



**POST GRADUATE DIPLOMA
IN
CHILD RIGHTS AND GOVERNANCE**



BLOCK II

DCG102: CHILD RIGHTS AS HUMAN RIGHTS- PART I

OFFERED BY

**CENTRE FOR OPEN AND DISTANCE LEARNING
TEZPUR UNIVERSITY
(A CENTRAL UNIVERSITY)
IN COLLABORATION WITH
UNICEF- ASSAM**

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- **To contribute to conserve and promote cultural heritage, literature, traditional knowledge and environment conducting short programmes, workshops, seminars and research in interdisciplinary field.**

DCG-102:Child Rights as Human Rights- Part I

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Published by **Dr. Rajeev K. Doley**, Director on behalf of the Centre for Inclusive Development, Tezpur University, Assam.

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BLOCK INTRODUCTION

The course of *DCG 102: Child Rights as Human Rights- Part I* is divided into two blocks. Each block contains two units. The present block contains *Unit 3 and 4*. *Unit 3* deals with the different conventions pertaining to the theme of child rights. This unit would help the reader to understand the basis of the juvenile justice system and the minimum age for employment in various sectors like industry, sea, and armed forces. A detailed account of the United Nations Convention on the Rights of the child is also a part of the present unit.

Unit 4 is focusing on the implementation of human rights law. It focuses on the functioning of Charter Based and Treaty-Based Bodies along with the composition of such bodies. In addition, the unit also explains the role of the International Criminal Court and the principles that are guiding the Court.

UNIT 3:
**SPECIALIZED INSTRUMENTS ON THE RIGHTS OF
THE CHILD & FOUNDATIONAL PRINCIPLES**

Structure

- 3.10 Introduction
- 3.11 Learning Objectives
- 3.12 Minimum Age Convention, 1973
- 3.13 United Nations Standard Minimum Rules for the Administration
Juvenile Justice (Beijing Rules)
- 3.14 Conventions on the Rights of the Child
- 3.15 Optional Protocols to the Convention to the Rights of the Child
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 - 3.7.2 Minimum Age (Industry) (Revised), 1937
 - 3.7.3 Minimum Age (Sea), (Revised), 1936
- 3.17 Foundational Principles of Child Rights
- 3.18 Summary

3.1 INTRODUCTION

In unit I we had discussed the history of the theoretical background for human rights and also explored the evolution of child rights. In unit 2, we

had discussed in detail the international human rights law and provisions which have a bearing on child rights. In this unit we would look into the specialized instruments and foundation principles of child rights.

We have already examined the, Geneva Declaration for the Rights of the Child, 1924. The next major step in the history of child rights was 1959, UN Declaration Rights of the child which laid down ten major principles. These ten principles established the rights of the child as a separate individual and not just an extension of their parents. This declaration included the principle of non-discrimination and equality, provisions for education and health, special treatment for children with disability, right to name and nationality, right to love by parents and society and the right to an appropriate environment for the complete development of the child. It also laid down provisions against child labor. These rights of the children have further developed through Child Rights Convention (CRC). This convention was widely ratified by a number of state parties. In this unit, we would examine the convention in detail but before that we will understand the Minimum Age Convention, 1973 which was adopted by the International Labour Organization (ILO). The convention lays down provisions for minimum age of employment and rules for state parties to comply for effective enforcement of the minimum age convention.

3.2 LEARNING OBJECTIVES

- To develop understanding relating to the specialized instruments for the rights of the child;
- To learn about the important provisions in relation to the rights of the child; and

- To understand the foundation principles in relation to the rights of the child.

3.3 MINIMUM AGE CONVENTION, 1973

The International Labour Organization (ILO) has played a major role in producing international standards to ensure legal protection against child labour. The development of these standards has taken place at different stages. In the early twentieth century between 1919 and 1932 five areas were identified for minimum age regulation. But child labour abolition was not specifically identified as the aim of the minimum age set. Over the period of time in a growing competitive economy it was considered necessary to re-think the minimum age of employment. The second phase between the mid-thirties to the sixties was when the ILO convention raised the minimum age from 14 to 15 years in certain fields like sea, industry and non-industrial employment but attempts were made to regulate certain hazardous forms of work such as fisher men and underground work. It was in the third stage in 1973 when there was a consolidation of the previous conventions. The Minimum Age Convention was adopted by the ILO on 26 June, 1973 and entered into force in 1976. This convention explicitly expressed the need to abolish child labour and each member state was put under an obligation to pursue a national policy to ensure abolition of child labour (Buck, 2014). The minimum age was not to be less than 15 years old but there was a concession for developing countries to specify minimum age of 14 years. It also states that the two years before they reach this minimum legal age, children can do 'light work'- non-hazardous work for no more than 14 hours a week, and that does not interfere with schooling. Children under the minimum working age who are engaged in more than light work are in child labour. Also in case of

hazardous work that would harm the children the minimum age was increased to 18 years.

The Minimum Age Convention has 18 articles. It has been ratified by 156 of the 183 member States of the ILO. Below we examine the articles that lay down the rules for the minimum age of admission to employment for the member states

Article 1: National Policy

Each member of the Convention will pursue a national policy to effectively abolish child labour. They will also rise the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

Article 2: Minimum Age

Each member ratifying the convention will declare the minimum age for admission to employment within their territory. No one under that age shall be admitted to employment or work in any occupation. The specified minimum age should not be less 15 years, the minimum age stipulated for compulsory schooling. Members whose educational facilities and economy has not completely developed may initially fix the minimum age at 14 years.

Article 3: Hazardous Work

The minimum age for work, that jeopardizes the health, safety and morals of young person's shall not be less than 18 years. National laws or regulations will fix these types of work after consultation with the organizations of employers and workers. The minimum

age of employment or work can be considered 16 years if the health, safety, and morals of the young person concerned are fully protected and that the young persons have received adequate instruction or vocational training in the relevant branch of activity.

Article 6: Conditions of Employment

This Convention does not apply to work done children and young person's as part of training in schools for vocational or technical education or in other training institutions. This includes training in

- (a) A course of education or training for which a school or training institution is primarily responsible;
- (b) A programme of training mainly or entirely in an undertaking approved by a competent authority
- (c) A programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training

Article 7: Conditions of Light Work

National laws or regulations may permit the employment of persons 13 to 15 years of age if it is considered light work, does not affect their schooling and is not harmful to their health or development.

Article 8: Participation in Artistic Performances

The state party may allow exceptions to the prohibition of employment or work provided for purposes such as participation in artistic performances. These permissions granted will be limited the number of hours and prescribe the conditions during which employment or work is allowed.

Article 9: National Laws

The state parties will make national laws or regulations to bring into force the penalties for the effective enforcement of provisions of the convention.

3.4 UNITED NATIONS STANDARD MINIMUM RULES FOR THE ADMINISTRATION JUVENILE JUSTICE (BEIJING RULES)

UN Minimum Rules for the Administration of Juvenile Justice: the 'Beijing Rules' adopted in 1985 in Beijing, China is a guideline to the states to protect child rights and establishing a separate and specialized systems of juvenile justice. It is not legally binding but many of its principles were adopted into the CRC. Pre-CRC this was the first legal instrument to setup norms for juvenile justice through the perspective of child rights. Beijing Rules state that the best interest of the child should be the guiding principle for legal proceedings and encourage the use of diversion from formal hearings to appropriate community programmes. The rules state that before depriving a juvenile of liberty all factors should be considered and juvenile cases should only be dealt by trained personnel. According to the Beijing Rules the major aims of the legal system in relation to the children are: proportionality and promotion of the well-being of the child. Proportionality means that it is not only the crime but also the circumstances under which the crime was committed. They clearly state that the juvenile justice system should be fair and humane and emphasize the well being of the child. Rehabilitation is one of the most important points in the rules; this necessary assistance should be in the form of education, employment or accommodation to be given to the child. Volunteers, voluntary organisations, local institutions and other

community resources should be utilized in providing assistance and rehabilitation to the children.

Box 3.1:
The Rules Address Fundamental Principles Such As*:

- The fair and humane treatment of children who come into conflict with the law
- Conducting proceedings in the best interest of the child and ensuring their full participation in the proceedings
- The application of the principle of proportionality to the offender and the offence
- The application of community programmes for diversion from court procedures
- Detention as a measure of last resort and for the shortest possible time
- Deprivation of liberty only for serious offences
- The abolition of corporal and capital punishment
- Continuous and specialised training for law enforcement officers working with children
- The application of alternatives where possible
- The provision of educational and other social re-integrative services for those children who are institutionalised

**Source: Working with children in conflict with the law.2009. UNICEF-
http://www.unicef.org/easterncaribbean/Working_with_children_in_conflict_with_the_law.pdf*

CEHCK YOUR PROGRESS

Match the Following

- | | |
|-------------------------------|--------------------|
| a) Light work | i) 18 years |
| b) Minimum age for employment | ii) 15 years |
| c) Hazardous work | iii) Non-hazardous |

True or False

1. Detention should be the first measure for the children in conflict with law.
a) True b) False
2. Children in conflict with law shall be deprived of their liberty only for serious offences
a) True b) False

In the next section we would direct our efforts to understand the United Nations Convention on the Right of the Child (UNCRC) also known as the Convention on the Right of (CRC).

3.5 CONVENTIONS ON THE RIGHTS OF THE CHILD

The United Nations General Assembly in 1976 declared 1979 as the International Year of the Child to commemorate the 20th Anniversary of the declaration of the Rights of the Child, 1959. It was then that the Polish Government proposed a legally binding document to effectively protect child rights. They presented the first draft to the Commission on Human Rights in 1978 and an amended version was presented in 1979. After this an open-ended working group was constituted by the United Nations general assembly to work on the document. It took a decade for this convention to be finally adopted by the United Nations general assembly on 20 November, 1989. This comprehensive document is divided into

three parts and consists of 54 articles covering a range of issues protecting the civil, political, economic, social and cultural rights of children. Part I (Articles 1- 41) has the substantive provisions of the convention dealing with the general obligations of state parties and the specific rights granted to children. Part II (Articles 42- 45) are the provisions on international implementation. Part III (Articles 46 -54) contains provisions concerning ratification and accession, entry into force, reservations, and amendments. This convention is a cornerstone in the history of child rights and one of the most widely ratified documents in international human rights history. The CRC is ratified by 195 countries, only two countries - United States of America (USA) and South Sudan have not ratified the convention. The implementation of the convention on the Rights of the Child (CRC) by state parties is monitored by eighteen Independent experts. All the state parties are bound to submit regular reports of the committee on how rights are being implemented. The CRC has specific rights related to the children; it includes civil and political rights, economic, cultural and political rights. The articles can be divided as

- Definition of the child (article 1)
- General principles (articles 2, 3, 6, 12)
- Family environment and alternative care (articles 5, 9 – 11, 18 – 21, 25, 27, 39)
- Civil rights and freedoms (Articles 7, 8, 13 - 17, 37)
- Basic health and welfare (articles 6, 18, 23 – 24, 26 – 27)
- Education, leisure and cultural activities (articles 28, 29, 31)
- Special protection measures (articles 22, 23, 30, 32 - 40)
- General measures of implementation (articles 4, 41, 42, 44.6)

Box 3.2:
Preamble of CRC came into force on 2 September 1990 states

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.

The articles of the CRC can be categorized into four as:

Guiding Principles: The guiding principles represent the underlying requirements for the realization of any rights. The guiding principles of the convention are non-discrimination; adherence to the best interests of the child; the right to life, survival and development; and the right to participate. They include.

- Article 1-Definition of the child
- Article 2- Non-Discrimination
- Article 3- Best Interest of the Child
- Article 6 - Right to life, survival and development
- Article 12-Respect for the views of the child (11)

Survival and Developmental Rights: These are the rights that necessary for the survival and full development of the child including the resources and skills required for it. These rights include right to food, shelter, education, clean water, health care, recreational facilities, cultural activities and awareness about their rights. It is also important that these rights are accessible to all children. This category has specific rights

focused on the needs of child refugees, children with disabilities and children of minority or indigenous groups (12).

Box 3.3: Survival and Developmental Rights	
Article 4:Protection of rights	Article 22:Refugee children
Article 5: Parental guidance	Article 23:Children with disabilities
Article 6:Survival and development	Article 24:Health and health services
Article 7:Registration, name, nationality, care	Article 25:Review of treatment in care
Article 8:Preservation of identity	Article 26:Social security
Article 9:Separation from parents	Article 27:Adequate standard of living
Article 10: Family reunification	Article 28:Right to education
Article 14:Freedom of thought, conscience and religion	Article 29:Goals of education
Article 18:Parental responsibilities; state assistance	Article 30:Children of minorities/indigenous groups
Article 20:Children deprived of family environment	Article 31:Leisure, play and culture
	Article 42:Knowledge of rights

Protection Rights: These rights are for the protection of the children from offences such as child abuse, neglect, exploitation, cruelty and special protection for children of war and refugees (13).

**Box 3.4:
Protection Rights**

Article 4:Protection of rights	Article 35:Abduction, sale and trafficking
Article 11:Kidnapping	Article 36:Other forms of exploitation
Article 19:Protection from all forms of violence	Article 37:Detention and punishment
Article 20:Children deprived of family environment	Article 38:War and armed conflicts
Article 21:Adoption	Article 39:Rehabilitation of child victims
Article 22:Refugee children	Article 40:Juvenile justice
Article 32 :Child labour	Article 41:Respect for superior national standards
Article 33 :Drug abuse	
Article 34:Sexual exploitation	

Participation Rights: These rights are those which are required for the children to express their opinions, right to be heard, right to information, right to make decisions. This will help them to participate and grow into active members of the society.

- Article 4:Protection of rights
- Article 12:Respect for the views of the child
- Article 13:Freedom of expression
- Article 14:Freedom of thought, conscience and religion
- Article 15:Freedom of association
- Article 16:Right to privacy
- Article 17:Access to information; mass media (14)

Given below are the articles under CRC in detail

Article 1: Definition of Child

The convention defines a child as every human being below the age of eighteen years unless the law of the state has set the age of adulthood for a younger age.

Article 2: Non- Discrimination

The convention states that all children within the jurisdiction of the state parties shall be treated equally without any kind of discrimination 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. The provision of non-discrimination also ensures protection to all children against 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: Best Interests of the Child

Best interest of the child will be of primary concern when taking any decision or action concerning children by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. The state will undertake measures to ensure the child protection and care necessary for his or her well-being and will take appropriate legal and administrative measures for the same.

Article 4: Protection of Rights

The state parties will take measures for the rights recognized in the present convention. Governments have the duty to ensure that maximum available resources are being utilized to respect, protect and fulfill children's

economic, cultural and social rights. The state parties will assess their legislative, administrative, legal and educational systems and take appropriate to optimize them within the framework of international co-operation

Article 5: Parental Guidance

The state parties have a duty to respect the rights duties of parents and significant people in the life of the child and assist them in ways that will help them in fulfilling their role as nurtures to the children. The convention also encourages the nurturing of child in way that will evolve the capacities, provide appropriate direction and guidance to the child.

Article 6: Right to Life

The convention recognises that right to life of the child and states that the governments should provide provisions for their survival and development.

Article 7: Right to Identity

The convention recognises the right to child to have a name and nationality and states that the governments should bring about national laws and obligations to ensure the same.

Article 8: Right to Preserve Identity

The convention states that the child has the right to preserve his/her identity including nationality, name, and family relations without interference. Government should recognise this right and lay down provisions to provide mechanisms for appropriate assistance and protection for the same

Article 9: Separation from Parents

The conventions states that the child should not be separated from his/her parents against their will. Separation will only be considered if it is in the best interest of the child and involves abuse or neglect by parents or if parents are living separately and decision should be made in case of the child's residence. This separation will only take place as per different applicable laws and procedures in place. All interested parties shall be given an opportunity to participate in the proceedings and make their views known. The governments will recognise the right of the child maintain relations with parents regularly, in case of their separation, except if it contrary to the best interest of the child. In case of separation because of action taken by the state, 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, the state party will make provisions to inform the child about the absent members whereabouts.

Article 10: Family Reunification

If the family members live in different countries they will have the right to leave and comeback to the country on regular basis to maintain relations. This right will only be restricted when prescribed by law.

Article 11: Illicit Transfer

States Parties should take measures to combat the abduction/illicit transfer (parental and for financial gain) of child from their country illegally. The governments will promote international agreements (bilateral/ multilateral) to end the illicit transfers

Article 12: Respect for Views of the Child

The convention states that the child has the right to express his/ her views in matters affecting him/her and the state parties should respect these views and give it due accordence as per the age and maturity of the child. The child has the right to be heard in judicial and administrative matters directly through representatives and appropriate body as per the laws of the country.

Article 13: Freedom of Expression

The child shall have the right to freedom of expression through any mediums (oral/print/visual) of their choice. This right will only be restricted when stipulated by law or as matter of national security, public health or morals.

Article 14: Freedom of Thought, Conscience and Religion

States Parties shall respect the right of the child to freedom of thought, conscience and religion. The state parties will recognise the right of parents and guardians to direct and guide the child in evolving the capacities of the child. The freedom to manifest one's religion or beliefs may be restricted as prescribed by law only if it is considered necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15: Freedom of Association

The convention stipulates that rights of child include freedom of association and freedom to assemble peacefully. These rights can be exercised can only be restrained if they come in conflict with the laws of the society, harms the freedom of others or causes public health concerns

Article 16: Right to Privacy

The convention recognises the right to privacy of the child which means that the governments will not unlawfully interfere with his/her privacy, family or correspondence. It also states that the state shall not unlawfully attack his/her honour and reputation and the child has the right to be protected against such attacks.

Article 15: Freedom of Association

States Parties recognizes the rights of the child to associate, join groups and organisations. The governments shall not place any restriction on this right of the child unless it is against the law of the democratic society, threat to national security or public health.

Article 16: Right to Privacy

Every child has the right to his or her privacy with no unlawful interference.

Article 17: Right to Information

State parties recognise the right of the child to have access to information through different sources especially those aimed for the overall development of the health. The state parties have the responsibility to encourage mass media to disseminate information and access to children's books.

Article 18: Parental Guidance

State parties recognise the right of parents and responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. The states will provide facilities and services

that will assist parents/legal guardians to perform their duties and responsibilities.

Article 19: Protection from Violence

The state parties has the responsibility for putting in place appropriate legislative, administrative, social and educational measures to protect the child from all forms of violence. Effective procedures should be put in place so to have necessary support to promote care of the child through proper judicial mechanisms.

Article 20: Alternative Care

The state party has the responsibility to provide special protection and assistance to a child who has been temporarily or permanently deprived of his/her family environment. The state parties will ensure national laws to ensure alternative care.

Article 21: Adoption

The best interest of the child will be the most important consideration when state parties recognise or permit the system of adoption. Proper laws and regulations will be laid down for the same. In case of inter-country adoption permitted by the state proper safeguards and standards as per existing national adoption laws have to be maintained.

Article 22: Refugee Children

State parties will ensure appropriate measures to protect and provide assistance to a child who is a refugee or seeking refugee status as set forth in the present Convention.

Article 23: Children with Disabilities

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. They have the right to a disabled child to special care by providing appropriate assistance applicable to the child's conditions and parents circumstances.

Article 24: Right to Health

Every child has the right to highest attainable standard of health including facilities for the treatment of illness and rehabilitation of health. The state has the responsibility to take appropriate measures to provide good quality health care provisions for safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy and special provisions for mother and child.

Article 25: Review of Treatment

Every child looked after by authorities of the child for the purposes of care, protection or treatment of his or her physical or mental health has the right to review the facilities and treatment provided to him / her

Article 27: Standard of Living

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 and will take appropriate measure, both material and programmatic

Article 28: Right to Education

The convention recognises every child's right to education. State parties will ensure provisions to achieve this right on the basis of equal opportunity. This includes making primary education free for all, encouraging development of different forms of secondary education, making higher education accessible, providing information about educational and vocational information, take measures to reduce drop-out rate.

Article 29: Goals of Education

States Parties agree that the goals of education involve the development of the child's full potential; the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; the development of child's respect for parents, culture, language and national values.

Article 30: Minority Rights

Children from minority or indigenous communities will have right to his/her community, culture, religion and language.

Article 31: Right to Rest, Leisure and Play

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.

Article 32: Child Labour

The convention recognises the right of the child to be protected from labour and exploitation and interferes with child education and overall development. The state parties will take legislative, administrative, social

and educational measures to implement this article by providing a minimum age for admission to employment, regulation of the hours and conditions of work and laying down penalties to ensure effective enforcement.

Article 33: Drug Abuse

States Parties shall take all measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of drugs.

Article 34: Protection from Sexual Abuse

Governments shall protect the child from all forms of sexual exploitation and sexual abuse and take all measures to prevent it.

Article 35: Prevention from Abduction and Trafficking

Governments 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: Protection from other forms of Exploitation

Children shall be protected from all other forms of exploitation that harm their welfare and development.

Article 37: Detention and Punishment

The convention states that no child shall be punished or degraded. No child below 18 years will be subjected to capital or life imprisonment. No child shall be deprived of his or her liberty unlawfully or arbitrarily. Every child deprived of liberty shall be treated with 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 except in exceptional circumstance. Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance.

Article 38: Armed Conflict

Governments will respect international laws and rules applicable to them in armed conflicts which are relevant to children. No child below the age of fifteen years will be recruited into the armed forces. State parties shall take measures to protect and care of children who are affected by an armed conflict.

Article 39: Rehabilitation of Children

Governments shall take all appropriate measures to promote social reintegration of child victims of all forms of neglect abuse, torture, or punishment or armed conflicts. Particular attention should be paid to restoring the health, self-respect and dignity of the child.

Article 40: Juvenile Justice

Governments recognises the right of every child accused of breaking the law to be treated respecting and promoting the child's sense of dignity and worth. They have the right to legal help and fair treatment. Governments will set a minimum age below which children cannot be held criminally responsible and will provide minimum guarantees for the fairness and quick resolution of judicial or alternative proceedings.

Article 41: Respect of Superior National Laws

If the laws of the country or international law are conducive to the realization of the rights of the child then the rules of the present convention would not apply

Article 42: Disseminating Information of Rights

State parties should make principles and provisions of the Convention widely known to both adults and children by using appropriate and different modes of communication.

Articles 43-54: Implementation Measures

These articles include provisions to governments and international organizations to ensure children are protected in their rights.

CHECK YOUR PROGRESS

Match the following

- | | |
|---|-----------|
| a) International Year of the child | i) 1959 |
| b) Declaration of the Rights of the Child | ii) 1989 |
| c) UNCRC | iii) 1979 |

1. Which of the following is not a part of Right to Survival and Development?

- | | |
|----------------------------|-------------------------|
| a) Family reunification | c) Right to Education |
| b) Separation from parents | d) Right to Information |
| c) | |

2. Right to participation includes _____.

- | | |
|-------------------------|--|
| a) Protection of rights | c) Protection from all forms of violence |
| b) Kidnapping | d) Respect for the views of the child |

3.6 OPTIONAL PROTOCOLS TO THE CONVENTION TO THE RIGHTS OF THE CHILD

The convention of the rights of the child is supplemented by three optional protocols:

- *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC)*
- *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC)*
- *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPIC)*

In this section we will examine the three optional protocols in brief.

3.6.1 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC)

The convention on the rights of the child had provisions, especially in article 1, 11, 21, 32, 33, 34, 35 and 36 to guarantee the protection of the child from the sale of children, child prostitution and child pornography. The Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography was adopted on May 25, 2000, and entered into force in 2002. It was the increasing demand for children in sex tourism and pornography that resulted in the adoption of this optional protocol. This optional protocol has seventeen articles and has been ratified by 169 countries. Article 2 of the protocol gives the definition for sale of children, child prostitution and child pornography as:

- ***Sale of children*** means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- ***Child prostitution*** means the use of a child in sexual activities for remuneration or any other form of consideration;
- ***Child pornography*** means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Articles in the protocol laid down provisions for jurisdictional laws which the states must abide by to ensure protection of children. The protocol states the need for each member country to ensure national laws to punish offences that harms a child in the form sexual exploitation, engagement of labour, transfer of organs of child for profit and child prostitution. Governments shall take measures necessary to establish its jurisdiction over the offences defined in the protocol. Provisions have been laid to include the offences in the protocol as extraditable and state parties will co-operate with each other in connection with investigations or criminal or extradition proceedings. The governments will take measures to protect the rights and interests of child victims of the practices prohibited under the Protocol. They will also take steps to strengthen international cooperation for prevention, punishment, investigation and prosecution of those responsible for acts.

3.6.2 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC)

Article 38 of the convention on the rights of the child requires state parties to prevent anyone under the age of 15 from taking direct part in hostilities and to refrain from recruiting anyone under the age of 15 years. The optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was drafted in order to raise the minimum ages set out in the Convention and increase the protection of children from involvement in armed conflict. The OPAC was adopted on May 25, 2000, and entered into force in 2002. The protocol has 13 articles and has been ratified by 159 states. The OPAC states that it is the states responsibility to take measures that no person below the age of 18 should take direct part in hostilities. The governments should increase the minimum age of recruitment to 18 years from 15 years as set in the CRC. The state party should take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of the Protocol within its jurisdiction.

3.6.2 *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPIC)*

The convention on the Rights of the child was the only core international human rights treaty which did not have communications procedure. It was in this regard that Optional Protocol to the Convention on the Rights of the Child on a communications procedure was adopted on 19 December 2011 entered into force in 2014 and has been ratified by twenty four states. This protocol establishes that an international complaints procedure for violations of child rights contained in Convention on the Rights of the Child (CRC), the Optional Protocol to the CRC on the Involvement of

Children in Armed Conflict (OPAC) and the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (OPSC). The Committee on the Rights of the Child has the responsibility of carrying out the functions provided in the protocol. The committee shall be guided by the principle best interests of the child. This protocol provides two ways for children to question the violation if their rights-

- Communication procedure: The children can bring complaints about violations of their rights to the UN Committee on the Rights of the Child, if they are not been fully resolved in national courts.
- Inquiry procedure: for grave or systematic violations of child rights.

3.7 INTERNATIONAL LABOUR ORGANIZATION (ILO) CONVENTIONS

In this segment, we would examine some of minimum age convention pertaining to specific field of employment.

3.7.1 Minimum Age (Underground Work), 1965

ILO adopted the convention on June 22, 1965, which may be cited as the Minimum Age (Underground Work) Convention, 1965. For the purpose of this Convention, the term *mine* means any undertaking, whether public or private, for the extraction of any substance from under the surface of the earth by means involving the employment of persons underground. The Convention include employment or work underground in quarries (article 1). The minimum age for the purpose shall not be less than 16 years (article 2).

Each Member that has ratified this Convention may subsequently notify the Director-General of the International Labour Office, by a further

declaration, that it specifies a minimum age higher than that specified at the time of ratification (article 3).

Under the Convention, the employer shall keep, and make available to inspectors, records indicating, in respect of persons who are employed or work underground and who are less than two years older than the specified minimum age--

(a) The date of birth, duly certified wherever possible; and

(b) The date at which the person was employed or worked underground in the undertaking for the first time.

The employer shall make available to the workers' representatives, at their request, lists of the persons who are employed or work underground and who are less than two years older than the specified minimum age; such lists shall contain the dates of birth of such persons and the dates at which they were employed or worked underground in the undertaking for the first time (article 4).

3.7.2 Minimum Age (Industry) (Revised), 1937

The convention was adopted on June 22, 1937, which may be cited as the Minimum Age (Industry) Convention (Revised), 1937. The term industry includes:

(a) Mines, quarries, and other works for the extraction of minerals from the earth;

(b) Industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished,

or in which materials are transformed; including shipbuilding, and the generation, transformation, and transmission of electricity and motive power of any kind;

(c) Construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gas work, water work, or other work of construction, as well as the preparation for or laying the foundations of any such work or structure;

(d) Transport of passengers or goods by road or rail or inland waterway, including the handling of goods at docks, quays, wharves, and warehouses, but excluding transport by hand (article 1).

The minimum age for the purpose shall not be less than 15 years. Further, in case of employment that are dangerous to the life, health or morals of the persons employed therein, national laws or regulations may permit such children to be employed in which only members of the employer's family are employed (article 2).

However, the provisions of this Convention are not applicable to work done by children in technical schools, if such work that is approved and supervised by public authority (article 3).

Under the convention, every employer in an industrial undertaking shall be required to keep a register of all persons under the age of eighteen years employed by him, and of the dates of their births (article 4).

In Indian context, the provisions mentioned under the Articles 2 and 4 are not applicable. The minimum age for employment in India shall not be less than 12 years in factories using power with more than ten persons. Further, children under the age of 13 years shall not be employed or work in the transport of passengers or goods, or mails, by rail, or in the handling of goods at docks, quays or wharves, but excluding transport by hand.

Again, children under the age of 15 years shall not be employed in mines, quarries, and other works for the extraction of minerals from the earth; employment involves usage of article that are dangerous to the health of the child.

3.7.3 Minimum Age (Sea), (Revised), 1936

The Minimum Age (Sea) Convention (Revised) was adopted on October 24, 1936. The convention prohibits the employment of children under the age of 15 years on vessels. However, it excludes the work done by children on school-ships or training-ships, approved and supervised by public authority. Every shipmaster shall be required to keep a register of all persons under the age of sixteen years employed on board his vessel, or a list of them in the articles of agreement, and of the dates of their births.

CHECK YOUR PROGRESS

Match the Following

- | | |
|---------|-----------------------------|
| a) OPSC | i) Armed conflict |
| b) OPAC | ii) Communication procedure |
| c) OPIC | iii) Child pornography |

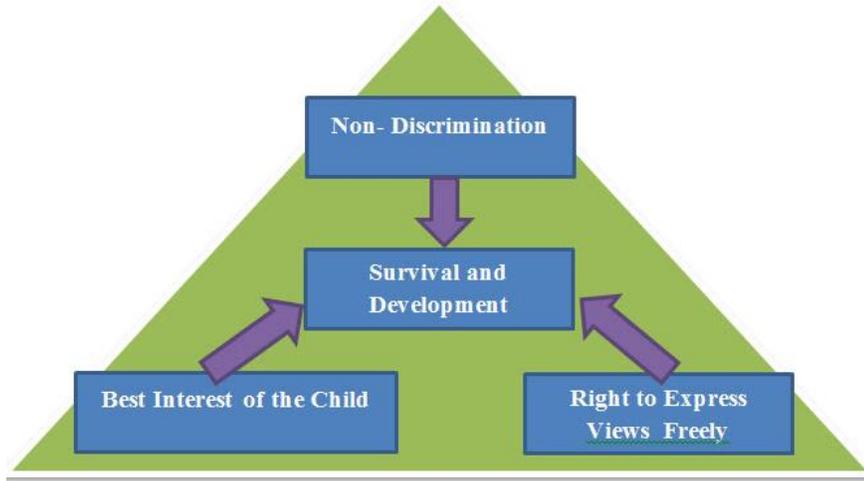
Fill-in the Blanks

2. Minimum age for employment in underground works is _____ years.
3. Minimum age for employment in industrial works is _____ years.
4. Minimum age for employment in vessels works is _____ years.

3.8 FOUNDATIONAL PRINCIPLES OF CHILD RIGHTS

The Convention on the Rights of the Child takes into account the different cultural, social, economic and political realities of individual States. In the general guidelines on periodic reporting, adopted in October 1996 the Committee on the right of the child introduced the term General Principles and identified articles 2, 3, 6 and 12 of the Convention. These general principles are meant to guide with the interpretation of the Convention as a whole and further implementation of national programmes. Article 2 links the right to non-discrimination, Article 3 states that the best interests of the child shall be a primary consideration in all actions concerning children, Article 6 is related to the survival and development of the child and article 12 is the right of the child to express her/his views freely. The concept of survival and development is a much more than just a guiding principle and is related to overall implementation of all the rights of the children (as examined in figure 3.1)

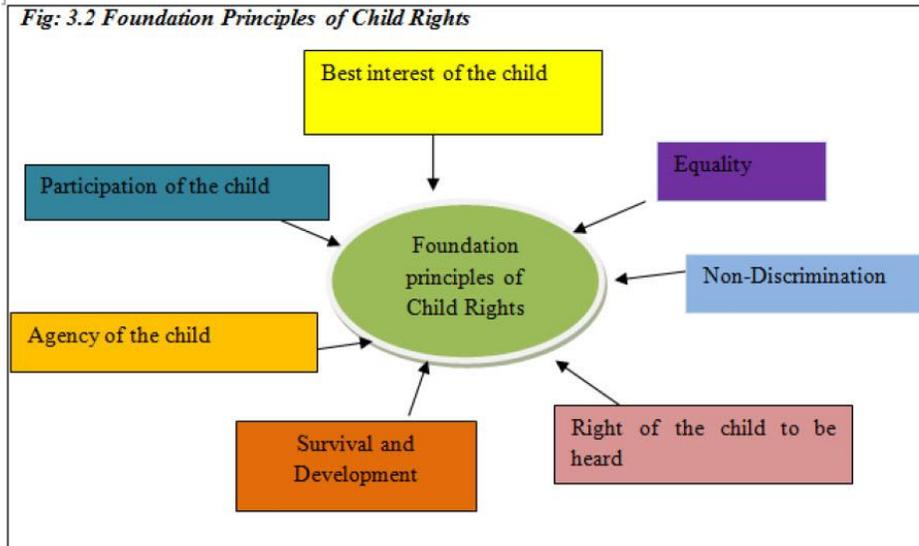
Figure 3.1: Guiding Principles of Child Rights



The reading of these international instruments will help us understand that across the laws the foundational principles far exceed the four core general principles that have stated as a guiding tool. In this section we will examine the following foundational principles

- Non-discrimination and Equality
- Best Interests of the Child
- Right of the child to be heard, Participation and Agency of the Child
- Right to Survival and Development

Fig: 3.2 Foundation Principles of Child Rights



In this section, we will discuss these foundational principles that guide child rights. It is necessary to understand as well as imbibe these principles when working in their area of child rights.

Non-discrimination and Equality

The principles of equality and non-discrimination intersect with each other and they are also seen as fundamentally indivisible, interrelated, and interdependent with all other human rights.

Discrimination or the act of discriminating means the act of unjust or prejudicial treatment. Webster dictionary describes discrimination the practice of unfairly treating a person or group of people differently from other people or groups of people. Non-discrimination across remains a cross cutting principle across all human rights law.

Box 3.4: 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.

The first paragraph of article 2, article 3(2) and article 4 establish the fundamental obligations of States Parties in the Convention on the Rights of the Child to 'respect and ensure' all rights of all children in their jurisdiction of without discrimination of any kind. The principle of 'Non-discrimination' has been identified by the Committee on the Rights of the Child as of fundamental importance for the implementation of the whole Convention. This means that all children, without exception, should enjoy their rights to effective protection. The convention for the rights of children does not define non-discrimination but lays down categories and standards of discrimination. The conventions states that no child should face discriminatory acts based on 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. Although it explicitly sets down categories of discrimination, it recognises the possibility of other grounds of discrimination from which children are

entitled to protection. Non-discrimination does not mean that all children should be treated in the same way as each other or as adults but a distinction is to be made between discriminatory treatment and differential. It is necessary to understand that special measures have to undertake to promote the rights of special groups of children.

The principle of equality in helps to diminish or eliminate conditions that cause or help to increase discrimination. The UDHR in its first article emphasises the right to equality when it stipulates that all the individuals are born free and equal in dignity and in rights. This means that all have people have to considered equal and not be discriminated against on any basis. In relation to children it is necessary that the right to equality is a principle that is practiced, but it does not mean that all children have to become exact copies of each other. It means that regardless of all the differences in people they possess the inherent worth and equally entitled to all rights without discrimination. It also means that differences have to be accommodated and in certain cases special provision for children have to be children so that they can enjoy all rights.

Best Interests of the Child

This is a specific principle for child rights and not a general principle. The best interest principle is important because human rights law is essentially an adult framework and it is this specific principles that are needed to recognize age based specificities and vulnerabilities of children. The best interest principle was not a novel concept that emerged during the drafting of the UN Convention on the Rights of the Child. Earlier it was included in a number of other international human rights instruments, like the 1959 Declaration on the Rights of the Child and the 1979 Convention on the Elimination of All Forms of Discrimination Against Women.

Box 3.5: 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”.

In the UNCRC best interest principle is set out in Article 3(1) which for the first time extended the reach of the principle to ensure that children’s interests are placed at the heart of government and of all decision-making which impacts on children. The term ‘best interest’ in the CRC broadly describes the well-being of the child. Well-being is determined by a number of factors such as individual circumstances, age, the level of maturity of the child, the presence or absence of parents/legal guardians, the environment in which the child brought up and the experiences of the child. Within the Convention itself, the concept of best interests of individual children is mentioned in other articles.

Separation from Parents (article 9) : The child shall not be separated from his or her parents against his or her will except when the competent authorities deem it necessary in the best interest of the child after it is subjected to judicial review and States must respect the right of the child to maintain personal relations and direct contact with both parents on a regular basis except if it is against the best interests of the child.

Parental Responsibilities (article18): Both parents have primary responsibility for the upbringing of their child in this regard their basic concern will be best interests of the child

Deprivation of Family Environment (article 20): Children temporarily or permanently deprived of their family environment are not allowed to remain in the same environment because it is not in the best interests of the child. These children are entitled to special protection and assistance

Adoption (article 21): While considering intra-country or inter-country adoption the state shall ensure the best interests of the child

Restriction of Liberty (article 37): Children who are deprived of liberty must be separated from adults “unless it is considered in the child’s best interest not to do so.”

Court Hearings of Penal Matters Involving a Juvenile (article 40): In legal matters involving a juvenile parents or legal guardians should be present unless it is deemed contrary to the best interest of the child.

Best interest principle must be viewed holistically and in connection with the other rights of the child. This principle should be of primary consideration when making policy or programmes or implementing any laws related to children. This means that the best interest of the child must not be in tension with the other rights of the child but when considering the best interest all other principles should be taken into account. It should be noted that the interpretation of the best interest of the child cannot be done in an overly culturally relativist way and cannot be used to deny rights guaranteed to children by the Convention.

Right of the child to be heard, Participation and Agency of the Child

Box 3.6: 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 either in any judicial and administrative proceedings affecting the child, directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 12, together with other rights of the UNCRC recognizes the child as an active agent able to exercise his/her rights. This means that the UNCRC respects the agency of the child. No child is looked upon as a passive receiver but is seen as an individual with an ability to actively engage in making his or her own decisions. This right to actively engage can be conceptualized as ‘participation’. Although the term participation has never been used in the article 12 but the participation has been used as a shorthand term to describe the process of children expressing their views freely and having these views taken seriously.

Box 3.7: Participation

Participation can be defined as an ongoing process of children's expression and active involvement in decision-making at different levels in matters that concern them. It requires information-sharing and dialogue between children and adults based on mutual respect, and requires that full consideration of their views be given, taking into account the child's age and maturity.

Source: Lansdown, Gerison(2011) Every Child's Right to be heard: A Resource Guide on the UN Committee on the Rights of the Child General Comment No.12, UNICEF and Save the Children- http://www.unicef.org/french/adolescence/files/Every_Childs_Right_to_be_Heard.pdf

Article 12 clearly states the child has the right “to express those views freely”.

Box 3.8:

“Freely” means that the child can express her or his views without pressure and can choose whether she or he wants to exercise her or his right to be heard. “Freely” also means that the child must not be manipulated or subjected to undue influence or pressure. “Freely” is further intrinsically related to the child's “own” perspective: the child has the right to express her or his own views and not the views of others. The UNCRC recognizes the right of the child to have a say in matters that have a direct bearing on them.

Source: General Comment No. 12 (2009) The right of the child to be heard

The rights of the child to express her/his views are recognized from an early age as the Convention sets no minimum age at which children can expressing their views freely, nor does it limit the contexts in which children can express their views. The Convention acknowledges active participation and involvement of children in decision making process increases with age and their evolving capacities. Parents and, where appropriate, members of the family and wider community are expected to give appropriate direction, guidance or advice to children. Children have the right to be heard in matters that affect their immediate family to the international level; the participation of the child is subject to his/her age, maturity and nature of their participation. Right of the child to be heard and participate is important to exercise their others rights in the families and communities.

The child's evolving capacity just represents one side of the coin the other is the willingness of adults to listen, learn and accept the views of the children, consider their perspective and willing to reconsider/re-examine their opinions and views when addressing children's views. This right of children to participate and be heard entails respecting their agency, training, mobilizing and creating awareness among adults about working with children and respecting their views. This is important, so that we have community that is prepared to give children the chance to freely and increasingly participate in society. This principle also entails providing the children an appropriate environment, proper services, skills and education in which they can exercise their rights.

Box 3.9: Examples of Participation of Child to Exercise Their Rights

Adoption: As one of “the persons concerned,” the child should be heard in any judicial or administrative adoption proceedings. Article 21(a) refers to the informed consent of persons concerned, including the child.

Separation from parents: In decisions to be taken on the need to separate a child from his or her parents (for example, on the basis of abuse or neglect), the child—as an “interested party”— must be given an opportunity to participate and make his or her views known.

Name change: In a decision to be taken on the changing of a child’s name, the views of the child should be taken into consideration.

Right to health: Children are entitled to be informed, have access to information and be supported in the use of basic knowledge of child health and nutrition (article 24(2)e) so that they may enjoy their right to health.

Education: Children’s participation takes on a special dimension in the area of education. Education should give children the opportunity to develop their talents and abilities to full potential, to gain confidence and self-esteem, to use their initiative and creativity, to gain life skills and take informed decisions and to understand and experience pluralism, tolerance, and democratic coexistence. In brief, the right to education means the right to experience citizenship. To achieve citizenship and all it entails, children must be perceived not as mere recipients of knowledge, but rather as active players in the learning process. It is for this reason that the Convention puts so much emphasis on the aims of education (article 28) and on an educational system that respects the child’s human dignity.

Source: Fact Sheet: The right to participation:

<http://www.unicef.org/crc/files/Right-to-Participation.pdf>

Box 3.10: Article 6(2)

Children have the right to live and governments should ensure that children survive and develop healthily.

The right of survival and development is the one of the core principles of the UNCRC. All the children should have the ability to exercise all their rights to ensure their right to survival and development. As seen in figure 1 of this unit all the core guiding principles have to be met to ensure survival and full development. To guarantee survival and development the basic rights of children such as adequate food, shelter, clean water, formal education, primary health care, leisure and recreation and cultural activities should be met. It is not only the existence of the means to fulfill the rights but also access to them. Along with this, children should be given information about their rights, resources, skills and an environment necessary for the survival and maximum development of the child. Specific articles address the needs of child refugees, children with disabilities and children of minority or indigenous groups. Special measures should be taken to ensure the survival and development of special of category of children with special needs like child refugees, children with adoptees, and children of minority groups or indigenous group.

CHECK YOUR PROGRESS

True or False

1. Children should decide all the matters pertaining to their wellbeing.
a) True b) False
2. Best interest of the child should be protected in every phase of decision-making process.
a) True b) False
3. Child has the right to be heard.
a) True b) False
4. Because of mental, emotional and intellectual maturity a child should not be allowed to share his/ her views freely.
a) True b) False

3.9 SUMMARY

UNCRC was adopted in 1989 is one of the most widely ratified documents in the history of human rights law. Total 195 countries have ratified the UNCRC. The only country to ratify the convention is the USA. It is an important document of child rights, which covers almost all the aspects of a healthy childhood. The convention has pronounced four core-guiding principles such as non-discrimination, best interests of the child, right to life, survival, and development and right to be heard. Children were seen as individuals with rights. UNCRC gave us an internationally accepted framework for children's rights that we can use to campaign for children's rights. There are three optional protocols of CRC. Further, ILO has also played a vital role in establishing the framework for employment of children in the different work field.

Suggested Questions

1. Describe the major provisions of Minimum Age Convention, 1973.
2. Define child. Explain any ten (10) provisions of UNCRC.
3. What are the optional protocols to UNCRC? Discuss in brief any two protocols.
4. Highlight the initiatives undertaken by International Labour Organization (ILO).
5. Describe the guiding principles of child rights with suitable examples.
6. Write short note on:
 - a) Survival and developmental rights
 - b) Right to participation

Further Readings

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UNIT 4: IMPLEMENTATION MECHANISMS UNDER INTERNATIONAL LAW INTERNATIONAL

Structure

4.1 Introduction

4.2 Learning Objectives

4.3 Charter-Based System

4.3.1 The General Assembly

4.3.2 Human Rights Council

4.3.3 Secretary- General and the Secretariat

4.3.4 Office of the High Commissioner for Human Rights (OHCHR)

4.4 Treaty-Based System

4.4.1 Committee for the Rights of the Child (CRC)

4.5 International Criminal Court

4.5.1 Rome Statute of the International Criminal Court

4.5.2 International Criminal Court and Children

4.5.3 Child-Specific Crimes

4.6 Summary

4.1 INTRODUCTION

In the preceding units we have examined the international human rights law, in particular law relating to children. In this unit we will understand the implementation mechanisms for international human rights law. It is important here to take note of some features of international law, that makes it different from municipal law:

Firstly, we need to note that international law primarily deals with rights, duties and obligations of states and not of individuals. While there is international law that accords rights to individuals (like the many treaty rights that we discussed in the previous units) the individuals cannot make a claim to get these rights automatically enforced, unless the states against which the individuals claim these rights consent to it. As such, consent forms the basis of the international legal order and to enforce any right against a state, the state must have consented to such enforcement.

Secondly, it is important that we draw a conceptual distinction between “enforcement” and “implementation” of international human rights law. Enforcement is about coercing a party to obey – i.e. ensuring that where the right is violated, a forum is available to compel obedience to it. Implementation, on the other hand is a wider concept, where all such measures that are required to ensure that the right is respected is brought within its ambit. “Enforcement”, thus, has a certain adversarial connotation, which “implementation” lacks (though according to some jurists, enforcement mechanisms are very much a part of the larger framework for implementation).

4.2 LEARNING OBJECTIVES

- To understand the charter based and treaty based mechanisms for implementing international human rights law;
- To know the functions of the child rights committee, and
- To learn about the role of international criminal court while dealing with child soldiers.

4.3 CHARTER-BASED SYSTEM

Implementation mechanisms for international human rights law are numerous and quite robust. Typically implementation mechanisms work by employing international supervision. Thus, international committees will oversee that particular rights are being “respected, protected and promoted” by a state that is bound by these rights. Typically, the modus operandi of these committees is to lay down certain standards that are to be met by the states, call for periodic reports from the states on meeting these standards (and in some cases, allow non-state actors like NGOs to provide parallel reports on the status of implementation) and openly discuss how far states comply with the standards. The open discussions are followed by adoption of “comments” where these committees make their observations on the conduct of States. It is thought that this process of international attention creates pressure on States to comply with international human rights law. States who fail to comply are named and publicly shamed before the international community and it is thought that this deters states from violating the standards. Thus, as such, the key feature of international implementation is in fact supervision. It is also important to note here that this implementation mechanism is not a judicial process, but a political one. Thus, political consensus does play an determinative role in which states are subjected to naming and shaming, for what actions and which ones are not.

At the domestic (national) level, international human rights law is implemented by States by making it a part of their domestic law. This is usually achieved by way of making a legislation that adopts the international standards into the domestic legal system – thus making it possible for a citizen (and in some cases even non-citizen) to claim these

rights. The Juvenile Justice Act is an example of this – the said Act was made to implement the provisions of the Convention on the Rights of the Child and the Beijing Rules in India. Without this enactment, a person could not have claimed any rights under that Convention in India.

United Nations rights have evolved over six decades have created a wide range of supervisory / implementation mechanisms for monitoring compliance with the international human rights laws. An understanding of these implementation mechanisms is important for all working in the area of child rights as the engagement of UN, international and regional human rights mechanism can be intelligent and powerful tool if used strategically for promoting domestic change. These human right mechanisms if used in the right way by the national stakeholders and the non-governmental organisation can be an important contribution in ensuring and advancing human rights in different countries.

Broadly, the international implementation mechanisms within the United Nations are divided into “Charter Based” and “Treaty Based” systems. The distinction basically lies in the source of their authority and how they were set up. Charter Based systems have been set up by way of resolutions of the bodies set up under the UN Charter. They have power to review human rights compliance standards of all the members of the United Nations. Charter based systems are generally politically driven. Treaty based systems, as the name suggests are products of a specific human rights treaty. Their mandate is limited to overseeing the implementation of the treaty which established them and they have jurisdiction only over those states who are parties to that treaty. These bodies tend to be less political and are driven by experts. In the next section we will examine the

charter and treaty based systems in more detail. Since the Role of the Security Council has been discussed above, it will not be repeated.

The Charter Based System consists of:

- a) General Assembly (third committee)
- b) Human Rights Council
 - Universal Periodic Review
 - Advisory Committee
 - Complaint Procedure
 - Special Procedures
- c) Secretary- General and the Secretariat
- d) Office of the High Commissioner for Human Rights (OHCHR)

4.3.1 The General Assembly

The United Nations General Assembly (UNGA) is a forum consisting of all member states of the UN with equal voting rights to all members. The UN Charter in Article 13(1) (b) allows the General Assembly to “initiate studies and make recommendations” for the purpose of “assisting in the realisation of human rights and fundamental freedoms for all”. The UNGA played an instrumental role in the internationalization of human rights with the adoption of the Universal Declaration of Human Rights.

The work of the UNGA on human rights monitoring started of with discussion pertaining to racial discrimination in South Africa. Over the years, the UNGA has been a forum where the international community has discussed several human rights issues and has attempted to create pressure on violating states.

All most all of the human rights monitoring mechanisms at the UN are products of resolutions of the general assembly, which established certain bodies with certain mandates over overseeing the implementation of human rights. It is important to mention here that much of this work happened through the Economic and Social Council (ECOSOC), a body under the authority of the General Assembly and has 54 members elected by the General Assembly. Between 1946 and 2006, the principal office that oversaw human rights monitoring was the Commission on Human Rights (which was set up as a subsidiary of the Economic and Social Council, with the approval of the General Assembly). In the initial years, much of the work of the commission was devoted to standard setting. This resulted in the drafting and adoption of the key international human rights instruments such as the UDHR, ICCPR and the ICESCR. A sub-commission on Prevention of Discrimination and Protection of Minorities was also set up to specifically deal with issues of discrimination. The commission, however, did not have the power or authority to take an action on violation of human rights. Over the years, however, there were more and more human rights violations that was brought to the notice of the commission and it was felt that there was a need to establish some mechanism to deal with these complaints. Hence, in 1967, the Economic and Social Council authorized the commission and the sub-commission to make a thorough study of cases revealing consistent patterns of human rights violations, giving them some powers to respond to complaints. Using these powers, the Commission and the sub-commission often set up fact finding missions, organized public debates, appointed special rapporteurs and working groups to undertake studies regarding particular issues, themes or situations. The commission had often also created

‘country mandates’ to specifically deal with human rights violations in particular States.

The General Assembly continues to be an important forum where standard setting exercises continue to happen. The Assembly continues to be a forum where grave violations of human rights are discussed – though much of the work programme now happens at the human rights council.

4.3.2 Human Rights Council

Over the years, as the work of the Commission became complex and more politically contested, the UNGA by way of a resolution discontinued the commission and established the Human Rights Council in 2006. The principal objective behind this was to take away human rights related work from the political arena into the hands of experts. The Human Rights Council has a broad mandate and is responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and making recommendations on them. Most of the work undertaken by the Human Rights Council is a continuation of the work programme of the commission, with suitable changes to ensure that the processes are left in the hands of expert and not left entirely to political judgment. Another important change is the round the year manner in which the Council functions. The commission sat only for about six weeks a year and in that short period of time a large number of agenda was discussed – usually resulting in some amount of dilution of the quality of debates and deliberations.

There are 47 Council seats, the members of which are elected by the 192 member states of the UN General Assembly. All the UN members have

the right to be elected on to the council. The council members are elected for three-year terms. The council has an ‘institutional building package’ to guide its work and set up procedures and mechanisms. There are three such mechanisms which include Universal Periodic Review, Advisory Committee and the Complaint Procedure.

- **Universal Periodic Review (UPR)**

The UPR mechanism is a unique process and serves to assess the human rights situations in all United Nations Member States. The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur. The review is held in *Palais des Nations*, Geneva, Switzerland. It was created in 2006 and by 2011, it involves a periodic and continuous review of the human rights records of all UN member states. The UPR gives each State the opportunity to declare the actions undertaken by them for the improvement of human rights and fulfil obligations in their respective countries. It also has the objective of providing technical assistance to States to enhance their capacity and deal effectively with human rights challenges. It also provides a forum to share best practices in the field of human rights among States and other stakeholders. Each State review is assisted by groups of three States, known as “troikas”, who serve as rapporteurs. These troikas are chosen based on draw of lots. Every State under review has a different troika. The troika has three fold role which involves relaying questions raised by states to the states under review. The troikas during the discussion have a limited role but can take floor to make questions and give recommendation and finally it prepares report of the working group containing the proceedings with the involvement of the State

under Review and with the assistance of the Secretariat. The review of each state is based on three factors: (i) Information provided by state under review which can take form of a ‘national report’ (ii) information from reports given by independent human rights experts and groups (i.e. information drawn from what is known as the Special Procedures), that from other human rights treaty bodies, and other UN bodies; and (iii) Information from stakeholders like national human rights institutions and non-governmental organizations. The result of each review is presented in the outcome report prepared by the troika which puts down the recommendations to the State under review to be implemented before the next review.

Box 4.1: The UPR is a full-circle process comprised of 3 key stages 1) Review of the human rights situation of the state under review 2) Implementation between two reviews (4.5 years) by the state under review of the recommendations received and the voluntary pledges made; 3) Reporting at the next review on the implementation of those recommendations and pledges and on the human rights situation in the country since the previous review.

Source: What is the UPR? <http://www.upr-info.org/en/upr-process/what-is-it> For more detail understanding of UPR refer to: Basic facts about the UPR <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>

- **Advisory Committee**

The advisory committee serves as the Council’s “think tank” providing it with expertise and advice on thematic human rights issues. It held its first meeting in August 2008 and meets twice a year, for one week in February immediately before the March session of the Council and for one week in August. The committee is composed of 18 independent

experts belonging to different professional backgrounds representing the various regions of the world. The members serve for a period of three years and may be re-elected once.

- i. The Advisory Committee provides expertise to the Council. Its main focus is on studies and research-based advice.
 - ii. The Committee may suggest further research areas for the council's consideration.
 - iii. The Committee is implementation-oriented and offers advice on promotion and protection of all human rights. It does not have the power to adopt resolutions or decisions.
- **Complaint Procedure:**¹ The complaint procedure has provisions for individuals and organizations to bring complaints about human rights violations to the attention of the Council. A communication related to a violation of human rights is admissible, provided that:
 - i. It is not politically motivated and its object is consistent with the Charter of the United Nations, the Universal Declaration of Human Rights and other applicable instruments in the field of human rights law
 - ii. It gives a factual description of the alleged violations, including the rights which are alleged to be violated

¹For more detailed understanding of the complaint procedure please refer to: Human Rights Bodies - Complaints Procedures <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx#inquiries> Human Rights Treaty Bodies - Individual Communications: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx>

- iii. The language of the complaint is not abusive
- iv. It can be submitted directly by person or a group of persons, claiming to be the victims of violations of human rights and fundamental freedoms.
- v. It can also be submitted by an individual, group or non-governmental organisation and is accompanied by clear evidence
- vi. It cannot be exclusively based on reports disseminated by mass media
- vii. It does not refer to a case that is dealt by another form of human rights procedures;
- viii. All domestic remedies have been exhausted before the complaint is made.

- **Special Procedures**

Box 4.2: The special procedures of the Human Rights Council are independent human rights experts with mandates to report and advice on human rights from a thematic or country-specific perspective.

Source: Special Procedures of the Human Rights Council
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>

“Special Procedures” is the name given to the Human Rights Council’s mechanism for investigating and enforcing human rights. Special procedures are individual human rights experts, or groups of such experts, who report and advise on human rights issues. They are called names such as Special Rapporteurs, Special Representatives, and Working Groups and Independent Experts. The special procedures use experts for the conduct of its mandate. Special procedures have either thematic or country-specific

mandates. Specific child rights mandate include Special Rapporteur on the sale of children, child prostitution and child pornography, Special Rapporteur on the right to education, Special Rapporteur on trafficking in persons, especially women and children. These special procedures mandate holders are not UN staff and are not paid a salary for their work, and do not represent their countries of citizenship. Each mandate holder may serve for a maximum of six years.

The special procedures mandates holders assess a specific human rights situation and report their findings or thematic studies to the Human Rights Council or the Assembly. They can also release public statements to the media. Special procedures mandate holders also present an annual report to the Human Rights Council. The Human Rights Council reviews country-specific mandates annually and thematic mandates every three years.

Box 4.3: Functions of special procedures include undertake

- Country visits to assess human rights violations
- Communicate directly with States on alleged human rights violation by sending urgent appeals or letters of allegation
- Make recommendations to States for preventing, ending, or remedying violations,
- Convene expert consultations and conduct thematic studies
- Raise awareness of human rights issues
- Provide advice for adherence to human rights standards
- Receive information from individuals and civil society
- Engage in advocacy and contribute to the overall development of human rights standards

Source: Special Procedures of the UN Human Rights Council
<http://www.ijrcenter.org/un-special-procedures/>

At present there are 44 thematic and 12 country mandates in operation. Details of these mandates and the progress of work can be accessed from the website:
<https://www.ohchr.org/en/hrbodies/sp/pages/welcomepage.aspx>

4.3.3 Secretary- General and the Secretariat

The Secretariat is one of the principal organs established by the UN Charter. It is headed by the Secretary-General, who is appointed by the General Assembly on the recommendations of the Security Council for a five-year renewable term . The Secretariat consists of the Executive Office of the Secretary-General; the Office for the Coordination of Humanitarian Affairs (OCHA); the Department of Peacekeeping Operations (DPKO); the Department of Economic and Social Affairs; the Department of Political Affairs (DPA); the Department for Disarmament and Arms Regulation; and the Office of Legal Affairs . The Secretary-General may bring to the attention of the Security Council any matter which, in his opinion, threatens international peace and security. He relies on advice from the Secretariat, including the High Commissioner for Human Rights, to inform his judgement on how best to promote human rights, especially in peace operations.

4.3.4 Office of the High Commissioner for Human Rights (OHCHR)

The OHCHR was established by the UN General Assembly in the wake of the 1993 Rights. The mandate of OHCHR derives from Articles 1, 13 and 55 of the Charter of the United Nations, the Vienna Declaration and Programme of Action and General Assembly resolution 48/141 of 20

December 1993, by which the Assembly established the post of United Nations High Commissioner for Human Rights. In connection with the programme for reform of the UN the OHCHR and the Centre for Human Rights were consolidated into a single OHCHR in 1997. The mandate of the OHCHR is to:

- Promote universal enjoyment of all human rights by giving practical effect to the will and resolve of the world community as expressed by the United Nations
- Play the leading role on human rights issues and emphasizes the importance of human rights at the international and national levels
- Promote international cooperation for human rights
- Stimulate and coordinates action for human rights throughout the United Nations system
- Promote universal ratification and implementation of international standards
- Assist in the development of new norms
- Support human rights organs and treaty monitoring bodies
- Respond to serious violations of human rights
- Undertakes preventive human rights action
- Promote the establishment of national human rights institutions.
- Undertake human rights field activities and operations
- Provide education, information advisory services and technical assistance in the field of human rights

CHECK YOUR PROGRESS

Tick (✓) the correct option

1. Which of the following is not a part of the Human Rights Council?
a) Universal Periodic Review (UPR) c) WHO
b) Advisory Committee d) General Assembly

2. Human Rights Council was established in _____.
a) 2005 c) 2007
b) 2006 d) 2008

3. How many seats are there in Human Rights Council?
a) 27 c) 47
b) 37 d) 57

4. Advisory Committee is composed of _____ independent experts.
a) 16 d) 20
b) 18 e) 22

4.4 TREATY-BASED SYSTEM

As we have examined early, a treaty is an international legal instrument which imposes a legal obligation on the state party. After the state ratify the document they become bound to uphold and implement the provisions of the relevant treaty. Even at the domestic level the state party must make laws in conformity to the provisions of treaty ratified. It was in this context that the treaty bodies were created for the enforcement and supervision of the implementation of the provisions of the treaty and their optional protocols. As the figure 4.1 shows there are ten human rights treaty bodies that monitor implementation of the core international human rights treaties. These bodies and the instruments whose implementation they oversee are as follows:

- Human Rights Committee (ICCPR)
- Committee on Economic, Social and Cultural Right (CESCR)
- Committee on the Elimination of Racial Discrimination (CERD)
- Committee on the Elimination of Discrimination against Women (CEDAW)
- Committee against Torture (CAT)
- Subcommittee on Prevention of Torture (SPT)
- Committee on the Rights of the Child (CRC)
- Committee on Migrant Workers (CMW)
- Committee on the Rights of Persons with Disabilities (CRPD)
- Committee on Enforced Disappearances (CED)

Treaty body	Composition	Number and duration of sessions	Sessions	
			Period	Location
CERD	18	2 sessions per year, of 3 weeks duration each	February and August	Geneva
HRC	18	3 sessions per year, of 3 weeks duration each	March, July and October	New York, Geneva, Geneva
CESCR	18	2 sessions per year, of 3 weeks duration each 1 week for pre-sessional working group immediately after each session to prepare lists of issues and questions for following session	May and November	Geneva
CEDAW	23	3 sessions per year, of 3 weeks duration each OP-CEDAW prior to each session for 3-5 days Pre-sessional working group for 1 week immediately after each session to prepare lists of issues and questions for following session	January, July and October	Geneva*, New York, Geneva
CAT	10	2 sessions per year, of 3 weeks duration each Pre-sessional working group for 1 week immediately after each session to prepare lists of issues and questions for following session	May and November	Geneva
SPT	10**	3 sessions per year, of 1 week duration each	February, June and November	Geneva
CRC	18	3 sessions per year, of 3 weeks duration each Pre-sessional working group for 1 week immediately after each session to prepare lists of issues and questions for following session	January, May and September	Geneva
CMW	10 ***	Approximately 2 sessions per year, of around 1 week duration each	April and November/ December	Geneva
CRPD	12 ****	2 sessions per year, presently for 1 week duration each	February and October	Geneva

* CEDAW began meeting in Geneva in January 2008.

** SPT will expand to 25 members in 2010 following the 50th ratification by Switzerland in September 2009.

*** Membership of CMW will increase to 14 when the Convention has 41 State parties.

**** Membership of CRPD will increase to 18 members in 2011.

Fig 4.1: Composition and Sessions²

²Simple Guide To The UN Treaty Bodies- The International Service for Human Rights (ISHR) (2010)

The treaty bodies draw their legitimacy from the treaty which created them. Typically, the committees of the treaty bodies are composed independent experts and the committee monitors the state parties based on the reports from the States parties, information from Non-governmental Organisations (NGOs) and other relevant sources. The Office of the United Nations High Commissioner for Human Rights (OHCHR) supports the work of treaty bodies through their secretariats.

The committee supervises the treaty principally in three forms:

- A reporting system
- A petition/ Complaints system (both individual and inter-state)
- General Comments/Recommendations

Reporting system is the standard mechanism for the supervision of UN treaties. In this system states parties submit reports to the relevant UN committee periodically explaining the progress and obstacles faced in the implementation of the treaty. Treaty bodies scrutinize and comment on periodic reports submitted by states parties every four to five years regarding their efforts to properly implement and comply with the treaty in question. They scrutinize and adjudicate complaints submitted by individuals about breaches of rights or states parties regarding alleged breaches by another ratifying state. They also make inquiries into serious or systematic treaty violations by states parties which are based on reliable information containing well-founded indications. In the review the committee invites the concerned state party to a dialogue to present the state report and respond to inquiries made by committee members. They base these reviews on issues brought to their attention by nongovernmental organizations (NGOs). At the end of the meeting the Committee adopts a set of concluding observations explaining the

progress and eliciting the matters of concern for which action should be taken by the state party.

Treaty	Periodicity of State reports	
	Initial report	Periodic reports
ICERD	1 year	Every 2 years (but in practice generally every 4 years as two combined periodic reports)
ICESCR	2 years	Every 5 years
ICCPR	1 year	Generally every 4 years, but the HRC varies the periodicity in accordance with its follow-up procedure
CEDAW	1 year	Every 4 years, or whenever requested by CEDAW
CAT	1 year	Every 4 years, but varies due date for next periodic report
CRC	2 years	Every 5 years
CMW	1 year	Every 5 years, and whenever requested by CMW
CRC-OPSC	2 years	Every 5 years or with next CRC report
CRC-OPAC	2 years	Every 5 years or with next CRC report
CRPD	2 years	Every 4 years

Fig 4.2: Periodicity of Reporting¹⁸

Fig 4.2: Periodicity of Reporting³

The petitions system or the complaints procedure is more akin to approaching a court for enforcement of the treaty rights. Many of the treaties (or their optional protocols) provide for mechanisms for a State or an individual to petition the treaty body complaining of violations of their rights under that treaty. This however is possible only if the State has consented to being subjected to the jurisdiction of that treaty body. As such, a treaty body can be approached only if all the remedies available domestically are exhausted (i.e. only after the complainant has approached

³Simple Guide To The UN Treaty Bodies- The International Service for Human Rights (ISHR) (2010)

the national courts or administrative bodies). Once a State has agreed to be subjected to the jurisdiction of a treaty body, then it is binding on them – in the sense that the State cannot refuse to participate in the proceedings. Treaty bodies, when they hear petitions from individuals or groups, act in a quasi-judicial manner i.e. the decisions they make in response to individual or inter- state complaints will give a hearing to both parties and opportunity to make out their case. The decisions of these bodies are, however, not binding or enforceable in the sense in which we say that court decisions are binding in the domestic context. What was described above is the broad pattern of the working of treaty bodies. There are minor differences in the powers and functions of these bodies, depending on the treaty that created them.

Some of the treaty bodies have an inquiry procedures (special procedures) which they can resort to investigate whether a state party has engaged in serious violations of the rights protected by that treaty. This procedure is usually resorted to, when the treaty bodies receive reliable information about systematic violations of the treaty rights. In addition, some treaties also provide for state visits, independent of the inquiry, to determine the truth of the allegations of serious or grave violations. The table below outlines the treaty bodies and the nature of special procedures that they can resort to:

Treaty Body	Nature of Special Procedures
CEDAW	Inquiry Procedure and State Visits
CAT	Inquiry procedure and state visits. In Addition and optional protocol to the Convention provides for a regular system of visits by international experts.
CRC	Inquiry procedure and state visits with the consent of the party.
Convention on the Rights of the Disabled	Inquiry procedure and state visits with the consent of the party.
Convention on Enforced Disappearances	Inquiry procedures, state visits and powers to request interim measures to locate a disappeared person.

Lastly, Treaty-based mechanisms contribute to the understanding and interpretation of human rights standards by occasionally producing General Comments or Recommendations. Experts make these General Comments through a consultative process, and they are regarded as the most authoritative interpretations of the obligations created by a particular treaty provision or the treaties in general. While they are not as such binding on anyone, it is widely used by courts and subject around the world to interpret the treaty provisions.

A collection of all general comments, issue by all the Human Rights Treaty bodies can be found at: <https://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx>

Treaty-based body	Monitoring Mechanisms
Committee on the Elimination of All Forms of Racial Discrimination	<ul style="list-style-type: none"> • State reports • Early-warning procedures • Inter-state complaints • Individual complaints
Human Rights Committee	<ul style="list-style-type: none"> • State reports • Inter-state complaints • Individual complaints
Committee on Economic, Social and Cultural Rights	<ul style="list-style-type: none"> • State reports • Individual complaints
Committee on the Elimination of Discrimination Against Women	<ul style="list-style-type: none"> • State reports
Committee Against Torture	<ul style="list-style-type: none"> • State Reports • Individual complaints • Undertake inquiries • Inter-state complaints
Subcommittee on Prevention of Torture	<ul style="list-style-type: none"> • State visits
Committee on the Rights of the Child	<ul style="list-style-type: none"> • State reports • Individual complaints (through other relevant committees)
Committee on Migrant Workers	<ul style="list-style-type: none"> • State reports • Individual complaints
Committee on the Rights of Persons with Disabilities	<ul style="list-style-type: none"> • State reports • Individual complaints
Committee on Enforced Disappearances	<ul style="list-style-type: none"> • State reports • Potential individual complaints

Fig 4.3: Mechanisms used by the Treaty Bodies to monitor treaty obligations

(Source: naturaljustice.org, undated)

4.4.1 Committee for the Rights of the Child (CRC)⁴

The Committee for the Rights of the Child is the body that supervises the implementation of the Convention on the Rights of the Child and it was created on February 27th, 1991. Article 43 of the convention that explicitly states the composition and the functioning of the CRC. The CRC is made up of 18 members', self-employed experts on children's rights from different countries and legal systems and it meets three times a year (in January, May, and September). This committee is one of the core treaty bodies and supervises the enforcement and supervision of the implementation of the Child rights convention and its Optional Protocols on the Sale of Children (OPSC) and on Children Involved in Armed Conflict (OPAC). The state parties submit regular reports to the committee to explain the implementation of child rights in the respective countries which is reviewed by the committee. The reports are submitted every five years to the committee. After the Committee reviews each report it puts forth its concerns and recommendations to the state part in the form of "concluding observations". The Committee also has the function of carrying out activities for promotion of international cooperation among multilateral agencies, donor countries and developing countries as well as carries out inquiries into allegations of grave or systematic violations of rights under the Convention and its two optional protocols. As per the 3rd Optional Protocol on a Communications Procedure the Committee also examines complaints from children about violations of their rights

⁴Fact Sheet: The Committee on the Rights of the Child:
http://www.unicef.org/crc/files/Committee_fact_sheet.pdf

As on date, the committee has adopted 18 General Comments on a number of issues relating to interpretation of the Convention on rights of the Child.

The Committee has adopted the following General Comments:

- General comment no. 18: eradicating harmful practices on women and girls (in collaboration with the UN Committee on the Elimination of Discrimination against Women)
- General comment no 17: Right to play
- General comment no 16: Children's Rights and Business
- General comment no 15: Right to health
- General comment no 14: Best interests of the child
- General comment no 13: Freedom from all forms of violence
- General comment no 12: Children's right to be heard
- General comment no 11: Indigenous Children and their Rights under the Convention(January 2009)
- General comment No. 10: Children's Rights in Juvenile Justice (February 2007)
- General comment No. 9 The Rights of Children with Disabilities (October 2006)
- General comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment
- General comment No. 7: Implementing child rights in early childhood (2005)
- General comment No. 6: Treatment of unaccompanied and separated children outside their country of origin(2005)
- General comment No. 5: General measures of implementation for the Convention on the Rights of the Child (2003)

- General comment No. 4: Adolescent Health (2003)
- General comment No. 3: HIV & AIDS and the rights of the child (2003)
- General comment No. 2 The role of independent human rights institutions (2002)
- General comment No. 1: The aims of education (2001)

4.5 INTERNATIONAL CRIMINAL COURT

Box 4.4: voices of Child soldiers at the age of 13, I joined the student movement. I had a dream to contribute to make things change, so that children would not be hungry ... later I joined the armed struggle. I had all the inexperience and fears of a little girl. I found out that girls were obliged to have sexual relations ‘to alleviate the sadness of the combatants. And who alleviated our sadness after going with someone we hardly knew? At my young age I experienced abortion. In spite of my commitment, they abused me, they trampled my human dignity. And above all, they did not understand that I was a child and that I had rights.

Source: GracaMachel ,Promotion And Protection Of The Rights Of Children Impact Of Armed Conflict On Children (1996) Report of the expert of the Secretary-. (Suggested Reading)

The militia first came to my village in early January. They beat many people and killed some. They told us that if we did not join them we would die. When the militia came, my parents were very afraid and said to me, “If the militia ask you to do anything, just do it or they will kill us.” The first time they took me from my house, we had to rape a woman and then kill anything we could find, like animals and people. They ordered us to rape. We did this together. Every day we were taken with them by car

to burn houses, kill animals and harass people. Sometimes we were happy to burn the houses because the people in our group were enjoying themselves. But other times I felt that it was not good to burn the house and to hurt these people. If we did not do this, we would die. Every day they came to get us and if we did not want to go, they would threaten us with machetes. They beat me with a piece of wood every day. The first time they beat me was the most difficult.

They killed many people but I don't know where they put the bodies. They screamed and shouted when they had killed people and showed off their machetes covered with blood and said, "Eat the people." There was so much blood. They drank alcohol made from palm like tuak and tuasabo and they ate angingila [amphetamines]. I did not drink or take any tablets. They gave us training in how to use guns and knives and how to attack and how to kill. An East Timorese militiaman was our teacher. We were also trained by the Indonesian military. Every week we were trained twice for two hours. They never talked about human rights – they only told us how to rape, steal and kill. They didn't teach me anything good. I was very sad and I cried when they killed people and raped people. If I cried in front of them I would die. I would only cry in my home. I had bad dreams and I woke up thinking that somebody wanted to kill me. Now I wake up still from bad dreams. I don't remember my dreams, but I feel afraid when I wake up. I am still constantly afraid.

Source: Adult Wars, Child Soldiers Voices of Children Involved in Armed Conflict in the East Asia and Pacific Region- UNICEF

As understood from the case studies children are the worst affected in case of war. In a war like situation, they face the most violence in the form of rape, abduction, forcefully being enlisted to partake in the atrocities.

Children become part of the continuous cycle of violence for generations. It goes against the basic right of the child to childhood and affects them both psychologically and physically. A study has estimated two million children have died and 6 million have been wounded as a direct result of armed conflict. At any one time over 300,000 child soldiers, some as young as eight, are exploited in armed conflicts in over 30 countries around the world.⁵ The adoption of the Convention on the Rights of the Child (CRC) was one of the most important conventions which addressed the plight of the children who face violence. The following articles are the guiding principles that apply with respect to the children who are presented before judicial bodies:

- Article 3: The best interest of the child should guide all policies and practices
- Article 12: child has a right to be heard
- Article 39: Physical and psychological recovery of a child victim, and social reintegration, should be promoted

Along with this the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict adopted in 2000 (examined in detail in the preceding unit) lays down clear cut provisions for the state parties to follow so as to ensure that children are not involved, enlisted or targeted in armed conflict. It was the adoption of the CRC and report by GracaMachel in 1996 that drew international attention to the impact on children because of armed conflict. There was an international consensus that the experiences of children in war

⁵GracaMachel ,Promotion And Protection Of The Rights Of Children Impact Of Armed Conflict On Children (1996) Report of the expert of the Secretary

situations— such as genocide, crimes against humanity or war crimes — are the worst as they are the most affected. The adoption of the Rome Statute of the International Criminal Court in 1998 paved for an institutional system of holding countries responsible for war crimes and also enlisting child soldiers.

4.5.1 Rome Statute of the International Criminal Court

Post the cold war the need for an international criminal justice was felt especially after the world witnessed heinous crimes being inflicted on people in former Yugoslavia and Rwanda. The United Nations Security Council established an *ad hoc* tribunal for these conditions. This formed the base for the formation of the International Criminal Court. It was in 1998 that the 160 states came together to adopt the first treaty based permanent international criminal court known as the Rome Statute of the International Criminal Court (ICC). The ICC commonly referred to as the Rome Statute was established to investigate, prosecute and try individuals accused of committing the most serious crimes, namely the crime of genocide, crimes against humanity, war crimes and the crime of aggression. Hundred and twenty-two countries have ratified the Rome Statute and it has its seat in Hague, Netherlands. The court conducts its functions through 18 judges elected by Assembly of State Parties. These judges hold the office for nine and cannot be re-elected. The case can be presented to ICC through three different ways:

- Through the reference of the State Parties and the Security Council in the context where one or more crimes appears to have been committed. The referral situation was created so that political entities can be prevented from making accusations against

particular individuals with the aim of unduly politicizing the process.

- The Security Council of the United Nations may refer a situation if it sees that the situation constitutes a threat to or breach of international peace and security.
- The ICC Prosecutor may initiate investigations in his or her own authority if well-founded complaints are about crimes referred from victims, nongovernmental organizations or any other reliable source and are within the jurisdiction of the Court.

4.5.2 International Criminal Court and Children:⁶

The ICC has three child-related provisions:

- Crimes against children within the jurisdiction of the Court
- Special measures to protect children during the investigation and prosecution of cases
- Requirements for ICC staff with expertise on children's issues, and other provisions relating to administrative matters

4.5.2 Child-specific Crimes

Three child-specific crimes defined under international law are the war crime of conscripting or enlisting children (see box 4.8 for definition) or using them to participate actively in hostilities, the crime of genocide for transferring children from one group to another and the war crime of attacking schools and other buildings dedicated to education. Please refer to Box 4.5 to understand the articles related to child specific crimes in the ICC.

⁶No Peace Without Justice UNICEF Innocenti- Research Centre International Criminal Justice And Children, 2002

Box 4.5

Article 8(2)(b)(xxvi), (e)(vii): Criminalizes the conscription, enlistment or use in active hostilities of child soldiers under the age of fifteen years, both in international and non-international armed conflicts.

Articles 7(1)(g), 8(2)(b)(xxii), (e)(vi): Criminalizes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence as both war crimes and crimes against humanity.

Article 7(1)(c), (2)(c): Criminalizes widespread or systematic enslavement, including trafficking in children Article 6(e): Criminalizes as genocide the forcible transfer of children from a group to another with the intent to destroy, in whole or in part a national, ethnic, or racial group as such.

Source: The International Criminal Court and Children's Rights- The American Non Governmental Organizations Coalition for the International Criminal Court-- [http://www. iccnw.org/documents/FS-AMICC-ICCnChildRights.pdf](http://www.iccnw.org/documents/FS-AMICC-ICCnChildRights.pdf)

While as such, the Rome Statute is silent on whether it can try children or not, “there is a consensus among states that these children should be considered primarily as victims, because they are often illegally recruited and they bear only limited, if any, responsibility if they commit such serious crimes”. (Coalition to Stop the Use of Child Soldiers, 2001).

This needs to be read along with The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. This optional protocol, which entered into force in 2002, requires the states parties to increase the minimum age for voluntary recruitment and prohibits the recruitment or use of persons below the age of 18 in any

armed conflicts by both state and non-state actors. “The Protocol reflects an emerging international consensus that 18 years should be the minimum age for recruitment into armed forces and groups and for participation in hostilities.” (Duraj, 2015).

The decision to not include any body below 18 in the jurisdiction of the ICC is because of the understanding that children are not likely to hold positions of leadership during armed conflict, and that other mechanisms – such as national courts or truth commissions – are more appropriate forums to address crimes allegedly committed by children. The role of a child in the ICC process is restricted to that of victim and/or witness. In the case of child soldiers who are forced to commit crimes –rape, murder, arson etc but in these cases they are understood as victims of circumstances and not perpetrators of crime.

Violations committed against children can be brought before the ICC if they fit the strict parameters of the crimes this includes acts such as murder, torture and inhumane treatment, the taking of hostages, the passing of sentences without due process, recruitment of children under the age of 15 years, rape and other forms of sexual violence. It also includes intentional attacks against civilians, humanitarian personnel or protected buildings such as schools. Most of the child specific war crimes or war crimes to which children are particularly vulnerable apply in all types of armed conflict. Only crimes committed by state parties ratifying the statute can be brought before the Court other than exceptional situations where the Security Council refers a case to the Court.

Box 4.6: Definition of a child soldier A child soldier is any child – boy or girl – under the age of 18, who is compulsorily, forcibly or voluntarily recruited or used in hostilities by armed forces, paramilitaries, civil defence units or other armed groups. Child soldiers are used for forced sexual services, as combatants, messengers, porters and cooks.

Graça Machel, The Impact Of War On Children: A Review Of Progress Since The 1996 United Nations Report On The Impact Of Armed Conflict On Children (2001)

‘Child soldier’ means any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers and those accompanying such groups, other than purely as family members. It includes girls recruited for sexual purposes and forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms. ‘Recruitment’ encompasses compulsory, forced and voluntary recruitment into any kind of regular or irregular armed force or armed group.

Source: Cape Town Principles, Adopted At The Symposium’ On The Prevention Of Recruitment Of Children Into The Armed Forces And On Demobilization And Social Reintegration Of Child Soldiers In Africa (1997)

Article 68(3) of the Rome Statute is the central provision related to victims’ participation. It states: “(...) where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court (...)”. Moreover, pursuant to Article 68(1) of the Statute, “the Court shall take appropriate measures to protect the safety,

physical and psychological wellbeing, dignity and privacy of victims and witnesses having regard to all relevant factors, including age, gender (...) health, and the nature of the crime, in particular...where the crime involves sexual or gender violence or violence against children”. Thus it can be understood that the incorporation the child-specific provisions has been important in the fulfilling the provisions in the Convention on the Rights of the Child (CRC) and its Protocols.

In addition to these, over the years, a number of the core war crimes and crimes against humanity (on which the Court has jurisdiction) is understood to include acts that affect the well-being of children directly or indirectly. Thus, genocide is understood to include acts such as forcible transfer of children and war crimes include intentional attacks on schools or hospitals and use of children below 15 years of age as soldiers. “Therefore, the Rules of Procedure and Evidence provides that protective and security arrangements, counselling and other assistance to ensure the safety of witnesses and victims during investigations, trial and after the trial. These measures can include, for example, hearings in camera, sight-screens between the victim and the accused, pre-recorded testimonies, video conferencing or closed-circuit television, and the use of pseudonyms.” (Duraj, 2015)

In addition to defining crimes concerning children, the Rules of Evidence include special provisions for the protection of children during the investigation and prosecution of cases – such as measures to prevent secondary victimization in the process of trials.

Box 4.7: Class task

Examine the countries in which child soldiers are actively involved.

Examine the cases that have been tried under the ICC for child specific crimes.

CHECK YOUR PROGRESS

Answer the Following

1. Name any three treaty based bodies.

2. List-out the monitoring mechanism of the Committee on the Rights of the Child (CRC).

3. Highlight the child related provision of International Criminal Court (ICC).

4.6 SUMMARY

In this unit, we made an effort to understand the mechanism for implementing the conventions. The human rights mechanisms have evolved into two different paths i.e. Charter Based System and Treaty-Based System. In the former system, the members of the states of the UN are the main actors and they are not legally binding. In the treaty-based (expert) system, private individuals who have no affiliations to the governments but are experts of the issue are chosen to be part of the supervisory committee and they are legally binding. These committees are interconnected but have very different working styles and mandates. In 1998, the Rome Statute of the International Criminal Court was adopted which has three child-specific provisions to give additional support to the existing laws. In short, we can say that the mechanism employed for the implementation of international law is a comprehensive one.

Suggested Questions

1. Describe the functioning of Human Rights Council.
2. Explain the role of Committee for the Rights of the Child.
3. Enumerate the importance of International Criminal Court.

Further Readings

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<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPICCRC.aspx> - Rights under the Convention on the Rights of the Child
http://www.unicef.org/crc/index_30177.htm

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