or her parents (or the holders of parental responsibility) or a family and the child support department to do a job that is not detrimental to the child's health or interrupting the training process.

4. The State shall ensure the child's right to receive vocational training since the age of 14 through a primary vocational training system.

5. Enterprises, institutions and organizations, whatever ownership, shall be duty bound to admit children to employment subject to quotas on employment services' assignments. No child may be dismissed without his or her consent or the consent of a body for the family and the child or unless such a dismissal is approved by court.

Article 38. Child labor

1. Labor that is forced, injurious to the health of the child or detrimental to his or her physical, intellectual, spiritual or moral development in any form in enterprises, institutions and organizations, including cooperatives or employment based on family or lease contracts shall be prohibited in The Kyrgyz Republic shall forbid.

2. Child labor in its worst forms shall be prohibited in the Kyrgyz Republic.

Child labor in harmful and hazardous conditions, involving underground operations or work detrimental to the child's health or moral development (in gambling business, night cabarets or clubs, production, transportation and trading in alcoholic drinks, tobacco goods, narcotics and toxic substances) shall be prohibited.

Carrying or moving weights exceeding maximum allowable standards by children shall be prohibited.

List of operations where child labor is prohibited and maximum allowable weights shall be approved as prescribed by the government of the Kyrgyz Republic.
Chapter 9. Personal property and non-property rights of the child

Article 39. The child's legal and active capacity

1. The legal and active capacity of the child, his or her personal property and non-property rights shall be subject to the Civil Code of the Kyrgyz Republic.

2. The child shall have the right to property which shall be under protection of the Constitution of the Kyrgyz Republic, this Code and other regulatory acts of the Kyrgyz Republic.

The child shall have the right to possess revenues and property purchased with his or her money.

The child shall have the right to receive support from his parents and other members of his or her family in the manner and size prescribed by law in the Kyrgyz Republic.

The child's property rights shall be given due consideration in cases involving division of property that is jointly owned by parents.

In accordance with law effective in the Kyrgyz Republic, the child shall have the right to get support from the resources of both or one of his/her parents if a court of justice recognizes both or one of them missing.

3. The child shall be recognized as fully competent upon attaining majority, that is after reaching the age of 18 years.

2. The child who legitimately enters into marriage before reaching the age of 18 years shall acquire full discretion since the date when he or she entered into marriage.

Discretion that the child thus acquires by entering into marriage shall continue also after the dissolution of the marriage.

If marriage recognized as illegitimate, a court of law shall make decision on stripping the minor spouse of his or her full capacity.

Article 40. The active capacity of the child who is under fourteen years of age

1. No deals made by children who are under fourteen years of age shall be deemed as legitimate except in cases mentioned in paragraph 3 of this Article.

2. Deals on behalf of a child who is under fourteen years of age shall be made only by holders of parental responsibilities: parents, adoptive parents or guardians except in cases mentioned in paragraph 3 of this Article.
3. The child who is between seven and fourteen years of age shall be allowed to make:

1) minor domestic deals;

2) deals aimed at obtaining non-repayable benefits that do not need notarial attestation or formal registration;

3) deals concerning resources provided by the holder of parental responsibility either for a certain purpose with the consent of the third party or for independent management.

4. The right of the child, who is under fourteen years of age, to make contributions to credit institutions and his or her right to command them shall be subject to law.

5. Property responsibility as to deals made by a child, who is under fourteen years of age, including deals he or she made independently shall be borne by his or her parents, adoptive parents or guardians unless proved that the obligation was not violated through their fault.

Article 41. The capacity of children who are between fourteen and eighteen years of age

1. Children who are between fourteen and eighteen years of age shall be allowed to make deals with the written consent of the holders of parental responsibility – parents, adoptive parents or guardians – except in cases mentioned in paragraph 2 of this Article.

Deals made by children without such consent shall be deeded legitimate also when approved later by parents, adoptive parents and guardians.

2. Children who are between fourteen and eighteen years of age shall have the right at their discretion, without the consent of parents, adoptive parents and guardians:

1) to command their earnings, scholarships and other incomes;

2) to hold copyright on works of science, literature or art, inventions or any other product of his or her intellectual endeavor protected by law;

3) to contribute to credit agencies and command their contributions;

4) to make minor domestic deals as well as other deals mentioned in paragraph 3 of Article 44 hereof.

3. Children who are between fourteen and eighteen years of age shall bear personal property responsibility for as to deals made by them in accordance with paragraphs 1 and 2 of this Article.

Such children shall be held responsible for any damage they may cause by their actions as set forth by the Civil Code of the Kyrgyz Republic.

4. With sufficient grounds and on request of parents, adoptive parents or guardians or guardianship bodies, the court of law may restrict the right of children who are between fourteen and eighteen years of age to command their earnings, scholarships and other incomes or strip them of that right,
except in cases where such children acquire discretion as set forth by the Civil Code of the Kyrgyz Republic and Article 43 hereof.

Article 42. The right of the child to housing

1. The residence of the parents, adoptive parents or guardians shall be recognized as the residence of children who are under fourteen years of age.

2. Children, who are members of the family of a housing owner and live with him or her shall have equal rights to such a housing.

3. Upon privatization of a housing in which the family lives, children shall have equal rights to such a housing regardless of age.

4. Orphaned and uncared for children as well as children placed in child-care boarding institutions, orphanages, families of relatives or guardians shall retain their right to the housing they lived before. If for some reason they are unable to move in such housing they shall be, without delay, provided with equivalent housing in perfect agreement with State standards by local self-government bodies.

Article 43. The child's right to claim the inheritance

1. Children shall have the right to inherit property as prescribed by the Civil Code of the Kyrgyz Republic.

2. Children shall have the right to own property they have obtained as a donation or as inheritance.

3. Children, including those adopted, as well as the late testator's child who was born after the death of the testator shall be recognized as first devisees; they shall have the right to claim the natural portion of the inheritance after the death of their parents while exercising their right to inheritance based on a testament favoring other persons.

If both parents or the sole parent die, guardianship bodies shall take adequate measures to protect the child's right to claim the inheritance.

Article 44. The child's copyright on the products of intellectual endeavor

1. Children shall hold copyright on the works of science, literature and art, inventions, and other products of their intellectual endeavor as set forth by the Civil Code of the Kyrgyz Republic.

2. The copyright, personal non-property and property rights to the objects of intellectual property shall be subject to the Civil Code of the Kyrgyz Republic.

Parents (holders of parental responsibility) and in their absence the appropriate authority for the family and the child shall take adequate measures to protect copyrights, personal non-property and property rights to the objects of the intellectual property of children.
SECTION 3. JUVENILE DELINQUENTS

Chapter 10. Juvenile justice

Article 45. Age of culpability

1) Criminal proceedings may be brought against a child, who has attained the age of 14 years prior to committing a crime, as set forth by the Criminal Code of the Kyrgyz Republic.

2) Juvenile delinquents who have committed actions that have formal signs of deeds envisioned by the Special Part of the Criminal Code of the Kyrgyz Republic but are not criminally liable for age reasons shall be qualified as children needing protection.

Work with such children shall be done in accordance with Article _________________ hereof.

Article 46. The specific features of judicial proceedings against juvenile delinquents

1) Juvenile criminal cases shall be investigated and heard by authorized officials of courts of justice and law-enforcement bodies, who have received appropriate education and training.

2) The rights of juvenile suspects, accused and defendants shall be deemed absolute and shall be strictly observed.

3) For confidentiality purposes, juvenile criminal cases shall be heard behind the closed doors and without delay.

Article 47. Imposition of penalty on juveniles

1) Sentences passed on juveniles shall be based, apart from circumstances envisioned by the special part of the Criminal Code of the Kyrgyz Republic, on circumstances of his life and upbringing, level of mental development and other personal qualities as well as the influence from seniors.

2) Imprisonment as a penalty imposed on juveniles shall be viewed by a court of justice as an ultimate and forced move.

Correction of a juvenile placed under the immediate supervision of the family and child support department shall be viewed as the most preferable measure as far as penalty is concerned.

Article 48. Types of sanctions applicable to juveniles

Should a court of justice find a child guilty of committing a crime the following sanctions may be applied against him or her:

- the warning;
- correction measures taken under direct supervision of the family and child support department;
- the fine;
- temporary restraint of the child's liberty;
- imprisonment.

Article 49. The court's warning

A warning issued to a child means a court's explanation to a child or the holder of parental responsibility of all the negative effects of the child's action and possible consequences for the child if he or she commits a repeat offence.

Article 50. Correction under the supervision of the family and child support department

Correction of children under the supervision of the family and child support department consists of a program of measures designed to provide social, psychological, pedagogical and any other support beneficial to the child on the basis of accredited representatives of appropriate services and organizations under the direct supervision of the family and child support department.

Article 51. Fine

The fine may be applied as a penalty against children who have reached 16 years of age and have their own sources of income by the moment of the sentence.

This penalty envisions that the family and child support department should take measures for the employment of the child wherever necessary as set forth by Article ________________ hereof.

Article 52. Temporary restraint on liberty

Temporary restraint on liberty means placing a juvenile convict in a specialized center or a closed educational institution to be specified by a resolution of the government of the Kyrgyz Republic.

The maximum term of the temporary restraint on liberty may not exceed one years.

Article 53. Imprisonment

Imprisonment means placing a child under penal jurisdiction.

This penalty may be applied against the following categories of juvenile delinquents:

- those who have committed major offences;
- those previously sentenced for committing serious and particularly serious offences.
Article 54. Guarantees of the child's rights in the institutions of confinement

To avoid cruel, inhuman and degrading treatment of juvenile convicts the administrations of the institutions of confinement may not apply the following disciplinary sanctions:

- corporate punishment;
- punishment cells;
- reduced diet;
- restraining or forbidding contacts with the family, representatives of bodies and organizations concerned that are engaged in convict rehabilitation;
- forced labor.

Three months prior to the date when a juvenile convict is due to be released, the administrations of institutions of confinement shall send a written report to inform about it the family and child support department of the area in which the child lived or wants to live.

Article 55. Grant of parole

As set forth by Article ____________ of the Criminal Procedure Code of the Kyrgyz Republic, the grant of parole with regard to juvenile delinquents shall be applied more frequently than envisioned for adult offenders.

Article 56. Revision of sentences passed on juvenile convicts kept in confinement

As set forth by Article ____________ of the Criminal Procedure Code of the Kyrgyz Republic, authorized higher courts of justice shall from time to time review court rulings on juvenile cases with the aim of detecting and removing possible violations of law.

Article 57. Juvenile convict rehabilitation

1) Rehabilitation of convicts is primarily aimed at providing assistance and support in order to encourage their socially beneficial and fruitful participation in the community.

2) Rehabilitation of juvenile convicts serving their sentences unrelated to confinement shall be in charge of the administration of a respective special correctional institution. These activities shall be supervised by the local family and child support department.

3) Rehabilitation of juvenile convicts kept in confinement shall be in charge of the administration of the respective penal jurisdiction.

4) For the purposes of providing juvenile convicts with maximum assistance, all persons and organizations concerned should be admitted to the rehabilitation process unless this is in conflict with the best interests of the convicts themselves.