

Chapter 15: Juvenile Justice

General Commentary

The term *juvenile* is defined in Article 1(26) of the MCCP as being a child between the ages of twelve and eighteen years. Under Article 7(4) of the MCC, the courts may assert criminal jurisdiction over juvenile persons where the persons are suspected of committing a criminal offense. Chapter 15 addresses the treatment of juvenile persons who come into contact with the criminal justice system, whether as suspects, accused persons, or convicted persons. Juveniles are also classified as children under the definition of child set out in Article 1 of the United Nations Convention on the Rights of the Child and are therefore entitled to the protections afforded to children under the international human rights legal framework.

Juveniles enjoy at least the same guarantees and protection as adults do in criminal proceedings (see United Nations Human Rights Committee, General Comment no. 13, paragraph 16). On account of their vulnerable status, juveniles are afforded additional protections provided by specialized international instruments that deal exclusively with the rights of the child. These rights address the unique needs of a juvenile and enhance the protection available to an individual who “by reason of [his or her] physical and mental immaturity, needs special safeguards and care, including appropriate legal protection” (see United Nations Declaration on the Rights of the Child, Preamble, paragraph 3; and United Nations Convention on the Rights of the Child, Preamble, paragraph 10).

The protective framework aimed at safeguarding juvenile rights consists of the United Nations Convention on the Rights of the Child and the United Nations African Charter on the Rights and Welfare of the Child and a number of nonbinding instruments. The nonbinding instruments—the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Protection of Juveniles Deprived of Their Liberty, and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)—specifically address the issue of the administration of justice for juveniles.

Many of the rights articulated in these instruments are common to both adults and juveniles: (a) freedom from torture and cruel, inhuman, or degrading treatment (United Nations Convention on the Rights of the Child, Article 37[a]; African Charter on the Rights and Welfare of the Child Article 17[2][a]); (b) presumption of innocence (United Nations Convention on the Rights of the Child, Article 40[2][b][i]; African Charter on the Rights and Welfare of the Child, Article 17[2][c][i]); (c) freedom from retroactive prosecution (United Nations Convention on the Rights of the Child, Article 40[2][a]); (d) freedom from unlawful or arbitrary deprivation of liberty (United Nations Convention on the Rights of the Child, Article 37[b]); (e) right to counsel (United Nations Convention on the Rights of the Child, Article 37[d]; African Charter on the Rights and Welfare of the Child, Article 17[2][c][iii]); (f) right to an interpreter (United Nations Convention on the Rights of the Child, Article 40[2][b][vi]; African

Charter on the Rights and Welfare of the Child, Article 17[2][c][ii]); (g) right to be informed of the charges against him or her (United Nations Convention on the Rights of the Child, Article 40[2][b][ii]; African Charter on the Rights and Welfare of the Child, Article 17[2][c][ii]); (h) right to challenge to lawfulness of the deprivation of his or her liberty (United Nations Convention on the Rights of the Child, Article 37[d]); (i) right to freedom from compulsion to testify or confess guilt (United Nations Convention on the Rights of the Child, Article 40[2][b][iv]); (j) right to trial without undue delay (United Nations Standard Minimum Rules for the Administration of Juvenile Justice [Beijing Rules], Rule 20; American Convention on Human Rights, Article 5[5]; African Charter on the Rights and Welfare of the Child, Article 17[2][c][iv]); (k) right to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses (United Nations Convention on the Rights of the Child, Article 40[2][b][v]); (l) right to have any decisions reviewed by a higher authority (United Nations Convention on the Rights of the Child, Article 40[2][b][v]; African Charter on the Rights and Welfare of the Child, Article 17[c][iv]); and (m) right to a competent, independent, and impartial tribunal (United Nations Convention on the Rights of the Child, Article 40[2][b][iii]; African Charter on the Rights and Welfare of the Child, Article 17[2][c][iv]). These rights are protected in general terms for both adults and juveniles throughout the MCC and the MCCP.

Chapter 15 contains supplementary rights that are applicable to juveniles. These rights are not common to adults and are not contained elsewhere in the MCCP. The drafters decided that it was better to create a separate section cataloging all the rights applicable to juveniles rather than disbursing them throughout the MCCP.

Part 1: Applicability of the MCCP to Juveniles

Article 321: Provisions Applicable to Juveniles

Except as otherwise provided for in Chapter 15, all the provisions of the MCCP apply to juveniles in the same manner that they apply to adults.

Commentary

As mentioned in the general commentary to Chapter 15, in the determination of criminal charges against a juvenile, that person is entitled to not only the protections provided to adults under the MCCP but also additional protections. These extra protective measures are set out in Chapter 15. Article 321 clarifies that, subject to the specifications of Chapter 15, the protections afforded to and procedures relevant to adults apply to juveniles.

Part 2: Special Panels for Juveniles

Article 322: Composition and Duties of Special Panels for Juveniles

1. The president of the courts must compose a special panel for juveniles in each trial court and the appeals court in [insert name of state].
2. The duty of the special panel for juveniles is to hear all matters in cases in which the suspect or the accused is a juvenile.
3. The special panel for juveniles must be composed of three judges with adequate expertise, experience, or training in criminal matters involving juveniles.
4. The judges of the panel may sit individually or collectively in accordance with the provisions of the MCCP.

Commentary

Paragraphs 1–3: Article 322 provides for the designation of a special panel of judges to deal with juvenile cases in each trial court and the appeals court. All matters relating to juveniles must be heard only before such panels. This special panel mechanism is distinct from a special juvenile court. The juvenile panel was inserted as a compromise solution between experts who thought that a fragile and often resource-poor post-conflict state could not sustain a separate system of criminal justice for juveniles (and consequently such a model should not be included in the Model Codes) and experts who argued that the Model Codes should advocate the establishment of a juvenile justice system. In an ideal world, separate juvenile courts would be established in a post-conflict state. International standards do not require the establishment of a separate juvenile justice system; however, “[t]here is nonetheless a more or less implicit presumption that something so different as to warrant the name ‘juvenile justice system’ is necessary in order to comply with current norms” (see UNICEF, *Innocenti Digest: Juvenile Justice*, page 10). A post-conflict state should seek to move to such a system, but in the interim, a good solution is to designate a certain number of judges within each trial court and appeals court to deal with juvenile cases. These judges should have expertise in juvenile justice and significant training and experience in the relevant international and domestic human rights standards and best practices in dealing with juveniles caught up in the criminal justice system.

Paragraph 4: Whether the judges who make up a special panel sit together or individually will depend on the other provisions of the MCCP. For example, a single juvenile judge at the trial court level might hear a case where the potential penalty is less than five years' imprisonment (see Article 6[2]), and a single judge might hear an application for habeas corpus under Articles 339–345. A panel of judges must hear a case where a juvenile is charged with an offense that carries a potential penalty greater than five years (see Article 6[3]).

Part 3: Jurisdiction over Children and Juveniles

Article 323: Jurisdiction over Children and Juveniles

1. In accordance with Article 7(3) of the MCC, a child under the age of twelve years must not be prosecuted or tried for a criminal offense.
2. In accordance with Article 7(4) of the MCC, a juvenile may be prosecuted and tried for a criminal offense.
3. The investigation, prosecution, trial, and appeal of a case involving a juvenile must be conducted in full compliance with Chapter 15 of the MCCP.
4. The imposition of dispositions on a juvenile, or a person who committed a criminal offense when he or she was a juvenile, must be conducted in full compliance with Section 14 of Part I: General Part of the MCC.

Commentary

Paragraph 4: Section 14 of the General Part of the MCC establishes a wholly separate mechanism for dispositions for juveniles found to be criminally responsible. The term *dispositions* is used with regard to juveniles in the same way that *penalty* is used with regard to adults. When a juvenile person is found criminally responsible for a criminal offense, the judge or panel of judges must follow the rules and procedures set out in Section 14 for imposing a suitable disposition.

Article 324: Determination of the Age of a Child or Juvenile

1. The age of a person is determined at the time at which the criminal offense was alleged to have been committed.
2. Where possible, proof of the age of the suspect or the accused must be obtained from a civil registration document recognized in [insert name of state].

3. Age must be determined by other means, such as by medical expertise, where:
 - (a) the civil registration document is suspect or devoid of probative value;
 - (b) there is no civil registration document; or
 - (c) the person is not registered in [insert name of state] but in another state and registration documents cannot be obtained.
4. Where age is determined by other means, age is then a question of fact to be determined by the competent judge or panel of judges.

Commentary

The determination of the age of a person is relevant to whether a court has personal jurisdiction over that person in accordance with Article 7 of the MCC.

In some states, official birth records or identification cards make it easy to determine the age of a person. Other states, and frequently post-conflict states, do not have a fully functional mechanism for the creation of birth records or identification cards, or birth records may have been destroyed during the conflict. An additional difficulty lies in the practice of delayed birth registration (e.g., waiting to register the birth of a child along with children born later). A child may thus have a “real” and an “official” birthday, which can lead to confusion in determining the actual age of the person.

Where no official civil registration document is available, where the authenticity of the civil document is in doubt, or where the person was never registered, the approximate age of a person may be determined by medical examination by a doctor. The judge or panel of judges may accept or reject the medical determination of age as a question of fact.

Part 4: Aim of Juvenile Justice and Applicable Principles

Article 325: Aim of Juvenile Justice

The juvenile justice system must emphasize the well-being of the juvenile and must ensure that any reaction to juvenile persons must always be in proportion to the circumstances of both the juvenile and the criminal offense.

Commentary

Article 325 is derived from Rule 5 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. The official commentary to this rule states that the rule contains two important objectives: first, the idea that the promotion of the well-being of the juvenile should be at the heart of criminal justice, meaning that merely punitive sanctions against a juvenile should be avoided; and second, the “principle of proportionality.” The commentary notes that the individual circumstances of the juvenile, including social status, family situation, harm caused by the offense, and other factors affecting personal circumstances, should influence the proportionality of the reactions of the criminal justice system to the juvenile. The rule “calls for no less and no more than a fair reaction in any given case.”

Article 326: Principles Applicable to Juvenile Justice

1. A juvenile must be treated in a manner consistent with the promotion of his or her sense of dignity and worth that reinforces the juvenile’s respect for the human rights and fundamental freedoms of others and that takes into account the juvenile’s age and the desirability of promoting his or her rehabilitation, reintegration, and assumption of a constructive role in society.
2. In all actions concerning children taken by the court, the best interests of the child must be the primary consideration.

3. At all stages of the proceedings, the juvenile's right to privacy must be respected to avoid harm being caused to him or her by undue publicity or by the process of labeling. In principle, no information that may lead to the identification of a juvenile may be published.
4. A case concerning a juvenile must be handled expeditiously and without any unnecessary delay.

Commentary

Paragraph 1: The wording of Paragraph 1 is taken directly from Article 40(1) of the United Nations Convention on the Rights of the Child. This wording is echoed in Article 14(4) of the International Covenant on Civil and Political Rights, which states that “in the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation,” and in Article 17(1) of the African Charter on the Rights and Welfare of the Child, which states that “every child . . . shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.” The principle outlined in Paragraph 1 is a general principle, like the rest of the principles in Article 326, that applies throughout the proceedings from investigation to trial and appeal. These principles should be taken into account by all criminal justice actors (police, prosecution, defense, and judiciary).

Paragraph 2: The “best interests” test derives from Article 3(1) of the United Nations Convention on the Rights of the Child, which requires that in all actions concerning children by public or private institutions, including courts of law, “the best interests of the child shall be a primary consideration.” Article 4(1) of the African Charter on the Rights and Welfare of the Child provides that the best interests test is “the primary consideration.”

Paragraph 3: Under Article 40(2)(b)(vii) of the United Nations Convention on the Rights of the Child and Rule 8 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the right to privacy of the juvenile is acknowledged and an obligation is created to ensure that he or she is not harmed by undue publicity or by being labeled. The official commentary to the Standard Minimum Rules notes that juveniles are particularly susceptible to stigmatization and that this labeling can result in the permanent identification of a juvenile as a delinquent or a criminal. It further states that the purpose of this principle is to protect the juvenile from any adverse affect from the publication in the mass media of information about the case such as the name of the juvenile.

The need to ensure the privacy of juveniles is given effect in Article 62, which provides that the public and the press may be excluded from proceedings “where the interests of the child so require.” Article 62(3) also states that in the case of a juvenile, a judgment may be pronounced otherwise than in public. These requirements are

reiterated in Article 326, which requires that all proceedings relating to juveniles be held in closed session, allows the judgment in the case to be delivered in private, and requires that publicity and reporting on a case be restricted. Article 326 obliges the court to seal and store records of juvenile proceedings separately and under lock and provides for limitations on access to this information to further secure the right to privacy of the juvenile.

Paragraph 4: Article 63 of the MCCP provides for the right to trial without undue delay and a trial within a reasonable time or release where a person is detained. These rights apply to both adults and juveniles. In the case of juveniles, international standards provide an extra element of urgency in expediting criminal proceedings. The wording of Paragraph 4 comes from Rule 20 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. The official commentary to the rule states that the speedy conduct of juvenile proceedings is of paramount concern. It notes that, as time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offense, both intellectually and psychologically.

Part 5: Juvenile Diversion Programs

Article 327: Juvenile Diversion Programs

The competent legislative authority in [insert name of state] must establish juvenile diversion programs.

Commentary

Article 327 requires that the competent legislative authority establish programs that divert juveniles from the criminal justice system. Diversion involves the removal of the juvenile from the criminal justice process and frequently means redirection to community support services. This is done either formally or informally, depending on the state in question (see the commentary to Rule 11 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice). According to UNICEF, *Innocenti Digest: Juvenile Justice*, more countries are attempting to find constructive ways of avoiding contact between a child or young person and the justice system “unnecessarily.” Diversion is regularly used in the case of first-time offenders or minor criminal offenses. It may be undertaken by the police, the prosecution, or the courts. Several different diversion models may be employed; for example, a juvenile may be diverted by police after police consultation with the juvenile’s family and social worker or after a formal meeting between a court representative and the juvenile. Diversion may also be controlled by the prosecutor, who may choose not to initiate an investigation where the juvenile is a first-time offender or where the offense is not of a serious nature. The juvenile may be required to undergo counseling or “life skills” courses, or the prosecutor may require that the juvenile be supervised by a responsible person. Juveniles may also be required to attend “children’s hearings” (a children’s hearing is a non-court-hearing that takes place in an informal and less adversarial setting, with a panel of laypersons deciding upon a disposition based on discussion with the juvenile, his or her family, teachers, and social workers) or be subject to welfare measures (*Innocenti Digest*, pages 10–11).

The Juvenile Justice Code of post-conflict Kosovo was enacted in 2004. It integrated a variety of court-imposed diversion measures such as mediation between the juvenile and the victim of the crime, mediation between the juvenile and his or her family, the payment of compensation, the requirement of regular school attendance, employment or other professional training, the performance of unpaid community service work, education in traffic regulations, and psychological counseling (Article 15). Before deciding on the suitability of a diversion measure, the court must ensure that the juvenile committed only a minor offense, that the juvenile has accepted responsibility for his or her action and is ready to make peace with the victim, and that

the juvenile has consented to diversion (Article 14). The element of consent is vital to the overall operation of diversion measures as required under Rule 11.3 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

The MCCC does not lay down specific diversion measures, nor does it lay out a process for their determination. There is a huge variety of diversion measures; their acceptance and potential for implementation will be context specific. It is incumbent on each state to decide which diversion measures to incorporate and how to incorporate them into law. A separate piece of legislation may be required. The issue of juvenile diversion measures should be broadly discussed within the community, and care should be given to implementing measures that are generally supported by the community, because many diversion measures require community involvement to work effectively. In some cases, authorities may choose to work with civil society or non-governmental organizations on the implementation and operation of diversion measures. This kind of cooperation has worked effectively in many states and lightens the financial burden on the state.

Part 6: Investigation, Arrest, and Detention of a Juvenile

Article 328: Contact with the Police and the Prosecutor

Contacts between the police and prosecutor and a juvenile must be managed in such a way as to respect the legal status of the juvenile, promote his or her well-being, and avoid harm to him or her, with due regard for the circumstances of the case.

Commentary

The wording of Article 328 is taken from Rule 10(3) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. The official commentary to Rule 10(3) states that “avoid harm” is a flexible term that covers many features of possible interaction (e.g., the use of harsh language, physical violence, or exposure to the environment). This term should be broadly interpreted as doing the least harm possible to the juvenile. According to the commentary, “compassion and kind firmness are important in these situations.”

The concept of avoiding harm should be integrated into police training and practice and also into any secondary legislation that governs police policies and procedures such as standard operating procedures or implementing regulations. Police officers need to be adequately trained on the law surrounding the treatment of juveniles and also on how to properly interact with juvenile suspects and accused persons. Specific procedures should be established to give effect to the rights of the juvenile as defined in international human rights law and the MCCP and other criminal procedure laws.

Article 329: Questioning of a Juvenile

1. The conditions set out in Articles 106–109 apply to the questioning of a juvenile.
2. In addition, the questioning of a juvenile must always be conducted in the presence of counsel for the juvenile and a responsible person.

3. A “responsible person” means the juvenile’s parents, legal guardian, or closest relative, in that order, or, if none of the above is available, a social worker or representative of a responsible organization.

Commentary

A juvenile being questioned is vulnerable to pressure, coercion, and possibly torture or other mistreatment. According to UNICEF, *Innocenti Digest: Juvenile Justice*, juvenile girls are particularly vulnerable to sexual harassment and abuse during questioning. It is therefore vital that special attention be paid to the circumstances and safeguards surrounding the questioning of a juvenile.

The regular safeguards contained in Articles 106–109 apply equally to adults and juveniles. In addition, Article 329 requires that a juvenile be questioned only in the presence of his or her counsel and a responsible person. The responsible person will most likely be a family member; however, if a family member is not available or if the court determines that it is not in the best interests of the juvenile for the family member to be present, the responsible person may be a social worker or a representative of an international or national organization, for example, a non-governmental organization that deals with children’s rights. The presence of counsel and a responsible person ensures effective oversight over the conduct of those interviewing the juvenile, and it provides the juvenile with reassurance and eases the potential trauma of a police interview.

In a post-conflict state where there is a shortage of trained lawyers, a paralegal may take the place of a lawyer and may therefore be present during the questioning of a juvenile instead of counsel. Reference should be made to Article 52 and its commentary.

Article 330: Warrants and Orders against a Juvenile

Warrants and orders against juveniles may be issued only by a competent judge of the competent special panel for juveniles.

Commentary

In light of Article 322(2), which requires that a member of the special panel for juveniles hear all matters in cases concerning juveniles, Article 330 provides that any warrants and orders that are requested by the prosecutor or the defense be heard by a competent judge from the special panel for juveniles.

Article 331: Physical Examination of a Juvenile

1. A juvenile may not consent to a physical examination.
2. A warrant for a physical examination of a juvenile under Article 142 must be issued only after careful consideration and where it is absolutely necessary.
3. In addition to the conditions for the execution of a warrant for a physical examination under Article 142, in the case of juveniles, a responsible person must be present during the physical examination. A responsible person has the same meaning as under Article 329(3).

Commentary

Paragraph 1: A warrant is usually required to conduct a physical examination of a person, except in certain circumstances outlined in the MCCP. A physical examination under Article 142(3) may be conducted without a warrant where the person consents or where other grounds exist. In the case of a juvenile who comes into contact with the police, the juvenile may be frightened or intimidated by the police. The juvenile may thus be unable to give a truly informed consent and may believe that he or she has no choice but to consent. For this reason, Paragraph 1 precludes the police from seeking consent from a juvenile to justify a physical examination.

Paragraph 2: A physical examination can be quite intrusive and may be an intimidating experience for a vulnerable juvenile. In line with the best interests criterion laid out in Article 326(2) and the minimization of harm principle in Article 328, physical examinations of juveniles should be avoided except where they are absolutely necessary. In considering the grounds for a warrant, the competent judge or a police officer who may have the grounds to conduct a physical examination without a warrant under Article 142 must consider the need to do so carefully before sanctioning a search or examination.

Paragraph 3: Where a physical examination is absolutely necessary, a responsible person, who may be a family member or legal guardian, a social worker, or a representative of a competent organization, should be present as the guardian of the juvenile and his or her well-being and to ensure that the juvenile is treated appropriately during the examination.

Article 332: Arrest of a Juvenile

1. A juvenile may be arrested only as a measure of last resort and for the shortest appropriate period of time.
2. Upon arrest of a juvenile, a responsible person must be notified of the arrest within the shortest possible time. The responsible person has the same meaning as under Article 329(3).
3. Upon arrest, a juvenile must be provided with free legal assistance under Article 68, where the juvenile does not have counsel of his or her own choosing.
4. In accordance with Article 69, a juvenile may not waive his or her right to counsel.

Commentary

Paragraph 1: Paragraph 1 derives its wording from Article 37(b) of the United Nations Convention on the Rights of the Child.

Paragraph 2: Rule 10 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice provides that upon the apprehension of a juvenile, his or her parents or guardian must be immediately notified. Principle 16(3) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment reiterates this obligation. Paragraph 2 gives effect to these obligations. It uses the term “responsible person,” which includes parents, legal guardians, other family members, and alternatively a social worker or representative of a responsible organization.

Paragraph 3: It is imperative that a juvenile have legal assistance because a juvenile will be unable to effectively defend himself or herself. Article 40(2)(b)(ii) of the United Nations Convention on the Rights of the Child requires that a child have legal or other appropriate assistance in the preparation and presentation of his or her defense. Article 37 provides that a child have prompt access to legal or other appropriate assistance. Rule 18(a) of the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty requires that juveniles have the right to free legal assistance where such aid is available. Where a child does not have a lawyer, Article 68 of the MCCP requires that mandatory legal assistance be given to the juvenile.

Paragraph 4: It is clearly in the best interests of the juvenile to have legal assistance. An adult may waive his or her right to legal assistance under Article 69 of the MCCP. An adult is more likely to be able to make an informed decision and is less susceptible to pressure. A juvenile may not fully understand the implications of waiving his or her right or may bow more easily to pressure to sign a statement to waive his or her right. For these reasons, Article 69 precludes the possibility of obtaining a signed waiver of legal assistance from a juvenile.

Article 333: Review of Arrest of a Juvenile

1. Special efforts must be made to ensure that juvenile arrested persons are brought as quickly as possible before the competent judge under Article 175.
2. Counsel for the juvenile and a responsible person must be present during the hearing. A responsible person has the same meaning as under Article 329(3).
3. The initial hearing under Article 175 must be heard in closed sessions.

Commentary

Paragraph 1: Articles 170(5) and 171(6) require that a person, either an adult or a juvenile, be brought promptly before a judge and no later than seventy-two hours after arrest. Seventy-two hours is the maximum allowable time frame under the MCCP. In the case of a juvenile arrested person, Article 333 provides that the authorities must make extra efforts to bring the juvenile before the judge sooner than the seventy-two hour period.

Paragraph 2: This paragraph stems from Rule 15 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

Article 334: Detention of a Juvenile

1. A juvenile may be detained only as a measure of last resort and for the shortest appropriate period of time.
2. Counsel for the juvenile and a responsible person must be present during any detention hearing or hearing on continued detention. A responsible person has the same meaning as under Article 329(3).
3. Detention hearings under Articles 175 and 188 must be heard in closed sessions.
4. No extension of the time limits of detention as set out in Article 190 may be granted with respect to a juvenile. Where the time limit of detention prescribed in Article 189 has expired, the juvenile must be released pending trial.

5. The applicable provisions of the Model Detention Act govern the detention of juveniles.

Commentary

Paragraph 1: Paragraph 1 derives its wording from Article 37(b) of the United Nations Convention on the Rights of the Child, which states that detention of a juvenile shall be a measure of last resort and only for the shortest possible time. This wording is repeated in Rule 17 of the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty and Rule 13 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. The commentary to Rule 13 talks about the danger of “criminal contamination” when juveniles are held in detention pending trial. Juveniles who are detained may also become liable to violation of other rights, particularly where the detention centers are substandard or resource starved, as is often true in a post-conflict state. The competent judge considering whether to detain a juvenile must carefully consider the principle contained in Paragraph 1, as must the prosecutor in considering whether to lodge a motion for detention or continued detention.

Paragraph 2: Reference should be made to the commentary accompanying Article 329.

Paragraph 4: In order to give effect to the general principle set forth in Paragraph 1, Paragraph 5 precludes the extension of the maximum period of detention under Article 189 in the case of juvenile detainees. The time limits set out in Article 189 must be adhered to. Where a juvenile is detained beyond these time limits, he or she must be released pending trial. This gives effect to the juvenile’s right to trial within a reasonable time or release, which is contained in Article 63.

Paragraph 5: Reference should be made to the Model Detention Act.

Part 7: Indictment, Trial, and Appeal Proceedings

Article 335: Proceedings in Court

1. A juvenile suspect or accused has the right to have counsel and a responsible person present during any hearing.
2. All hearings and all indictment, trial, and appeal proceedings must be heard in closed session.
3. The publicity of hearings and indictment, trial, and appeal proceedings must be restricted by an order of the special panel for juveniles made at each session.
4. The identity of the juvenile must not be revealed to the public, particularly in newspapers or on the radio or television, by an order of the special panel for juveniles at each session of the panel.
5. The judgment may be delivered in public, except where the interests of the juvenile require otherwise.

Commentary

Paragraph 1: Just as in the case of a hearing under Article 333(2), the juvenile has the right to have counsel for the juvenile and a responsible person must be present during any hearing in the criminal proceedings.

Paragraph 2: All hearings, including the confirmation of indictment, the trial, and any appeals, must be held in closed session. Reference should be made to Article 326(3), which discusses the need to protect the privacy of juveniles to forestall any potential stigmatization that might arise from publicity about their involvement in the criminal process.

Paragraph 3: Reference should be made to Article 326(3) and its commentary.

Paragraph 4: Reference should be made to Article 326(3) and its commentary.

Paragraph 5: This paragraph reiterates Article 62(3).

Article 336: Records of Proceedings

1. The records of the hearings and the indictment, trial, and appeal proceedings must be sealed and stored in a secure place under lock.
2. Access to the records must be limited to persons directly concerned with the disposition of the case or other persons duly authorized by the special panel for juveniles.

Commentary

In order to give effect to the juvenile's right to privacy set out in Article 326(3), Article 336 provides for restricted access to any records that may reveal information about criminal proceedings surrounding a juvenile. Special provisions need to be made for the secure storage of these records, in addition to the development of protocols or guidelines as to who may have access or how access can be granted.

Article 337: Juvenile Dispositions

1. Prior to juvenile dispositions, a prejuvenile disposition report must be ordered by the special panel for juveniles.
2. The prejuvenile disposition report must contain information on the background and circumstances in which the juvenile is living, the character of the juvenile, and the conditions under which the criminal offense was committed.
3. In the determination of an appropriate juvenile disposition, the special panel for juveniles must follow the procedure set out in Section 14 of Part I: General Part of the MCC.
4. The Model Detention Act applies to the imprisonment of juveniles.

Commentary

Section 14 of Part I of the MCC sets out the principles and guidelines for determining a disposition for a juvenile who has been convicted of a criminal offense.

Article 337 provides some additional procedural guidance. In line with Rule 16 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, which refers to "social inquiry reports," Article 337 requires that a report be com-

piled about the juvenile's circumstances prior to the decision on the disposition. According to the official commentary to Rule 16, such reports "are an indispensable aid in most legal proceedings involving juveniles." The commentary notes that the report should provide the judge or judges with information on the juvenile's social and family background, school career, and education. The creation of such a report requires that adequate social services exist. Although it may be difficult to write a prejuvenile disposition report where few social services exist or there are few probation officers or other qualified personnel to write the report, authorities need to work to meet this standard.

Article 338: Conditional Release from Juvenile Imprisonment

1. Where a juvenile convicted person has been sentenced to juvenile imprisonment, he or she, through counsel, may apply to the special panel for juveniles to be conditionally released if:
 - (a) the juvenile has served at least one-third of the term of imprisonment that was imposed by the court;
 - (b) a favorable report on the conduct of the juvenile has been presented to the court by the detention authority; and
 - (c) credible evidence has been presented that the juvenile poses no danger to public security and safety.
2. The application for conditional release must be heard by the special panel for juveniles.
3. The court may impose a measure of intensive supervision under Article 82 of the MCC until the end of the original disposition. The court may also:
 - (a) prohibit the juvenile from appearing in specified places that are likely to have a negative impact on the juvenile;
 - (b) prohibit the juvenile from associating with particular persons likely to have a negative impact on the juvenile;
 - (c) require that the juvenile attend school on a regular basis; or
 - (d) require that the juvenile accept employment or training for a profession appropriate to his or her abilities or skills.
4. The court may revoke the conditional release if, during the period of conditional release, the juvenile commits a criminal offense.

5. Conditional release terminates on the day on which the convicted juvenile would have been eligible for unconditional release if the entire term of juvenile imprisonment had been completed.

Commentary

Reference should be made to the commentary to Article 273, which discusses conditional release, or *parole*, as it is called in some states. Rather than appearing in front of a conditional release panel, a juvenile may be released conditionally upon the order of the special panel for juveniles. Like with adults, the court may work with the *parole service*, or another such appropriate body, in the supervision of the conditional release of a juvenile. Where a parole service is established in a post-conflict state, the court may require that the juvenile report on a regular basis to the parole service during the period of conditional release.