

CHILDREN'S RIGHTS COUNT

EXPLORING DOMESTIC AND
INTERNATIONAL MECHANISMS
FOR PROTECTING AND ADVANCING
CHILDREN'S RIGHTS GLOBALLY



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ACKNOWLEDGEMENTS

This resource is a collaboration of UNICEF Canada and the Ontario Justice Education Network. We hope this study guide inspires your students to think critically about and take action on children's rights issues. We gratefully acknowledge the support of the following people in preparing this guide: Sholeh Popatia, Christine Poirier, Andrea Sobko, Simone Vandaiyar, Antoinette Issa and Nikita Ponomarev.

Copy Editor is five Communications

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TEACHER'S GUIDE

ABOUT UNICEF CANADA'S GLOBAL CLASSROOM PROGRAM

UNICEF Canada's mission is to mobilize and empower Canadians to invest in the positive transformation of every child's future. UNICEF Canada's Global Classroom program is a partnership with Canadian teachers and their students to inspire, educate and promote action on social justice, humanitarian issues and human rights—especially the rights of all children. This acclaimed program provides educators with classroom-ready resources and engagement tools. Designed to foster global citizenship and understanding, the Global Classroom program shows how each of us can create a better world for all children and the communities in which they live. For more information about UNICEF Canada's Global Classroom program, visit globalclassroom.unicef.ca

ABOUT THE ONTARIO JUSTICE EDUCATION NETWORK (OJEN)

The Ontario Justice Education Network (OJEN) is a charitable organization dedicated to promoting public understanding, education and dialogue to support a responsive and inclusive justice system. OJEN's programs bring together leading justice and education sector representatives to collaborate on initiatives designed to foster understanding of the justice system. As a result of the efforts of hundreds of volunteers including judges, justices of the peace, lawyers, court staff, educators and community representatives, OJEN is able to facilitate public legal education opportunities for youth throughout Ontario. All of OJEN's classroom resources are available for free in French and English. To find out more about OJEN's programs and resources, visit www.ojen.ca.

ABOUT THIS RESOURCE

UNICEF Canada and OJEN have partnered to create an interactive classroom resource designed to enhance high school students' understanding of children's rights. This resource includes experiential activities that introduce students to the United Nations Convention on the Rights of the Child (the Convention), and domestic legal cases related to children's rights. Through case studies and discussion-based strategies, students explore the social and legal issues related to spanking, medical treatment of minors and child soldiers. The final component of the resource, a mock hearing set at the International Criminal Court (ICC), provides students with the opportunity to apply their knowledge of the Convention and international law in an engaging and interactive activity.

GOALS

- To encourage students to think critically about children's rights issues, both domestically and internationally.
- To introduce students to the United Nations Convention on the Rights of the Child, including the rights it protects, its application and enforcement.
- To enhance students' understanding of Canadian and international law.
- To encourage students to formulate sound judgments and express well-founded opinions based on information presented.
- To provide opportunities for students to develop and demonstrate advocacy skills, oral and written communication skills and active citizenship.

USING THIS RESOURCE

Designed for students in grades 9 through 12, this resource is divided into three distinct sections that introduce students to the Convention and its application, and demonstrate the interrelatedness of Canadian and international law.

Each of the three sections builds on the knowledge and skills of the former. As such, it is recommended that teachers move through the sections consecutively rather than using any one in isolation. This will help students develop a context and shared language for discussing and analyzing the issues presented. Within a particular section, teachers may select individual activities based on the prior knowledge, skills and needs of their students. Your expertise as an educator will be an invaluable tool for adapting the content of the activities to correspond to your subject areas, grade levels and students' backgrounds.

Please note that although the guide refers to teachers and students, the activities are adaptable and would be equally useful in many learning environments, and not only formal learning settings.

Section One: Introduction to the Convention on the Rights of the Child

This section contains four activities aimed at introducing students to the Convention as well as concepts of justice and fairness. Teachers can choose amongst the various activities which are designed to provide students with a thorough understanding of both the broad structure of the Convention, as well as the specific articles it contains.

For background information on children's rights and the Convention, see *Understanding Children's Rights* in appendix B. A plain language version of the Convention is also available in appendix A.

Section Two: Application of the Convention on the Rights of the Child

This section includes two activities each focused on a different Canadian legal case related to children's rights:

- *The Canadian Foundation for Children, Youth and the Law v. The Attorney General of Canada*
- *A.C. v. Manitoba.*

The first case study examines the constitutional challenge to the spanking laws in Canada, and the second focuses on medical treatment for mature minors. Each activity looks at the legal aspect of the decisions, as well as the broader social and policy concerns related to children's rights. Students are encouraged to analyze, interpret and apply the Convention through a variety of critical-thinking exercises.

Section Three: International Criminal Law Mock Hearing

The final component of the resource is a mock hearing set at the International Criminal Court (ICC). The mock hearing includes three packages of material: a scenario, a role preparation package and a justice sector volunteer package. The scenario, *The Prosecutor v. Mabo*, has students prepare for the trial of Arthur Mabo, a rebel army commander accused of recruiting and using children as child soldiers in armed conflicts. The scenario package includes the facts of the case, the relevant law and witness statements for each character. The role preparation package provides background information on the ICC, the legal procedure and general information for students playing the roles of the lawyers, court staff and judges. The justice sector volunteer package can be provided to lawyers or judges who volunteer to coach students in preparing their arguments, and/or to adjudicate the trial in the classroom. If you're interested in being connected to justice sector volunteers in your local area, please contact OJEN at info@ojen.ca. This simulation provides an exciting, experiential way for students to apply their knowledge of the law.

For additional resources to help prepare students to complete a mock hearing, please see OJEN's Mock Hearing Demonstration Video and companion guide, *Making the Case: A Mock Hearing Toolkit*. To request free copies of these resources, send an email with your mailing address to info@ojen.ca.

CURRICULUM CONNECTIONS

This resource has been developed for use in a variety of courses that deal with human rights, family issues, law, social justice, international relations, politics, ethics and morality and global issues, among others. Activities have been developed with various grade levels and subject areas in mind. In particular, this resource has direct application to expectations in the following courses:

CANADIAN AND WORLD STUDIES
<i>Civics</i>
Civics, Grade 10, Open (CHV20)
<i>Economics</i>
The Individual and the Economy, Grade 11, University/College Preparation (CIE3M) Analyzing Current Economic Issues, Grade 12, University Preparation (CIA4U)
<i>Geography</i>
Geography of Canada, Grade 9, Academic or Applied (CGC1D/P) Canadian and World Issues: A Geographic Analysis, Grade 12, University Preparation (CGW4U)
<i>History</i>
Canadian History Since World War I, Grade 10, Academic or Applied (CHC2D/2P) Canadian History and Politics Since 1945, Grade 11, College Preparation (CHH3C) Canadian History and Politics Since 1945, Grade 11, Workplace Preparation (CHH3E) World History Since 1900: Global and Regional Perspectives, Grade 11, Open (CHT3O) Canada: History, Identity and Culture, Grade 12, University Preparation (CHI4U) World History: The West and the World, Grade 12, University Preparation (CHY4U) World History: The West and the World, Grade 12, College Preparation (CHY4C) Adventures in World History, Grade 12, Workplace Preparation (CHM4E)
<i>Law</i>
Understanding Canadian Law, Grade 11, University/College Preparation (CLU3M) Understanding Canadian Law, Grade 11, Workplace Preparation (CLU3E) Canadian and International Law, Grade 12, University Preparation (CLN4U)
<i>Politics</i>
Canadian Politics and Citizenship, Grade 11, Open (CPC3O) Canadian and World Politics, Grade 12, University Preparation (CPW4U)
SOCIAL SCIENCES AND THE HUMANITIES
<i>Family Studies</i>
Individual and Family Living, Grade 9 or 10, Open (HIF10/HIF20) Living and Working with Children, Grade 11, College Preparation (HPW3C) Managing Personal and Family Resources, Grade 11, College Preparation (HIR3C) Parenting, Grade 11, Open (HPC3O) Individuals and Families in a Diverse Society, Grade 12, University/College Preparation (HHS4M) Issues in Human Growth and Development, Grade 12, University/College Preparation (HHG4M) Parenting and Human Development, Grade 12, Workplace Preparation (HPD4E)
<i>General Social Science</i>
Introduction to Anthropology, Psychology and Sociology, Grade 11, University/College Preparation (HSP3M) Challenge and Change in Society, Grade 12, University/College Preparation (HSB4M)
<i>Philosophy</i>
Philosophy: Questions and Theories, Grade 12, University Preparation (HZT4U)
INTERDISCIPLINARY STUDIES
Applied Journalism, Grade 11, Open Issues in Human Rights, Grade 12, University Preparation Information and Citizenship, Grade 12, Open Children's Literature, Grade 12, University Preparation
HEALTH AND PHYSICAL EDUCATION
Healthy and Active Living, Grade 9 or 10, Open (PPL10/20) Healthy Active Living Education, Grade 11 or 12, Open (PPL30/40)

ASSESSMENT AND EVALUATION

PERFORMANCE ASSESSMENT

The use of an extensive range of assessment strategies, both reflective and traditional, allows for ongoing feedback to students and teachers, to ensure that intended learning outcomes are met. Assessment strategies should reflect the full range of student learning in children's rights, and therefore must incorporate a variety of assessment activities. In so doing, the diverse backgrounds, needs and learning styles of individual students may be taken into consideration as students are given a variety of opportunities to demonstrate their knowledge and skills.

Performance assessment may include, but is not limited to the following:

- Formal and informal observations
Teacher-made and other tests
- Oral and written communication tasks
- Self-assessments
- Learning logs/journals (What I did, What I learned, What questions I still have)
- Reflective writing
- Questionnaires
- Student-Teacher interviews
- Peer Feedback/Assessment (Perhaps ask what students think their friends who have not taken the curriculum would do in a particular situation vs. what they would do.)
- Activity-based tasks/problems
- Observations of what students do and say, making anecdotal records
- Development and application of specific criteria to assess student performance (e.g., rubrics, rating scales, checklists)
- Examination of students' work and application of criteria in assessment

Source: Cape Breton University Children's Rights Centre



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UN CONVENTION ON THE RIGHTS OF THE CHILD ASSESSMENT RUBRIC

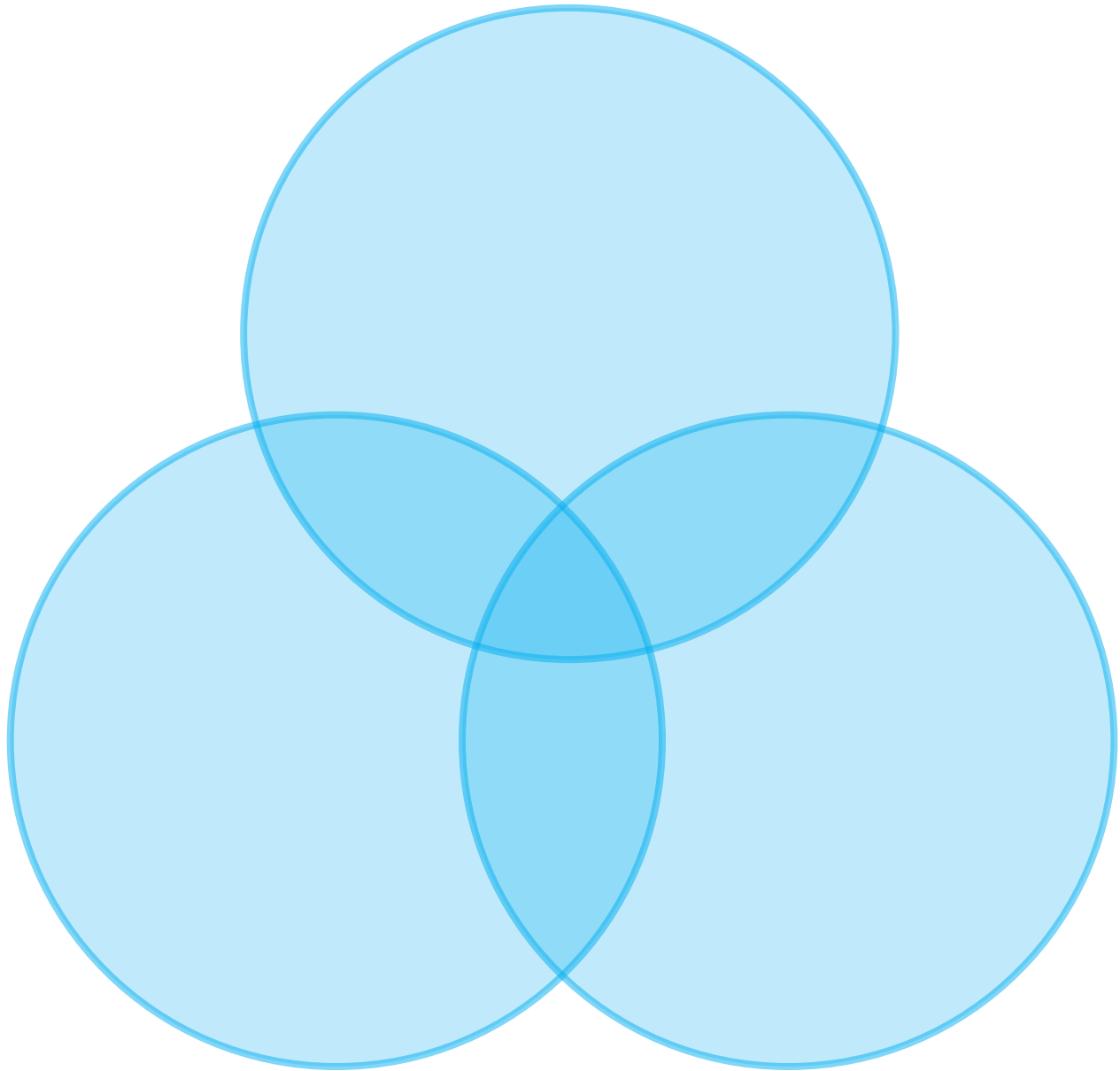
	Level 1	Level 2	Level 3	Level 4
Knowledge/ Understanding	Demonstrates <i>limited</i> knowledge of the articles of the CRC.	Demonstrates <i>some</i> knowledge of the articles of the CRC.	Demonstrates <i>considerable</i> knowledge and understanding of the articles of the CRC.	Demonstrates <i>thorough</i> knowledge and understanding of the articles of the CRC.
Thinking	Uses critical/creative thinking processes, as well as skills of analysis, synthesis, and evaluation, with respect to the CRC, with <i>limited</i> effectiveness.	Uses critical/creative thinking processes, as well as skills of analysis, synthesis, and evaluation, with respect to the CRC with <i>some</i> effectiveness.	Use critical/creative thinking processes, as well as skills of analysis, synthesis, and evaluation, with respect to the CRC, with <i>considerable</i> effectiveness.	Uses critical/ creative thinking processes, as well as skills of analysis, synthesis, and evaluation, with respect to the CRC with a <i>high degree</i> of effectiveness
Communication	Is able to organize and express ideas and information regarding the CRC with <i>limited</i> effectiveness.	Is able to organize and express ideas and information regarding the CRC with <i>some</i> effectiveness.	Is able to organize and express ideas and information regarding the CRC with <i>considerable</i> effectiveness.	Is able to organize and express ideas and information regarding the CRC with a <i>high degree</i> of effectiveness.
Application	Applies and transfers knowledge of the CRC to familiar and novel contexts, and makes connections within and between such contexts, with <i>limited</i> effectiveness.	Applies and transfers knowledge of the CRC to familiar and novel contexts, and makes connections within and between such contexts, with <i>some</i> effectiveness.	Applies and transfers knowledge of the CRC to familiar and novel contexts, and makes connections within and between such contexts with <i>considerable</i> effectiveness.	Applies and transfers knowledge of the CRC to familiar and novel contexts, and makes connections within and between such contexts, with a <i>high degree</i> of effectiveness.

UN CONVENTION ON THE RIGHTS OF THE CHILD VENN DIAGRAM

The Convention Venn diagram can be a useful tool for students to consider the relationship between various articles of the Convention.

NAME _____

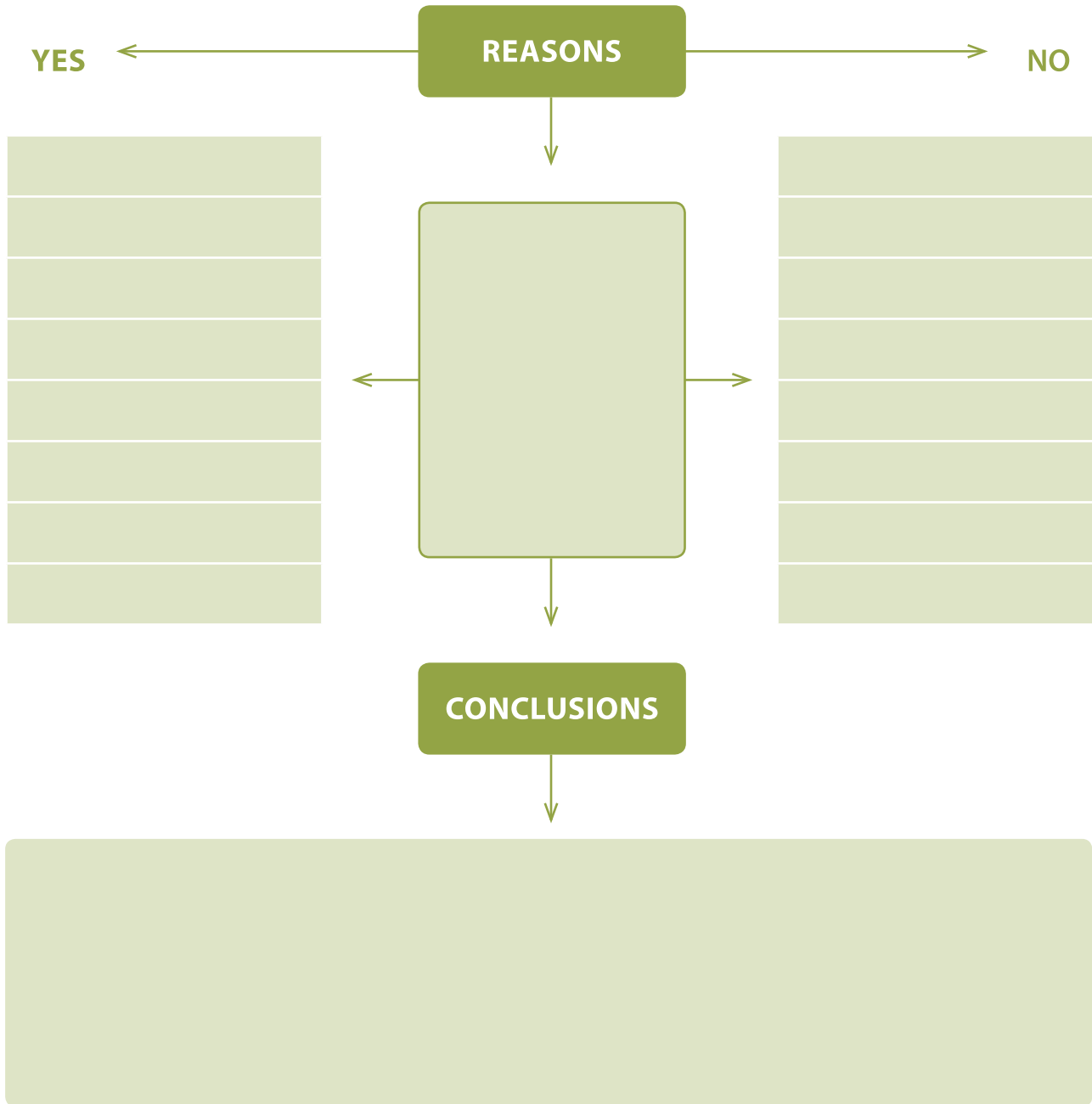
DATE _____



UN CONVENTION ON THE RIGHTS OF THE CHILD DECISION WEB

The decision web can be used to consider both sides of an argument or issue, and draw conclusions based on a solid and reasoned thought process.

NAME _____ DATE _____

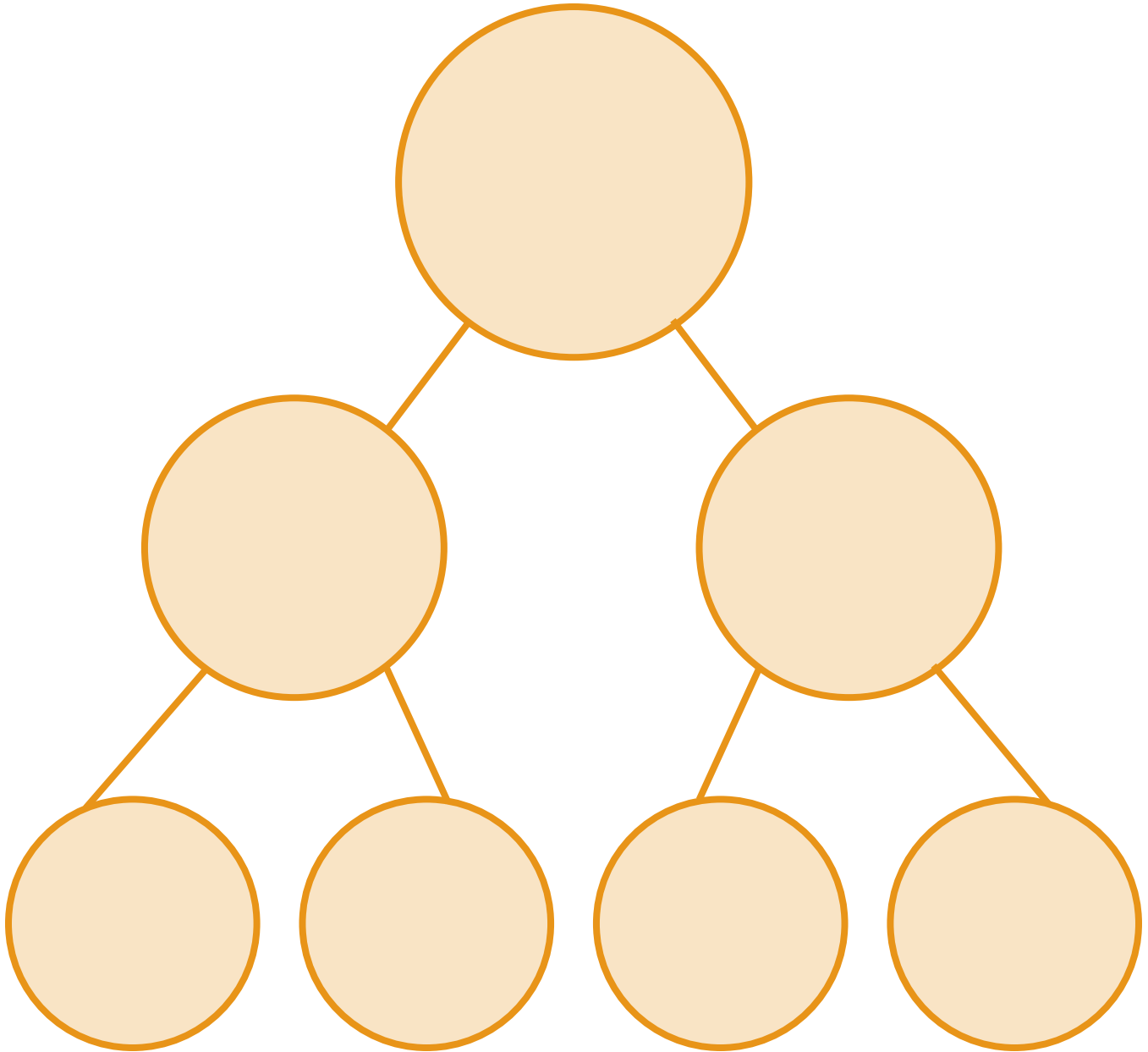


UN CONVENTION ON THE RIGHTS OF THE CHILD CONSEQUENCES CHART

The consequences chart can be used to determine the consequences of an action or occurrence, and the resulting effects of those consequences.

NAME _____

DATE _____



ADDITIONAL E-RESOURCES

OJEN Resources

<http://www.ojen.ca/resources>

UNICEF Global Classroom

<http://www.globalclassroom.unicef.ca/>

Amnesty International Canada – Human Rights Resources for Educators

http://www.amnesty.ca/resource_centre/teachers.php

Canadian Coalition for the Rights of Children

<http://rightsofchildren.ca/>

Children's Rights Centre, Cape Breton University

<http://www.cbu.ca/crc/index.php?q=content/curriculum-resources>

Children's Rights International Network

<http://www.crin.org>

Equitas

<http://www.equitas.org>

Justice For Children and Youth

<http://www.jfcy.org/index.html>

LEARN Children's Rights Resources

http://www.learnquebec.ca/en/content/childrens_rights/childrens_rights_resources.html

Oxfam Children's Rights resources

<http://www.oxfam.org.uk/education/resources/rights/>

Save the Children Teaching Resources

[http://www.savethechildren.org.uk/resources/online-library/search?f\[0\]=field_publication_category%3A49](http://www.savethechildren.org.uk/resources/online-library/search?f[0]=field_publication_category%3A49)

Taking It Global

<http://www.tigweb.org/tiged/resources.html>

Toronto District School Board Human Rights Temperature Check

<http://www.tdsb.on.ca/site/viewitem.asp?siteid=15&menuid=6093&pageid=5295>

UNHCR Guidelines on the Formal Determination of the Best Interests of the Child

http://www.iin.oea.org/2006/Lecturas_Sugeridas_2006/00-69422.pdf

SECTION 1: INTRODUCTION TO THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

Overall Objectives

- To introduce students to the Convention.
- To introduce the concepts of justice and fairness.
- To identify the rights that children are entitled to.

ACTIVITY 1 – THE RIGHT TO WHAT?

Learning Objectives

- To introduce students to the Convention.
- To develop an understanding of rights and responsibilities under the Convention.

Materials

- Copies of the Convention in plain language (one per student) (Appendix A) The full text is available at: http://globalclassroom.unicef.ca/en/resources/other_resources.htm

Steps

1. Introduce the concept of children's rights to students and ask the class to brainstorm a list of rights they think children should have.
2. Distribute copies of the Convention in plain language.
3. In small groups, have students compare their list with the Convention.

Discussion

1. How did your list compare to the Convention?
2. What rights were similar? What rights were different?
3. Are there any rights listed in the Convention that you disagree with?



ACTIVITY 2 – RIGHTS, WANTS & NEEDS

Learning Objectives

- To help students make the distinction between wants and needs.
- To introduce the idea that basic needs can be considered rights.

Materials

- A set of *Rights, Wants & Needs* cards for each pair of students
- Blank Cards

Steps

1. Have students form pairs, and give each pair a set of *Rights, Wants & Needs* cards, cut into individual cards.
2. Ask students to imagine that a new government is being set up in their village, town or city. This government wants to provide all young people with the basic things that they want and need. The cards represent the list of wants and needs that the elected officials have drawn up. The officials would like young people to add any items that might be missing. Ask the pairs to decide together on four additional items, and to write them on blank cards.
3. Announce to the group that the new government has found that for political and economic reasons, it can provide young people with only 16 of the items on the list, rather than all 24. Ask the pairs to decide which eight items they are willing to give up.
4. When all pairs have completed step 3, announce that further cuts in what can be provided to young people must be made. Ask the pairs to eliminate another eight item

Discussion

1. Which items were the most commonly eliminated in the first round? Why?
2. Was the second round of elimination more difficult than the first? Why?
3. Were there any disagreements over which items to give up? Which items caused disagreement? Why?
4. What is the difference between wants and needs? Which items were wants, and which were needs?
5. Do wants and needs differ for different people? Why or why not?
6. Do wants and needs differ for different cultural groups? Why or why not?

Extension

1. Have students make a list of their top five rights, and their top five wants. Referring to the Convention, have students look at their lists and determine which of those items are included in the Convention.
2. Ask students to find and examine a local, national or international news story about a general human rights issue, or a children's rights issue in particular. Which rights are being discussed in the news story? Are these rights being infringed upon? If so, how? Is there anything being done to make sure those rights are being respected? If so, what is being done?

RIGHTS, WANTS & NEEDS CARDS



Decent shelter



Clothes in the latest style



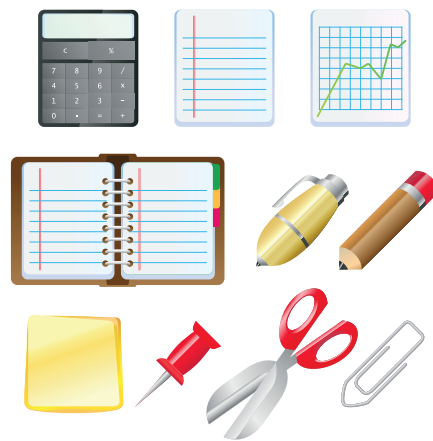
Holiday trips



Nutritious food



Protection from abuse and neglect



Education



RIGHTS, WANTS & NEEDS CARDS



Clean air



A personal stereo



Fast food



Playgrounds and recreation



A television set



Opportunities to practise your own culture, language and religion



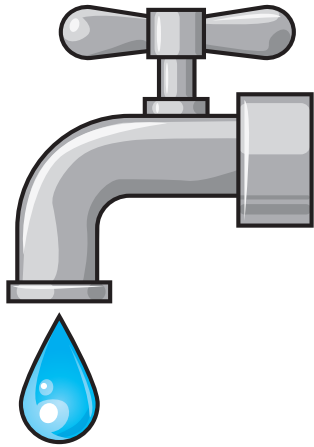
RIGHTS, WANTS & NEEDS CARDS



Opportunities to share opinions



Money to spend as you like



Clean water



Your own bedroom



A personal computer



Fair treatment and non-discrimination



RIGHTS, WANTS & NEEDS CARDS



Health care



A bicycle



ACTIVITY 3 – WORKING WITH THE CONVENTION ON THE RIGHTS OF THE CHILD

Learning Objectives

- To encourage young people to examine the articles of the Convention in depth, and to reflect on the different types of rights covered in the Convention.

Materials

- Convention cards (one card per student)
- Copies of the Convention in plain language (one per student) (Appendix A) The full text is available at: http://globalclassroom.unicef.ca/en/resources/other_resources.htm
- Copies of *Understanding Children's Rights* (Appendix B)
- Scissors
- Tape
- Chart paper

Steps

Part One

1. Cut out the Convention cards and give one to each member of the group. If the group is larger than 41, some students may work in pairs. If the group is smaller, eliminate an appropriate number of cards. Make sure that students read and understand their cards.
2. Instruct students to stand up, move around the room and meet with other participants. As they do, students should explain the right their card describes. If students feel that their cards have something in common or belong together, they should form a group.
3. Students should continue walking around the room, adding any number of additional people to their group if they feel that their card describes a right of a similar type.
4. As the activity proceeds, students may switch to a different group as they refine their thinking about the categories of rights covered by the Convention. Some students may find that they "stand alone" and do not belong to any of the groups. Encourage discussion and negotiation. Stress that there is no one "correct" answer to this activity.
5. Once the groups are finalized and there is no further movement around the room, ask each group to decide on a name for itself; for example, "Health," "Education," etc.
6. Have the groups sit together. Call on one group at a time to tell its name, and summarize the articles that belong to this category.

Part Two

7. Have students read the handout, *Understanding Children's Rights* (Appendix B).
8. As a class, discuss the following groupings of the articles of the Convention: survival, development, protection and participation. Have students discuss what children need for survival, what they need to develop, why they need protection and from whom, and why they need to participate. Discuss some reasons why not all children in the world have their rights respected (e.g., poverty, war, racial discrimination, geography, gender inequality, etc.).

ACTIVITY 3 – WORKING WITH THE CONVENTION ON THE RIGHTS OF THE CHILD

9. Prepare four pieces of chart paper with the following headings: "Rights to Survival," "Rights to Development," "Rights to Protection," "Rights to Participation" and post one at each corner of the room.
10. Ask students to revisit their Convention card from the previous activity with these four categories in mind. Give students a few minutes to move to the corner of the room that best represents the category of their right.
11. Once students have formed groups with all the rights in their category, have them discuss and prioritize the rights.
12. Ask students to tape their rights cards to the chart paper with the appropriate heading, making sure to maintain the prioritization they established in their groups.
13. Have each group briefly summarize their group of rights to the rest of the class, and explain the reason for their chosen prioritization.
14. Have students remain with their groups. Distribute the plain language Convention (one per student). Give students some time to read it over in its entirety, making note of the order of the rights. Have them find the category they discussed in their groups, and compare the prioritization of rights in the Convention to the one they created in their groups.

Discussion

1. Were some rights more difficult to categorize than others? If so, which ones and why?
2. What seem to be the main types of rights protected by the Convention?
3. Do some rights seem to have been given more emphasis than others? If so, which ones? Why do you think this is so?
4. Do you think there are any rights that have been left out of the Convention that should be included? Explain.
5. Do you think there are some rights, or some types of rights, that should be given priority, or are all rights equally important?
6. How do you feel the rights under the Convention are being upheld in your school? In your community? In your country?
7. Which rights, if any, do you feel deserve special attention? Why or why not?
8. How do you think Canada can work to ensure that all children's rights are protected?

Extension

1. Which children's rights under the Convention are the most at risk in a humanitarian emergency (e.g., Japan tsunami, Haiti earthquake, Pakistan flood, Côte d'Ivoire conflict, Libya conflict, Louisiana flood, Darfur conflict)? Why?
2. Why do you think children are of particular concern in times of crisis? Which of the rights under the Convention are the most important to protect in a humanitarian emergency? Why?
3. What measures are taken to ensure that children's rights are protected in a humanitarian emergency?

CONVENTION CARDS



Articles 42-54: Implementation and entry into force

These refer to the administrative aspects of implementing the CRC.



Article 1: Definition of a child

A child is recognized as a person under 18, unless national laws recognize the age of majority earlier.



Article 2: Non-discrimination

All rights apply to all children, and children shall be protected from all forms of discrimination.



Article 3: Best interests of the child

All actions concerning the child shall take full account of his or her best interests. The Governments shall provide the child with adequate care when parents, or others charged that responsibility, fail to do so.



Article 4: Implementation of rights

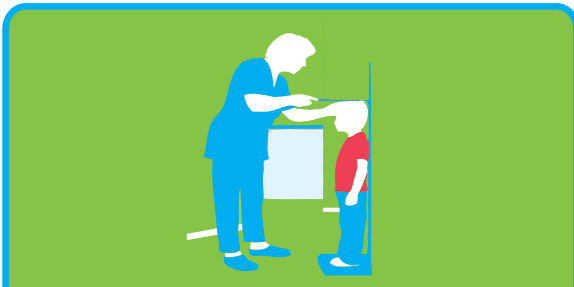
The Government must do all it can to implement the rights contained in the Convention.



Article 5: Parental guidance and the child's evolving capacities

The Government must respect the rights and responsibilities of parents to provide guidance for the child that is appropriate to her or his evolving capacities.

CONVENTION CARDS



Article 6: Survival and development

Every child has the right to life, and the Government has an obligation to ensure the child's survival and development.



Article 7: Name and nationality

Each child has the right to a name and nationality, to know his or her parents and be cared for by them.



Article 8: Preservation of identity

The Government has an obligation to protect, and if necessary, to re-establish the child's identity. This includes name, nationality and family ties.



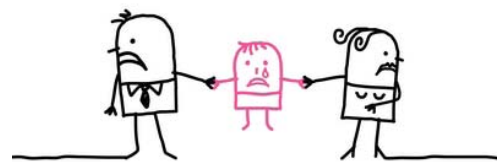
Article 9: Separation from parents

The child has a right to live with his or her parents unless this is not in the child's best interest. The child has the right to maintain contact with both parents if separated from one or both.



Article 10: Family reunification

Children and their parents have the right to leave any country or enter their own to be reunited, and maintain the parent-child relationship.



Article 11: Illicit transfer and non-return

The Government has an obligation to prevent and remedy the kidnapping or holding of children abroad by a parent or third party.

CONVENTION CARDS



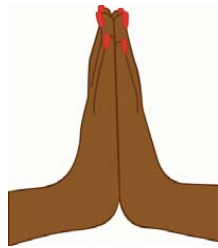
Article 12: The child's opinion

Children have the right to express their opinions freely, and have their opinions taken into account in matters that affect them.



Article 13: Freedom of expression

Children have the right to express their views, obtain information, and make ideas or information known, regardless of frontiers.



Article 14: Freedom of thought, conscience and religion

Children have the right to freedom of thought, conscience and religion, subject to appropriate parental guidance.



Article 15: Freedom of association

Children have a right to meet with others, and to join or form associations.



Article 16: Protection of privacy

Children have the right to protection from interference with privacy, family, home and correspondence, and from attacks on their character or reputation.



Article 17: Access to appropriate information

Children shall have access to information from national and international sources. The media shall encourage materials that are beneficial, and discourage those which are harmful to children.

CONVENTION CARDS



Article 18: Parental responsibilities

Parents have joint responsibility for raising the child, and the Government shall support them in this.



Article 19: Protection from abuse and neglect

Children shall be protected from abuse and neglect. Governments shall provide programs for the prevention of abuse and treatment of those who have suffered abuse.



Article 20: Protection of a child without family

Children without a family are entitled to special protection, and appropriate alternative family or institutional care, with regard for the child's cultural background.



Article 21: Adoption

Where adoption is allowed, it shall be carried out in the best interests of the child, under the supervision of competent authorities, with safeguards for the child.



Article 22: Refugee children

Children who are refugees, or seeking refugee status, are entitled to special protection.



Article 23: Disabled children

Disabled children have the right to special care, education and training that will help them to enjoy a full and decent life with the greatest degree of self-reliance and social integration possible.

CONVENTION CARDS



Article 24: Health and health services

Children have the right to the highest possible standard of health and access to health and medical services.



Article 25: Periodic review of placement

A child who is placed by the Government for reasons of care, protection or treatment of his or her physical or mental health is entitled to have that placement evaluated regularly.



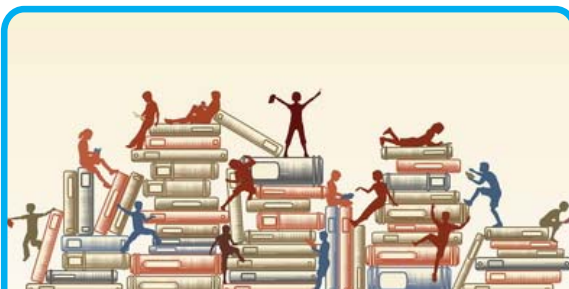
Article 26: Social security

Children have the right to benefit from social security including social insurance.



Article 27: Standard of living

Children have the right to a standard of living adequate for their physical, mental, spiritual, moral and social development. Parents have the primary responsibility to ensure that the child has an adequate standard of living. The Government's duty is to ensure that this responsibility is fulfilled.



Article 28: Education

Children have the right to education. Primary education should be free and compulsory. Secondary education should be accessible to every child. Higher education should be available to all on the basis of capacity. School discipline shall be consistent with the child's rights and dignity.



Article 29: Aims of education

Education should develop the child's personality, talents, mental and physical abilities. Children should be prepared for active participation in a free society, and learn to respect their own culture and that of others.

CONVENTION CARDS



Article 30: Children of minorities or indigenous populations

Children have a right, if members of a minority group, to practice their own culture, religion and language.



Article 31: Leisure, recreation, and cultural activities

Children have the right to rest, leisure, play and participation in cultural and artistic activities.



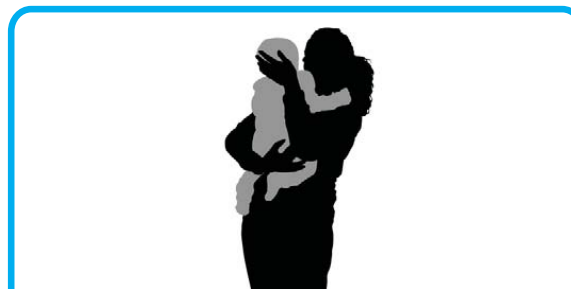
Article 32: Child labour

Children have the right to be protected from economic exploitation, from having to participate in work that threatens their health, education or development. The Government shall set minimum ages for employment and regulate working conditions.



Article 33: Drug abuse

Children have the right to protection from the use of drugs, and from being involved in their production or distribution.



Article 34: Sexual exploitation

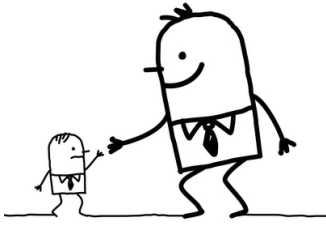
Children shall be protected from sexual exploitation and abuse, including prostitution and involvement in pornography.



Article 35: Sale, trafficking, and abduction

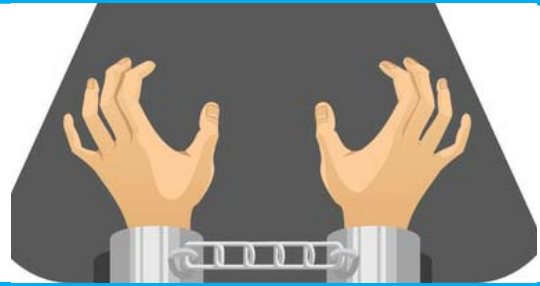
The Government shall take all appropriate measures to prevent the sale, trafficking and abduction of children.

CONVENTION CARDS



Article 36: Other forms of exploitation

The child has the right to protection from all forms of exploitation that can harm any aspects of the child's welfare not covered in articles 32, 33, 34 and 35.



Article 37: Torture and deprivation of liberty

No child shall be subjected to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty. Capital punishment and life imprisonment are prohibited for offences committed by persons below 18 years of age. A child who is detained has the right to legal assistance and contact with the family.



Article 38: Armed conflict

Children under age 15 shall have no direct part in armed conflict. Children who are affected by armed conflict are entitled to special protection and care.



Article 39: Rehabilitative care

Children who have experienced armed conflict, torture, neglect or exploitation shall receive appropriate treatment for their recovery and social reintegration.



Article 40: Administration of juvenile justice

Children in conflict with the law are entitled to legal guarantees and assistance, and treatment that promote their sense of dignity and aims to help them take a constructive role in society.



Article 41: Respect for higher standards

Wherever standards set in applicable national and international law relevant to the rights of the child are higher than those in this Convention, the higher standard shall always apply.

ACTIVITY 4 - WHAT'S FAIR?

Learning Objectives

- To clarify students' ideas about what is fair and what is unfair.
- To introduce the concepts of justice and injustice.

Materials

- *What's Fair?* cards (one set per pair; half of the pairs will get one set, the other half will get a different set)
- Scissors
- Glue
- Large sheet of paper (with columns for "Fair," "Unfair," and "Unsure") (one for each group of two pairs)

Steps

1. Put students in pairs and have them discuss situations in their lives in which something was unfair. Have them discuss why they believed it was unfair.
2. Discuss as a class what makes something fair as opposed to unfair.
3. Distribute a set of *What's Fair?* cards to each pair. Give half of the pairs one set, and the other half the second set.
4. Have each pair of students read through the *What's Fair?* cards together, and cut and sort them into three categories:
 - **FAIR** - Situations in which the individual was treated in a way that was consistent with his/her rights.
 - **UNFAIR** - Situations in which the individual's rights may have been violated.
 - **UNSURE** - Situations about which they are unsure.
5. Have each pair of students join another pair with a different set of *What's Fair?* cards. Ask them to reach a consensus on which category to place each situation under, and then have them glue the cards into the columns on the large piece of paper.

Discussion

1. What kinds of situations were described as fair? Why?
2. What kinds of situations were described as unfair? Why?
3. What needs to be done to make an unfair situation fair?
4. Which situations were difficult to categorize? Why?
5. What can students, teachers, governments and organizations do to ensure that young people are treated fairly?
6. What can you do when you see someone being treated unfairly?

WHAT'S FAIR? CARDS

Set A

Gina wants to play football with a group of boys at break time, but they won't let her play because she is a girl. Is this fair to Gina?

Katie just turned 16 and has received an allowance since her 10th birthday. When she was first given an allowance of \$15 per week, she and her parents decided she would put \$5 in a savings account to use for university, \$5 in a personal account to use as she pleases, and \$5 in a separate account to use for charity. Katie has spent the money from the personal account over the past 5 years and wants to use the money from her university account to buy car insurance for her first year of driving. Katie's parents tell her the money is for university and they will not allow her to use it for anything else. Is this fair to Katie?

Ali is ten years old and likes to go to school, but his family needs him to get a job and earn money because there are younger siblings to feed. Ali does not get to finish primary school. Is this fair to Ali?

Marta comes to school without having done her homework. The teacher makes her stay indoors at break time to do it. Is this fair to Marta?

Set B

Lee lives in a country that is at war. It is dangerous to travel. He cannot go to the health clinic to get his immunization shots. Is this fair to Lee?

Chris doesn't like school and he wants to leave. His parents say he can't leave because he is only ten years old. Is this fair to Chris?

Rose and Tahira have come to live in a new country and they are learning to speak a new language. Sometimes in school they speak their native language. The teacher makes them stop, and says that they must learn to speak like everyone else in the school. Is this fair to Rose and Tahira?

Sue lives in a country where it is common practice for females to eat last and eat the least amount of food. The women typically get what's leftover when the men are finished eating. Women do much of the heavy work but only eat about half as many calories as the men. Is this fair to Sue?

SECTION 2: APPLICATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD

Overall Objectives

- To examine how the Convention applies to Canadian legal cases.
- To discuss and understand policy issues associated with children's rights.

ACTIVITY 1 – THE SPANKING CASE

Learning Objectives

- To introduce students to how the Convention has been applied in Canadian domestic law.
- To develop an understanding of rights and responsibilities under the Convention.

Materials

- Copies of Case Summary 1: *The Canadian Foundation for Children, Youth and the Law v. The Attorney General of Canada* (one per student)
- Copies of *What's Your Opinion?* Activity (one per student)

Steps

1. Read the following statements aloud and have students form a value line in the classroom, arranging themselves from strongly agree to strongly disagree. Encourage students to discuss the statements with each other to determine where to stand in the continuum.
 - a. Parents should be allowed to use physical force to discipline their children.
 - b. Teachers should be allowed to use physical force to discipline or restrain students.
2. Review Case Summary 1: *The Canadian Foundation for Children, Youth and the Law v. The Attorney General of Canada* by asking students to volunteer to read aloud. After each paragraph, stop to check for understanding and clarify any points.
3. Discuss the following issue with students: Children are the only group in society that can be assaulted by a parent or teacher in the name of discipline. (Assault is not permitted for prisoners, detainees, etc.) Is it acceptable that section 43 creates a defence for the assault of children?
4. Review *The Relevant Law*. This case includes law from the *Criminal Code of Canada*, the *Canadian Charter of Rights and Freedoms*, and the UN Convention on the Rights of the Child. Explain why each is important, different, and how they all work together in this case.
5. Divide the class into groups. (Ideally, divide students based on their views for or against the repeal of section 43.) Ask students to read *The Arguments in Court* for their respective sides and then present them to the class. Have students review the Convention in their groups and decide which articles of the Convention are relevant to this case. This is a good opportunity for students to take part in a brief and informal discussion/debate on the issue.
6. Ask students to read *The Final Judgment*. Instruct students not to look at this section until they have expressed their own opinions and speculated about the outcome of the case. Discuss the judgment as a class.
7. Have students read the first exercise in the *What's Your Opinion?* Activity and write a brief letter to the editor expressing their opinions. For the second exercise, allow students to discuss the question before answering in the space provided.

ACTIVITY 1 – THE SPANKING CASE

Discussion

1. What is “reasonable force under the circumstances”
 - b. in families?
 - c. in the classroom?
2. Do you agree with the Supreme Court of Canada’s guidelines? Why or why not? What changes to these guidelines would you suggest?
3. Why is it significant that the Convention was included in this case in addition to the *Charter*?
4. Why is this case important for children’s rights?
5. What are some current examples in your everyday life where you could see the Convention protecting your rights? For example, children have the right to peaceful assembly, so why are kids kicked out of malls or parks for “causing trouble?” Think of some more examples based on the Convention.
6. How do we listen to and find out about children in Canada whose rights aren’t protected?
7. By listening and working together with children and families whose rights are not protected we can all make a difference. However, instead of always speaking for children whose right aren’t protected, how do we help them to speak for themselves and fight for their own rights?



CASE SUMMARY 1

The Canadian Foundation for Children, Youth and the Law v. The Attorney General of Canada

Facts

The Canadian Foundation for Children, Youth and the Law (CFCYL) is a group dedicated to the protection of children's rights. In November 1998, the CFCYL applied to the court for a declaration that section 43 of the *Criminal Code of Canada* is invalid since it legalizes the use of corporal punishment on children for the purpose of correction.

WHAT IS A DECLARATION?

When the court declares that a law or piece of legislation violates the *Charter*, the government must correct the problem.

The basis for the challenge was that s. 43 was unconstitutional and violated many sections of the *Canadian Charter of Rights and Freedoms*. The challenge also relied on Canada's commitment to comply with the UN Convention on the Rights of the Child. They also claimed that the law violated the UN Convention on the Rights of the Child, which attempts to establish an international standard of human rights for children all around the world.

Aside from the applicant (CFCYL) and the respondent (Attorney General of Canada), there were also a number of groups that felt they had an interest in the outcome of this challenge. These groups applied to the court for intervener status so that they too could participate in this case. Status was not granted to all applicants. The only group granted intervener status in support of this challenge was the Ontario Association of Children's Aid Societies. Parties opposed to this challenge that were granted intervener status were the Canadian Teachers' Federation and a group of organizations that joined forces to form the Coalition for Family Autonomy.

Trial Decision

This application for a declaration began in the Ontario Court (General Division), now the Ontario Superior Court of Justice. Mr. Justice McCombs heard the application of the CFCYL from December 6-10, 1999. Justice McCombs ruled that section 43 was consistent with the *Charter* and that it did not violate Canada's obligations under the UN Convention on the Rights of the Child. He dismissed the application. However, he suggested that federal Parliament should examine the use of reasonable force, as set out in section 43, and come up with more clearly defined parameters to guide teachers, parents and caregivers.

Court of Appeal for Ontario

In January 2001, the CFCYL appealed the decision to the Court of Appeal for Ontario. The court upheld the previous decision, stating the purpose of section 43 was to allow parents and teachers to "apply strictly limited corrective force to children without criminal sanctions so that they can carry out their important responsibilities to train and nurture children without the harm that such sanctions would bring to them, to their tasks and to the families concerned." The appeal was dismissed.

Supreme Court of Canada

In March 2002, the CFCYL applied for leave to appeal to the Supreme Court of Canada (SCC). The SCC usually hears cases that are of national significance, on appeal from a provincial appeal court. Often the cases deal with constitutional issues. CFCYL's argument was that the Court of Appeal for Ontario made an error in law and did not give adequate enough consideration to the expert evidence before them and, as the matter was one of national significance, permission to appeal should be granted. The SCC announced it would hear the appeal, and granted intervener status to those groups that had participated in the two previous hearings in the lower courts, as well as to two other organizations that applied for status, the Child Welfare League of Canada and the Quebec Human Rights Commission.

The Issue

Is it acceptable that section 43 creates a defence for the assault of children?

The Relevant Law

CRIMINAL CODE OF CANADA

43. Every school teacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The principles of the Convention that are most relevant to this case are:

- every child has the right to have her/his basic needs fulfilled
- every child has the right to express his/her opinions and be respected
- children have the right to be protected from abuse and exploitation

The Arguments in Court

CFCYL and Supporting Interveners:

- Section 43 creates an environment where violence towards children is accepted as a matter of discipline and has allowed people to be found innocent even after hitting kids with belts, paddles, sticks and other objects.
- Criminal law plays a big role in setting acceptable standards of behaviour in society. Allowing section 43 to stand sends a message that it is OK to hit a child as long as it is “reasonable” and “for correction.”
- Children are being discriminated against because of their age and have suffered serious harm at the hands of the people who are supposed to protect and nurture them.

Attorney General and Other Opposing Interveners:

- Approximately 75% of parents in Canada use physical discipline with their children. Eliminating section 43 won't change attitudes regarding physical punishment.
- Parents need to use physical force sometimes. Eliminating section 43 would result in parents being prosecuted for removing a screaming child from the mall or trying to put an uncooperative child in a car seat.
- Physical force is sometimes needed to maintain order in schools; for example, removing a child from a classroom, leading a student to the principal's office, getting a child's attention, and guiding a child to line up. These behaviours would be considered assaults if not for section 43.



FOLD PAGE HERE AND DON'T READ *THE FINAL JUDGMENT* UNTIL THE ARGUMENTS HAVE BEEN PRESENTED



The Final Judgment

On January 30, 2004, the SCC ruled that section 43 was constitutional, upholding the previous decisions of the lower courts. The majority in the SCC (six judges to three) ruled that section 43 did not violate children's *Charter* rights. However, they did establish some legal guidelines to use when determining how much force would be considered “reasonable under the circumstances.” The SCC held:

- that spanking by parents is only acceptable for children aged 2-12 years;
- that the use of objects such as belts or hitting on the head is not permissible;
- that no child should be hit in anger or out of frustration.

The SCC also added that teachers are not allowed to hit students, but that limited force is allowed in order to restrain students during a violent outburst.

WHAT'S YOUR OPINION?

Exercise One: People have very strong feelings and opinions about this issue. Assume that the case was just resolved and has been on the news and in the newspapers every day. On a separate sheet of paper, write a brief letter to the editor of your local paper saying why you agree or disagree with the court's decision.

If you agree with section 43, explain why and use one example to support your position on this issue. Also, include any other guidelines or limitations you would include to protect children.

If you disagree with section 43, explain why and use one example to support your position on this issue. Also, include any ideas or ways that parents and teachers would control unruly children.

Exercise Two: Section 43, also known as the defence of reasonable correction, first appeared in the *Criminal Code of Canada* in 1892. Since that time it has only been amended once, removing the master and apprentice relationship from the wording. Is it acceptable for a law to go virtually unchanged for well over a century? What can be done to make sure that our laws are keeping up with society's changing values and beliefs, and who would be responsible for such an overwhelming task as updating laws?

ACTIVITY 2 – MEDICAL TREATMENT AND MINORS

Learning Objectives

- To encourage students to analyze how the Convention would be applied to a legal case

Materials

- Copies of Case Summary 2: *A.C. v. Manitoba* (one per student)
- Copies of the Convention (Appendix A)

Steps

1. Ask students at what age they think that minors should be able to make the following decisions:
 - to become a vegetarian
 - to get a tattoo or piercing
 - to have plastic surgery

Ask students to identify what factors they considered in making their age assessments.
2. Review article 3 of the Convention and discuss the concept of “best interests of the child.” Discuss the importance of having parents make decisions that advance the well-being of their children.
3. Review Case Summary 2: *A.C. v. Manitoba* by asking students to volunteer to read aloud. After each paragraph, stop to check for understanding and clarify any points.
4. Discuss the following questions with students:
 - a. Why do you think the courts are concerned with children making decisions independent of parental influence? What potential consequences do you foresee?
 - b. Do you agree with the decision of the majority, or the dissenting opinion of Justice Binnie?
 - c. Do you think the government should decide what is in the best interests of the child? If not, who should?
 - d. Should the government be able to override parental decisions regarding the health of their child? Does your answer change depending on the age of the patient?
 - e. How do you think the best interests of the child should be determined?
 - f. Do you think 16 is the right age for self-determination? When do people display maturity? When should they have the autonomy to make decisions about their medical health? Should the age for self-determination be lower or higher? Explain why.
5. Explain to students that even though this particular case does not involve the Convention, it raises many important children’s right issues, and relates to many articles in the Convention. Have students work in pairs or small groups to identify which articles of the Convention could apply to this case. Take up their answers as a class, and discuss any discrepancies.
6. In small groups, have students debate the following statement. They should incorporate the relevant sections of the Convention into their arguments. Have students switch groups and argue the opposite side.

Mature minors should have the ability to make their own health choices regardless of age.

ACTIVITY 2 – MEDICAL TREATMENT AND MINORS

Discussion

1. Who ultimately determined the best interests of the child in this case?
2. Is it fair to impose your idea of best interests even if the person in question doesn't believe it is in his/her best interest? When? Why or why not?
3. How can the government adopt more of the values of the Convention into Canadian law?

Extension

- Have students prepare a postcard containing a visual representation of the children's rights issues they learned about.



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CASE SUMMARY 2

A.C. v. Manitoba

Facts

A child in Manitoba, A.C., was admitted to hospital two months before her 15th birthday, suffering from gastrointestinal bleeding caused by Crohn's disease. The child, a devout Jehovah's Witness, had previously completed a medical directive containing written instructions not to be given blood transfusions under any circumstance, including potential medical emergencies. The child's doctor believed that the internal bleeding created an imminent and serious risk to her health and potentially her life. The child, however, refused to consent to receiving blood despite the professional medical opinion of her doctor because of her religious beliefs. The majority of Jehovah's Witnesses believe that the Bible prohibits the ingestion of blood, including blood transfusions in medical emergencies.

The Director of Child and Family Services apprehended A.C. as "a child in need of protection." As provided for under subsections 25(8) and (9) of the Manitoba Child and Family Services Act (CFSA), the Director sought a treatment order from the court to authorize the medical treatment of the child. The CFSA gives the court this power when the court considers the treatment to be in the "best interests" of the child, and the child is still under the age of 16. The court ordered the child to receive the blood transfusions prescribed by her doctor; she survived and made a full recovery.

MANITOBA CHILD AND FAMILY SERVICES ACT

25(8) Subject to subsection (9), upon completion of a hearing, the court may authorize a medical examination or any medical or dental treatment that the court considers to be in the best interests of the child.

25(9) The court shall not make an order under subsection (8) with respect to a child who is 16 years of age or older without the child's consent unless the court is satisfied that the child is unable

(a) To understand the information that is relevant to making a decision to consent or not consent to the medical examination or the medical or dental treatment; or

(b) To appreciate the reasonably foreseeable consequences of making a decision to consent or not consent to the medical examination or the medical or dental treatment.

The CFSA presumes that the "best interests" of a child over 16 years of age will be most effectively promoted by allowing the child's views to be determinative, unless the child does not understand or appreciate the consequences. When the child is under 16, the court can authorize medical treatment through an interpretation of what is in the child's "best interests," with the child's views not being considered as the final decision.

The child and her parents appealed the court order for treatment arguing that it was unconstitutional because it unjustifiably infringed the child's rights under sections 2(a), 7, and 15(1) of the Charter. Unsuccessful at the provincial level, the case was brought before the Supreme Court of Canada (SCC)

The Decision

The SCC dismissed the appeal by a majority of 6 to 1, and declared subsections 25(8) and (9) of the CFSA constitutional. The majority held that when the “best interests” standard is properly interpreted, the legislative scheme does not infringe on sections 7, 15 or 2(a) of the Charter because it is neither arbitrary, discriminatory, nor infringes on religious freedom. When a child’s “best interests” are interpreted in a way that sufficiently respects their capacity for mature and independent judgment in a medical decision-making context, the legislation remains constitutional.

Under section 7 of the Charter, the majority held that, while it may be arbitrary to assume that children under the age of 16 do not have the ability to make responsible medical treatment decisions, the assumption is not arbitrary because children are given the chance to establish a maturity level that facilitates making such important decisions. A young person is entitled to lead evidence of sufficient maturity to have her wishes respected. Chief Justice McLachlin added that such legislation successfully balances society’s interest in ensuring that children receive necessary medical care on the protection of their autonomy.

Accordingly, although section 25(9) identifies 16 years of age as the threshold for ensuring self-determination, it does not constitute age discrimination under section 15 of the Charter because the ability to make treatment decisions is “ultimately adjusted in accordance with maturity, not age.” Additionally, the law is aimed at protecting the interests of minors as a vulnerable group by utilizing a rational standard that affords the child a degree of input, which is not discriminatory by the very definition of section 15 of the Charter.

Finally, if the child is entitled to prove sufficient maturity, the Manitoba legislation cannot be seen to be violating his/her religious convictions under section 2(a). Consideration of a child’s “religious heritage” is one of the statutory factors to be considered in determining their “best interests” and therefore is not being unconstitutionally disregarded. Even if the child’s religious beliefs are considered to be infringed upon, section 1 of the Charter justifies the infringement “when the objective of ensuring the health and safety and of preserving the lives of vulnerable young people is pressing and substantial, and the means chosen—giving discretion to the court to order treatment after a consideration of the relevant circumstances—is a proportionate limit on the right.”

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

2. Everyone has the following fundamental freedoms:

(a) Freedom of conscience and religion.

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

15. Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The Dissent

Justice Binnie wrote that the *Charter* is not just about protecting “the freedom to make the wise and correct choice,” but rather to protect the individual autonomy and religious freedom to refuse medical treatment regardless of what the judge thinks is in their best interest. He expressed the opinion that the government has not shown that the limitations on the rights of mature minors are proportionate to the alleged positive effects. Justice Binnie concluded that the best interests of the child should be determined by the child if she has the capacity to make the decision and understand the consequences

Contrary to the majority’s opinion, Justice Binnie found that the provisions violated subsections 2(a) and 7 of the Charter. The presumption that a child under the age of 16 lacks capacity arbitrarily denies mature minors the same rights as children over the age of 16. It limits their religious freedoms and infringes on the life, liberty and security of the person in an arbitrary manner that is not proportionate to the positive effects the laws have on immature minors, which he argues are none. The benefits of ensuring judicial control over medical treatment for “immature” minor is not advanced by overriding the Charter rights of “mature” minors under 16 years old who are not in need of judicial control.



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APPENDIX A

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD IN PLAIN LANGUAGE

Article 1: **Definition of a child.** A child is recognized as a person under 18, unless national laws recognize the age of majority earlier.

Article 2: **Non-discrimination.** All rights apply to all children, and children shall be protected from all forms of discrimination.

Article 3: **Best interests of the child.** All actions concerning the child shall take full account of his or her best interests. The States shall provide the child with adequate care when parents, or others charged that responsibility, fail to do so.

Article 4: **Implementation of rights.** The State must do all it can to implement the rights contained in the Convention.

Article 5: **Parental guidance and the child's evolving capacities.** The State must respect the rights and responsibilities of parents to provide guidance for the child that is appropriate to her or his evolving capacities.

Article 6: **Survival and development.** Every child has the right to life, and the State has an obligation to ensure the child's survival and development.

Article 7: **Name and nationality.** Each child has the right to a name and nationality, to know his or her parents and be cared for by them.

Article 8: **Preservation of identity.** The State has an obligation to protect, and if necessary, to re-establish the child's identity. This includes name, nationality and family ties.

Article 9: **Separation from parents.** The child has a right to live with his or her parents unless this is not in the child's best interest. The child has the right to maintain contact with both parents if separated from one or both.

Article 10: **Family reunification.** Children and their parents have the right to leave any country or enter their own to be reunited, and maintain the parent-child relationship.

Article 11: **Illicit transfer and non-return.** The State has an obligation to prevent and remedy the kidnapping or holding of children abroad by a parent or third party.

Article 12: **The child's opinion.** Children have the right to express their opinions freely, and have their opinions taken into account in matters that affect them.

Article 13: **Freedom of expression.** Children have the right to express their views, obtain information, and make ideas or information known, regardless of frontiers.

Article 14: **Freedom of thought, conscience and religion.** Children have the right to freedom of thought, conscience and religion, subject to appropriate parental guidance.

Article 15: **Freedom of association.** Children have a right to meet with others, and to join or form associations.

Article 16: **Protection of privacy.** Children have the right to protection from interference with privacy, family, home and correspondence, and from attacks on their character or reputation.

Article 17: **Access to appropriate information.** Children shall have access to information from national and international sources. The media shall encourage materials that are beneficial, and discourage those which are harmful to children.

Article 18: **Parental responsibilities.** Parents have joint responsibility for raising the child, and the State shall support them in this.

Article 19: **Protection from abuse and neglect.** Children shall be protected from abuse and neglect. States shall provide programs for the prevention of abuse and treatment of those who have suffered abuse.

Article 20: **Protection of a child without family.** Children without a family are entitled to special protection, and appropriate alternative family or institutional care, with regard for the child's cultural background.

Article 21: **Adoption.** Where adoption is allowed, it shall be carried out in the best interests of the child, under the supervision of competent authorities, with safeguards for the child.

Article 22: **Refugee children.** Children who are refugees, or seeking refugee status, are entitled to special protection.

Article 23: **Disabled children.** Disabled children have the right to special care, education and training that will help them to enjoy a full and decent life with the greatest degree of self-reliance and social integration possible.

Article 24: **Health and health services.** Children have the right to the highest possible standard of health and access to health and medical services.

Article 25: **Periodic review of placement.** A child who is placed by the State for reasons of care, protection or treatment of his or her physical or mental health is entitled to have that placement evaluated regularly.

Article 26: **Social security.** Children have the right to benefit from social security including social insurance.

Article 27: **Standard of living.** Children have the right to a standard of living adequate for their physical, mental, spiritual, moral and social development. Parents have the primary responsibility to ensure that the child has an adequate standard of living. The State's duty is to ensure that this responsibility is fulfilled.

Article 28: **Education.** Children have the right to education. Primary education should be free and compulsory. Secondary education should be accessible to every child. Higher education should be available to all on the basis of capacity. School discipline shall be consistent with the child's rights and dignity.

Article 29: **Aims of education.** Education should develop the child's personality, talents, mental and physical abilities. Children should be prepared for active participation in a free society, and learn to respect their own culture and that of others.

Article 30: **Children of minorities or indigenous populations.** Children have a right, if members of a minority group, to practice their own culture, religion and language.

Article 31: **Leisure, recreation and cultural activities.** Children have the right to rest, leisure, play and participation in cultural and artistic activities.

Article 32: **Child labour.** Children have the right to be protected from economic exploitation, from having to participate in work that threatens their health, education or development. The State shall set minimum ages for employment and regulate working conditions.

Article 33: **Drug abuse.** Children have the right to protection from the use of drugs, and from being involved in their production or distribution.

Article 34: **Sexual exploitation.** Children shall be protected from sexual exploitation and abuse, including prostitution and involvement in pornography.

Article 35: **Sale, trafficking and abduction.** The State shall take all appropriate measures to prevent the sale, trafficking and abduction of children.

Article 36: **Other forms of exploitation.** The child has the right to protection from all forms of exploitation prejudicial to any aspects of the child's welfare not covered in articles 32, 33, 34 and 35.

Article 37: **Torture and deprivation of liberty.** No child shall be subjected to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty. Capital punishment and life imprisonment are prohibited for offences committed by persons below 18 years of age. A child who is detained has the right to legal assistance and contact with the family.

Article 38: **Armed conflict.** Children under age 15 shall have no direct part in armed conflict. Children who are affected by armed conflict are entitled to special protection and care.

Article 39: **Rehabilitative care.** Children who have experienced armed conflict, torture, neglect or exploitation shall receive appropriate treatment for their recovery and social reintegration.

Article 40: **Administration of juvenile justice.** Children in conflict with the law are entitled to legal guarantees and assistance, and treatment that promote their sense of dignity and aims to help them take a constructive role in society.

Article 41: **Respect for higher standards.** Wherever standards set in applicable national and international law relevant to the rights of the child are higher than those in this Convention, the higher standard shall always apply.

Articles 42-54: **Implementation and entry into force.**

APPENDIX B

UNDERSTANDING CHILDREN'S RIGHTS

HISTORY OF THE CONVENTION

Children have rights, as do all human beings. The rights of all humans are enshrined in the Universal Declaration of Human Rights (UDHR) which was adopted by the United Nations (UN) in 1948. This international treaty outlines the civil, economic, cultural and social rights that apply to individuals worldwide regardless of their age, race, ethnicity, nationality or any other distinction.

In 1979, world leaders decided that children needed a special convention that would recognize that they have rights and require specific care and protection that adults do not. This convention, which came into effect in 1989, became known as the United Nations Convention on the Rights of the Child (the Convention).

Drafting of the Convention began in March 1978 and took 11 years to complete. The Convention was adopted by the UN General Assembly in November 1989. Canada played an important role in the process, facilitating communication between over 40 countries as well as co-chairing the World Summit on Children at the UN in 1990 to encourage ratification of the Convention. The Convention is the most ratified UN human rights treaty, as there are only two countries which have not ratified the Convention: the United States of America and Somalia. Canada signed the treaty with support from all provinces and territories on May 28, 1990 and ratified the treaty on December 13, 1991.

PURPOSE OF THE CONVENTION

The Convention is a treaty which outlines the basic human rights to which every child is entitled. These rights include the right to survival, the right to development of their full physical and mental potential, the right to protection from influences that are harmful to their development and the right to participation in family, cultural and social life, among others.

The 54 articles of the Convention are based upon four guiding principles which are themselves articles of the Convention. They reflect the explicit values of the Convention and provide the means by which all other articles are interpreted. Adherence to these guiding principles is necessary for the full implementation of the Convention.

GUIDING PRINCIPLES

There are four guiding principles to the Convention.

1. **Non-discrimination (Article 2):** The Convention applies to all children, whatever their race, religion or abilities; whatever they think or say, whatever type of family they come from. It does not matter where children live, what language they speak, what their parents do, whether they are boys or girls, what their culture is, whether they have a disability or whether they are rich or poor. No child should be treated unfairly on any basis.
2. **Best interests of the child (Article 3):** The best interests of children must be the primary concern in making decisions that may affect children. When adults make decisions, they should think about how their decisions will affect children and do what is best for them.

3. **Right to life, survival and development (Article 6):** Children have the right to live. Governments should ensure that children survive and develop fully.
4. **Respect for the views of the child (Article 12):** When adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account. The Convention requires that adults listen to the opinions of children and involve them in decision-making, but it does not give children authority over adults. Article 12 does not interfere with the right and responsibility of parents to express their views on matters affecting their children. Moreover, the Convention recognizes that the level of a child's participation in decisions must be appropriate to the child's level of maturity.

RATIFICATION AND ENFORCEMENT OF THE CONVENTION

Signing a treaty indicates a state's (i.e., a county's) intention to incorporate the treaty into domestic law, while ratification of a treaty is a declaration that the state's laws reflect the rights outlined in the treaty. By agreeing to (or ratifying) the obligations under the Convention, governments have committed to being accountable to the international community for protecting and ensuring the rights of all children. Under the Convention, the Government of Canada is a 'duty-bearer' with a primary responsibility to fulfill and protect the rights of all children in Canada. However, the responsibility to ensure children's rights is not the government's alone. Duty-bearers include all levels of government, and both public and private institutions such as schools and hospitals. As well, the Convention recognizes the primary role of families to nurture and guide their children. Under the Convention, children are 'rights-holders'. As in the diagram below, the rights-holders claim their rights from the duty-bearers and, in turn, the duty-bearers have the responsibility to ensure those rights are protected and fulfilled.



To ratify the Convention in Canada, the government reviewed all provincial and federal laws and concluded domestic laws provide for the rights outlined in the Convention; there was no legislation introducing the Convention into domestic law. Canada's Constitution provides that implementation of international treaties where provincial laws and policies are affected is the responsibility of the federal, provincial and territorial governments.

Ensuring the legal protection of children's rights is an ongoing obligation. Governments are expected to develop new laws, as well as all types of public policy, administrative decisions, services and programs to uphold children's rights. As time goes on, standards become clearer about what it means to provide for and protect children's rights. Governments are expected to constantly revisit existing legislation and develop new legislation to incorporate the highest possible standards of treatment for children

The Convention is monitored and assessed by the UN Committee on the Rights of the Child (the Committee). Canada is responsible for submitting a report to the Committee every five years which is prepared and filed by the Continuing Committee of Officials on Human Rights, formed within the Human Rights Program of the Department of Canadian Heritage. The Committee studies the reports, draws conclusions and makes recommendations for improvement. Governments, however, are not legally obliged to follow all recommendations.

The courts also have a role to play in advancing children's rights. According to Canada's Constitution, international law such as the Convention can be used by the courts and other decision-making bodies (such as tribunals) as an aid in interpreting legislation that affects human rights in Canada.

Some of the challenges to more fully realizing children's Convention rights in Canada are related to our legal system. Canada has a "dualist" rather than a "monist" legal system which means that international conventions do not automatically become part of domestic law when they are ratified. We must introduce a new law or laws, and make changes to existing laws, to give legal force to the rights—to bring legal charges when they are violated and to make claims in the courts and human rights commissions for them. Canada has not done so sufficiently in the case of the Convention on the Rights of the Child.

As well, because Canada is a common-law country, the courts have a strong influence on interpreting the rights in the law. Courts mainly use the Constitution and national and provincial laws to make rulings. They rarely consider the Convention as well, and when they do, their interpretations are not always rights-consistent. Furthermore, Canada has a "child-invisible constitution."^[i] There is no specific mention of children and their unique rights in the *Canadian Charter of Rights and Freedoms*.



APPENDIX C

Article—A section of a treaty, contract or statute.

Bilateral treaty—A treaty agreement made between two countries.

Ceasefire—A temporary stoppage of a war in which each side agrees with the other to suspend aggressive actions.

Civil law—The body of law that deals with disputes between private parties, such as individuals and corporations. Civil law also refers to the legal system in Quebec.

Climate change—Small but steady changes in average temperatures around the world.

Common law—A system of law that originated in England and is based on past court decisions.

Commonwealth—An association of countries that were formerly colonies of the British Empire.

Constitution—The supreme law of a state that sets out how the state will be organized, the powers and authority of the government and the basic principles of society. The constitution will usually “trump” other national or local laws if there is a conflict between them.

Covenants and Conventions—Both terms refer to binding agreements, or treaties, made under international law.

Crimes against humanity—A legal term defined in the Rome Statute⁷⁶ as widespread or systematic offences that constitute a serious attack on human dignity or grave humiliation or degradation of one or more human beings.

Criminal law—The body of law that declares acts to be crimes and prescribes punishments for those crimes.

Custom—Law that becomes binding on states although it is not written, but rather adhered to out of custom. Customary international law is created when countries repeatedly behave a certain way because they believe they are legally required to do so. It is one of the main sources of international law.

Declaration—A document stating agreed upon standards, but is not legally binding.

Democracy—A system of government in which people freely choose who will govern them through elections. It also refers to the principles and ideals of such a government, such as freedom of speech and the rule of law.

Discrimination—The unjust or prejudicial treatment of different categories of people, especially on the grounds of race or gender.

Domestic law—The internal or national laws and legal system of a country, including laws made at the state, provincial, regional or local level. Domestic law is also referred to as “national law.”

Due process—The principle that the government must respect all legal rights that are owed to a person according to the law. For example, one of the rights protected under the doctrine of due process is the right to an impartial judge.

Ethnic cleansing—The elimination of an unwanted ethnic group or groups from a society, by genocide or forced relocation.

Extractive Industries—A term that describes industries or companies engaged in activities that have significant environmental impacts, such as oil, gas, mining and forestry.

Formal equality—To treat all people the same, regardless of their gender, race, religion or other circumstances or to treat all states the same, regardless of their economic, political or other status.

Genocide—The mass killing of human beings, especially a targeted group, such as people of a particular ethnicity, race, religion or nationality.

Globalization—The process by which regions and countries of the world are becoming interconnected.

Global Warming—The gradual increase in the temperature of the earth's atmosphere, believed to be caused by increased levels of greenhouse gasses such as carbon dioxide, methane and nitrous dioxide.

Humanitarian law—Defines the conduct and obligations of nations engaged in warfare, both in terms of how states act toward one another and how they act in relation to civilians and those not involved in the fighting. It is also known as the "laws of war."

Human rights—The rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity. Human rights are universal, inalienable and indivisible. The idea of human rights as inalienable means that it is impossible for anyone to give up their human rights, even if he or she wanted to, since every person is granted those rights by virtue of being human. It also means that no person or group of persons can deprive another individual of her or his human rights. The indivisibility of human rights means that none of the rights considered to be fundamental human rights are more important than any other; they are inter-related.

Human Security—An emerging way of thinking about security (the state of being free from danger or threat) that places human beings—rather than states—as the focal point of security considerations. Human security has been described as the freedom from fear and want.*

International governance organizations—Organizations that are set up by a legal agreement or treaty between two or more states to attempt to solve problems that affect multiple states and designate regulations intended for a global scale.

International law—A set of rules and customs that govern the relationships between countries, known as states.

Jurisdiction—The power or authority to do something, such as make laws.

Legally binding—Means that certain actions are now either required or prohibited by an agreement and violating the terms of the agreement can have legal repercussions enforceable by law.

Mandate—A direction or authorization to act in a particular way on an issue. In the context of the UN and other international organizations, it refers to the document that describes how a particular role is to be fulfilled.

Mass atrocities—A legal term that includes acts that are considered to be crimes against humanity, war crimes and ethnic cleansing.

Member State—A state that is a member of the United Nations.

Multilateral treaty—A treaty agreement made between three or more countries.

Negotiation—Discussion intended to produce a compromise or mutually acceptable agreement.

Non-governmental organization (NGO)—Organizations set up by individuals or groups that advocate for social justice and act as an intermediary between state- dominated international legal systems and individuals. NGOs work to influence government policies at national and international levels.

Optional Protocol—An optional protocol to a treaty is a multilateral agreement that governments can ratify or agree to, intended to further a specific purpose of the treaty or assist in the implementation of its provisions.

Party to a treaty—A country that has signed onto and ratified a treaty and agrees to be legally bound by its terms.

Peacebuilding—The process and activities involved in resolving violent conflict and establishing a sustainable peace.

Peacekeeping—An activity that aims to prevent further conflict between parties. Peacekeepers are usually deployed to monitor the implementation of a ceasefire and oversee the resolution of conflict.

Peacemaking—Peaceful efforts to stop a conflict or prevent its spread by bringing hostile parties to an agreement. These efforts usually involve the use of diplomatic techniques, such as negotiation.

Ratification—The process by which a state officially consents to being legally bound by a treaty.

Repatriation—To return someone to their country of citizenship.

Resolution—The formal decision of an organization.

Responsibility to Protect (R2P)—The international human rights standard aimed at preventing and stopping mass atrocities. R2P empowers the international community to intervene when a country fails to protect its population from serious harm.

Right—A moral or legal entitlement to have or do something.

Rule of Law—A fundamental legal principle that states that the law applies equally to all persons and that no one, neither an individual nor a government, is above the law.

UN Security Council Resolution—A formal expression of an opinion or intention adopted by the UN Security Council. For example, UN Security Council Resolution 1325 provides for the increased participation of women at all levels of decision-making in matters of peace and security.

Social justice—Refers to the idea of creating a society that is based on principles of equality, democracy and solidarity; that understands and values human rights and recognizes the dignity of every human being.

Sovereignty—The exclusive power and jurisdiction of a state to govern its territory.

State—A country or nation considered an organized political community under one government.

States party—A country that is a party to a treaty.

Treaty—An agreement between states that sets out their mutual legal rights and obligations. Treaties are one of the main sources of international law.

Tribunal—A specialized court set up to hear specific kinds of disputes. For example, the International Tribunal for the former Yugoslavia only hears cases related to the mass atrocities taking place in the former Yugoslavia in the 1990s.

United Nations Charter—The treaty that establishes the United Nations and describes its principles, purposes and structure.

Veto—The power of the permanent members of the UN Security Council to prevent the adoption of a draft Security Council resolution regardless of whether the draft has received the required number of affirmative votes. It is also called the “great power unanimity.”

War crimes—Serious violations of humanitarian law during times of war. War crimes may include the willful killing, torture or inhuman treatment of persons or the unjustified destruction of property.



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SECTION 3: INTERNATIONAL CRIMINAL LAW MOCK HEARING

Overall Objectives

- To provide students with a participatory and experiential learning opportunity.
- To enhance students' understanding of the International Criminal Court (ICC), procedures related to international criminal law and issues involving child soldiers.
- To enhance students' critical-thinking and advocacy skills.

BACKGROUND FOR TEACHERS: RUNNING A MOCK HEARING IN YOUR CLASS

This section provides a brief introduction to mock hearings. It is recommended that teachers refer to OJEN's *Mock Hearing Demonstration Video* and its companion guide, *Making the Case: A Mock Hearing Toolkit*, for additional information on how to run a mock hearing with students. To request free copies, send an email with your mailing address to info@ojen.ca.

WHAT IS A MOCK HEARING?

A student mock hearing is a simulation of a real court or administrative hearing, with students playing the roles of lawyers, witnesses, the accused, court staff, and in some cases, the judge. During mock hearings, students re-enact every step of a real hearing. Depending on the type of hearing this may include: opening the case, examining witnesses, presenting legal arguments, making and responding to objections, making sentencing submissions, mediating, negotiating with opposing counsel and receiving a judgment.

WHY HOLD A MOCK HEARING FOR STUDENTS?

Mock hearings are a great way to bring the law to life for students. Participants develop their advocacy, public speaking, organization, research and reasoning skills. They work as members of a team, developing a theory of a case, and making sure all elements of their case are presented harmoniously. Individually, either as a lawyer presenting arguments or leading evidence, or as a witness giving evidence, they develop personal confidence and self-esteem. And, student participants learn to think on their feet!

Through mock hearings, students experience many different aspects of the justice system and consider different legal and procedural issues. Mock hearings enable students to be part of the adjudication process and learn the fundamentals of courtroom etiquette, the order of a trial and the rules of evidence.

When justice sector representatives get involved, students also benefit from positive interactions with members of the legal profession. The opportunity to discuss different aspects of the judicial process deepens students' understanding and provides positive role modeling and career information. Active engagement with the justice system benefits students' academic progress and establishes a foundation for a lifelong understanding of their role in our democracy.

WHERE DO MOCK HEARINGS TAKE PLACE?

Mock hearings can take place in real courtrooms or in classrooms. Defence counsel, crown attorneys, court clerks and police constables often coach students on their particular roles. Judges and justices of the peace enjoy presiding over mock hearings and offering feedback to students. If you would like to be put in touch with justice sector volunteers in your local region, contact OJEN at info@ojen.ca.

WHO CAN PARTICIPATE IN A MOCK HEARING?

Any size group, including individual school classes, schools, teachers, school boards, community agencies, or committees of justice sector representatives can develop and participate in mock hearings

This mock hearing scenario was created for ten lawyers and five witnesses. Other roles include judges, the court clerk, court services officer, court artist and members of the press. In some cases, real judges or lawyers can play the role of the presiding judge, and students can take on the roles of the additional two judges (or jury for a modified version). When working with a large group, two or more juries can deliberate and compare their reasoning and verdicts. The flexibility of roles allows the mock hearing to involve the whole class, or be an enrichment activity for a small group.

RUNNING A MOCK HEARING IN YOUR CLASS

Materials

- International Criminal Law Mock Trial Scenario: *The Prosecutor v. Mabo*
- International Criminal Law Mock Trial Role Preparation Package
- International Criminal Law Mock Trial Justice Sector Volunteer Package
- Students need the Scenario and Role Preparation packages. Justice sector volunteers/teachers/organizers need all three packages.

Steps

1. Review all mock hearing materials, as well as OJEN's *Mock Hearing Demonstration Video* and its companion guide, *Making the Case: A Mock Hearing Toolkit*, prior to distributing materials to students. (To request free copies of these resources, send an email with your mailing address to info@ojen.ca.)
2. Distribute and review the mock hearing scenario and role preparation package with students. Spend time discussing any difficult concepts, clarifying students' understanding of the scenario and procedure, and theorizing arguments for each side of the case. Have students select roles, or assign them.
3. Using the role preparation package, review the trial process with students. If time permits, you may want to show students video clips of high school students performing a criminal law mock trial from the *Mock Hearing Demonstration Video*. The video includes a full-length student mock hearing, as well as sections on how to prepare direct and cross examinations. If you have justice sector volunteers assisting, you may invite them in to coach students on the trial process.
4. Once students are familiar with the scenario and role preparation package, divide them by role and have students prepare their particular aspect of the case. You may want to invite justice sector volunteers to coach the student lawyers on developing their theories of the case. Students performing other roles may work individually, or in groups as needed.
5. Allow students one to three classes to prepare their roles and practice their individual parts. Prior to the final mock hearing, review courtroom etiquette (contained in the role preparation package) with students.
6. On the day of the trial, rearrange the classroom to look like a courtroom. Have students argue the case before the assigned judges. Judges should debrief the various issues in the case and provide a sentence, if necessary, at the end of the trial. Teachers can decide if they want to evaluate students on the basis of their performance and/or in conjunction with a written assignment. Certain roles will lend themselves better to each of these. For ideas of assessment options for the various roles, see the following section on *Assessment & Evaluation Strategies for Mock Hearings*

Discussion Questions after conducting the Trial:

1. Why do you believe Arthur Mabo was found guilty or not guilty? Did you have any doubts about his guilt? What were they?
2. Do you think that the child soldiers like Thomas Gaba and Anna Rutu should also be tried for the crimes they committed? Why or why not?
3. Do you think it is important for victims to be represented by a lawyer during a trial at the International Criminal Court? Why or why not?
4. Do you think children who join rebel armies willingly should be treated differently than children who are forced to join by being abducted?
5. Had you heard about child soldiers before this mock trial? If so, can you tell us about what you knew?
6. Which of the two international legal processes do you think is more effective at protecting children – the International Criminal Court or UN Sanctions under the Convention on the Rights of the Child?
7. Contrast the pros two international law approaches to protecting children – identify the advantages and disadvantages, as well as the differences of each.

ASSESSMENT AND EVALUATION STRATEGIES FOR MOCK HEARING

Mock hearings provide students with participatory and experiential learning opportunities. Preparation for mock hearings require students to work cooperatively in small groups and produce legal arguments, statements or lines of questioning, as well as conduct oral presentations or interview witnesses.

There are many possibilities for incorporating mock hearing activities into the curriculum and student evaluation. Mock hearings can be used to assess students' understanding, analysis and interpretation of course content and their ability to communicate this knowledge effectively. The following are some examples of curriculum expectations that can be addressed through mock hearings:

- understanding the meaning of texts
- using information and ideas from texts to support opinions
- demonstrating critical-thinking skills
- investigating historical topics and issues
- researching, recording and organizing information
- developing a clear focus for investigations by formulating and asking appropriate questions
- identifying different viewpoints and biases
- public speaking and effective communication
- expressing ideas, opinions and conclusions clearly and articulately
- working collaboratively to achieve group goals
- developing writing skills in argumentative or editorial styles.

Teachers can decide whether they would like to evaluate students on the basis of their performance as a group, or individually. Some teachers have required student teams to submit written summaries of their theory of the case prior to the trial. Individual students may also be required to submit drafts of their opening or closing statements, or questions for examinations of witnesses. On the day of the hearing, students may be assessed on the basis of their performance during the hearing itself. Some of the mock hearing roles lend themselves to written reflections on the course of the trial, or the experience of the student in the role of a juror or witness.

The following are some examples of assessment tools, including a marking scheme, performance sheet, evaluation rubric and performance-rating table that may be used when evaluating mock hearings.



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ASSESSMENT OPTIONS FOR A FULL-CLASS MOCK HEARING

One possible configuration of student roles to involve up to 30 students in a classroom-based mock hearing includes a written assignment appropriate to each role, and similar in length and scope to each of the other roles. Using this model, a teacher could involve a full class in the preparation, presentation and follow-up of a mock hearing.

Role	No. of Roles	Assignment
Lawyers for the Defense	4	Arguments and script for direct and cross-examination
Lawyers for the Prosecution / Victim	6	Arguments and script for direct and cross examination
Witness	3	Reflection on the reliability of recollections and the inclination to favour the desired result
Accused	1	Letter of apology or reflection on experience of a process that could result in incarceration
Victim	1	Victim impact statement or reflection on process that exposes personal information and situations
UN Observer	2+	Observe the trial and prepare a report for the UN High Commissions including recommendations for compliance with the Convention on the Rights of the Child
Court Clerk	1	Research the role of the clerk and the importance of control of exhibits and transcripts to appeals.
Press	2-6	Have one student prepare an article on the trial. Have other students prepare an editorial by assigning perspectives, such as a "law and order agenda" or a "victim's rights agenda" and have students prepare an editorial on the results of the trial.
Judge	1-3	A student, alone or in consultation with a judge or lawyer or other students, can preside over the hearing, decide on a verdict and then write a reflection on the decision making process.
	Total 27+	

MARKING SCHEME FOR JUDGES

Have a volunteer judge or lawyer use this marking scheme to provide feedback on student performance that can be used for assessment. Each of the four areas is worth 25 marks.

1. TRIAL PROCESS AND PROCEDURE

In this area, the judges will be considering the following:

- Did each team member/lawyer observe proper trial procedure (order of case, appropriate objections, appropriate responses to objections, court decorum, entering of exhibits, witnesses, etc.)?
- Did the team members, including witnesses, refrain from unfairly deviating from the scenario?
- Did the team members conduct themselves professionally and civilly, treating opposing counsel and witnesses respectfully? Did the team focus on presenting the case to the judge, rather than engaging in an argument with opposing counsel?

2. DEVELOPMENT AND PRESENTATION OF LEGAL ARGUMENT

In this area, the judges will be considering the following:

- Did the opening and closing statements set out the theory of the case?
- Did the direct examination utilize appropriate, effective, non-leading questions?
- Did the cross-examination questions bring out contradictions and/or weakness in the other case?
- Were the closing statements organized and well-reasoned, and did they summarize the important areas of the evidence and the team's case?

3. ORAL ADVOCACY

In this area, the judges will be considering the following:

- Did team members speak clearly and distinctly; could they be heard?
- Did team members keep their presentations within the prescribed time limits?
- Were the team members compelling in their arguments?
- How did students deal with objections or other unexpected developments in the trial?

4. WITNESS PERFORMANCE

In this area, the judges will be considering the following:

- Were the witnesses (including accused, police, etc.) convincing in their testimony, well-prepared for questions and did they answer the questions appropriately?

MOCK HEARING PERFORMANCE SUMMARY SHEET

Preparation and Research	4 (80-100% of the time)	3 (70-79% of the time)	2 (60-69% of the time)	1 (50-59% of the time)
Witness	Statements are fully developed; completely consistent with record, did not deviate from facts, responded well to questions posed to cross-examination and accurately performed.	Statements are fully developed, completely consistent with record and accurately performed.	Statements are undeveloped, inconsistent and inaccurate.	Statements are non-existent and are completely inconsistent (unprepared witness).
Lawyer (all)	Questions are relevant, logical, and clear; questions are properly formed and delivered and bring out important information for side.	Questions are relevant, logical, and clear; questions are properly formed and delivered; lawyer memorizes opening or closing statement.	Questions are irrelevant, illogical and unclear.	Does not have any questions; questions are irrelevant, illogical, unclear.
Lawyer (opening statement)	Provides a clear and concise description of his/her team's side of the case.	Provides a semi-clear and concise description of the case.	Although there is a description of the case, it is unclear.	There is no clear, concise description of the case.

Preparation and Research	4 (80-100% of the time)	3 (70-79% of the time)	2 (60-69% of the time)	1 (50-59% of the time)
Lawyer (direct examination)	Uses questions with straightforward answers; direct questions; brings out key facts of his/ her case.	Most of the questions are direct and straightforward; brings out key facts of case.	Half of the questions are direct and straightforward; brings out some of key facts of the case.	Very few of the questions are direct and straightforward; very few of the facts are brought out.
Lawyer (cross-examination)	Brings out contradictions or problems with testimony and weakens other side's case; uses properly phrased questions and exhibits clear understanding of trial procedures; all questions are leading.	Brings out some contradictions of testimony and does not really weaken the other side's case; most questions are clear and most exhibit a clear understanding of trial procedures; most questions are leading.	Brings out few contradictions of testimony and does not weaken the other side's case; some questions are not clear; shows some examples of trial procedures; some questions are leading.	Does not contradict or weaken other side's case; questions are completely unclear; questions are all direct.
Lawyer (closing statement)	Makes an organized and well-reasoned presentation summarizing the important points of the case.	Makes a semi-organized and reasoned presentation summarizing the important points of the case.	Presentation is unorganized and is not well-reasoned; the facts of their side are not really presented.	The presentation is completely unorganized and does not represent their side.
Voice	Easily understandable; consistent use of appropriate voice rate and speed; loud enough for everyone to hear; intonation (tone).	Understandable most of the time; appropriate voice rate in most of the performance; usually loud, has a decent tone.	Not easily understood; delivery needs work.	Is not understandable and does not have appropriate voice.
Eye Contact	Establishes appropriate eye contact for the situation and setting.	Establishes eye contact most of the time.	Very rarely establishes eye contact.	Does not establish eye contact.
Authenticity	Seems very real; excellent use of body and facial expressions; words and gestures match character; well adapted to setting; appropriate costume; did not unfairly deviate from the facts.	Believable character; adequate use of expressions; adapted to setting fairly well.	Needs to be more convincing; unbelievable character; inadequate expressions; has not adapted to setting.	Not in character; no expressions; not adapted to setting.

SAMPLE MOCK TRIAL PERFORMANCE RATING SHEET

In deciding which team has made the best presentation, the following criteria could be used to evaluate each team's performance. For each of the performance standards listed below, the judge rates each team on a scale of 1-5.

Performance Expectations	Crown	Defense
Defense team opening statement: the lawyers provided a clear and concise description of their team's side of the case.		
On direct examination , lawyers utilized questions that required straightforward answers and brought out key information for their side of the case.		
On cross-examination , lawyers were able to bring out contradictions in the testimony and weaken the other side's case.		
Throughout the questioning of witnesses , lawyers utilized properly phrased questions and exhibited a clear understanding of criminal trial procedures, rules of evidence and the applicable law.		
Closing statement: the lawyers made an organized and well-reasoned presentation summarizing the most important points of their team's side of case.		
Performance Standards WITNESSES	WITNESSES	
Witnesses/accused were believable in their characterizations, convincing in their testimony and did not unfairly deviate from the facts in the case.		
Witnesses/accused were well-prepared for answering the questions posed to them under direct examination.		
Witness/accused responded well to questions posed to them under cross-examination.		
OVERALL TEAM PERFORMANCE		
Team members were courteous, observed general courtroom decorum, spoke clearly and distinctly.		
Team members kept their presentations within the prescribed time limits, with all team members involved in the presentation of the case. Objections, if any, were timely and relevant.		
TOTAL SCORE:		

INTERNATIONAL CRIMINAL LAW MOCK TRIAL

THE PROSECUTOR V. MABO

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For each International Criminal Law Mock Trial, there are three packages:

- » International Criminal Law Mock Trial **Scenario**
- » International Criminal Law Mock Trial **Role Preparation Package**
- » International Criminal Law Mock Trial **Justice Sector Volunteer Package**

Students/youth need the scenario and role preparation packages.

Justice sector volunteers/teachers/organizers need all three packages.

INTERNATIONAL CRIMINAL LAW MOCK TRIAL

THE PROSECUTOR V. MABO

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THE PROSECUTOR V. MABO

» Recruitment and conscription of child soldiers

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- » **International Criminal Law Mock Trial Role Preparation Package**
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Students/youth need the scenario and role preparation packages.

Justice sector volunteers/teachers/organizers need all three packages.



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LIST OF PARTICIPANTS

1. **Arthur Mabo** (the accused)
2. **Thomas Gaba** (former combatant, witness for the accused)
3. **Anna Kabolo** (former child soldier, witness for the prosecutor)
4. **Patrick Bateman** (UN soldier, witness for the prosecutor)
5. **Alia Rutu** (parent of a deceased child soldier, victim, witness for the victim's lawyer)
6. **Prosecutors** (4)
7. **Defence Lawyers** (4)
8. **Victim's Lawyers** (2)
9. **Judges** (3) (The presiding judge could be played by a teacher, a lawyer, or a judge and two students could play the roles of the other two judges.)
10. **UN Observer** (2+) (observes the trial and makes recommendations to the UN High Commissioner on the country's compliance with the Convention on the Rights of the Child)
11. **Court Services Officer** (keeps order in the court) (optional)
12. **Registrar** (assists the judge) (optional)

WHAT HAPPENED?

The conflict in Shansau is an historic conflict in the northeastern part of the country involving two different ethnic groups, the Kani and the Lago. Tension and fighting between the groups have occurred for many years because of competition for land and power over the region's rich natural resources, and in particular the diamond mines. In 2002, the conflict intensified and the violence escalated when Philippe Troua staged a coup and overturned the government of Shansau. Once Philippe Troua took power and declared himself President of Shansau, he replaced all the ministers of the former government. All those named to power in his government identified themselves as Kani. The Kani were declared the dominant people of Shansau and land belonging to the Lago was taken away to be handed over to the Kani. As a result, many Lagos fled to the neighbouring country of Vilba as refugees. By 2005, a group of refugees had formed the Union of Shansau Patriots, and Arthur Mabo was allegedly its president and the commander-in-chief of its military wing, the Patriotic Forces for the Liberation of Shansau (PFLS). The Patriotic Forces for the Liberation of Shansau were a militia group (a rebel group) whose main goal was to establish dominance through violence against non-Lago people, especially against the Kani.

In 2006, the Patriotic Forces for the Liberation of Shansau returned to Shansau to establish control in the northeastern part of the country, and to reclaim their land, and more specifically, the diamond mines of the region. The conflict was violent and deadly. The PFLS were outnumbered by the Shansau army but sought to remain in control of the region at any cost. The conflict made commanders rich because of the control of mines, and therefore gave them a reason to keep fighting. They motivated their forces by promoting ethnic hatred of the Kani to continue the war.

As the number of rebels and available adults began to decrease, the PFLS resorted to enlisting children from nearby villages to increase their numbers. Children as young as 7 years of age were seen by villagers and UN soldiers carrying automatic weapons and wearing different assortments of military clothing. Rebel camps were teeming with children, both girls and boys ranging from 7 to 17 years of age. The older ones trained the younger ones in tactics of war and in weaponry. Children were seen on the front line of the continuing conflict. They were often the ones who were sent out first during an attack to enable older, more experienced soldiers to stay alive throughout the attack.

A UN peacekeeping mission was launched in early 2007 to help the Troua government. UN soldiers reported coming face-to-face with armed child soldiers. They also reported that villagers told them about rebel attacks on their villages during which children were taken away and made to commit atrocities against the villagers before being forced into trucks with the rebel leaders. These children were of Kani and Lago ethnicity—the rebels had taken them indiscriminately. Some children who escaped the rebel camps said that they were required to learn to operate automatic weapons and to use them during attacks on villages. The children who were not used as soldiers were used as cooks, porters or slaves. Some girls were given to rebel commanders as their “wives.” Child soldiers who behaved well and followed orders were treated well, and given food and shelter. Those who did not do what they were told were beaten and sometimes killed.

Although it has been reported that Arthur Mabo was rarely seen during these attacks, it is widely known that he remained in command of the rebels throughout the conflict.

In 2008, the UN mission arrested several militia leaders of the PFLS, including commander-in-chief, Arthur Mabo, following the issue of an arrest warrant for him and several others by the International Criminal Court prosecutor. Several other militia leaders of the PFLS are still at large today, including the second-in-command of the PFLS, Charles Yitu.

Arthur Mabo is charged under the Rome Statute on the International Criminal Court with committing three war crimes between June 2006 and April 2008:

1. Conscripting children under the age of 15 years into armed groups;
2. Enlisting children into armed groups, and
3. Using children to participate actively in armed conflict.

THE ACCUSED

ARTHUR MABO

Arthur Mabo grew up in a small village in the northeastern part of Shansau. At 16, he was awarded a position in the youth military training academy. He completed the program when he was 18 and returned to his village to help his mother as his father had recently been killed by a Kani police officer (the same

INTERNATIONAL CRIMINAL LAW MOCK TRIAL | THE PROSECUTOR V. MABO

officer became the general of Troua's army). He was 25 when he fled his village because of the persecution against people who identified themselves as Lago. He fled to neighbouring Vilba with his mother and two younger brothers.

Arthur was resentful that Troua's government and his supporters had robbed him and his family of their land in Shansau. This land was rich in minerals and he had planned to continue working and exploiting it to give his family a better life. Arthur also sought to get revenge for his father's murder. He, along with several other men, met regularly in their refugee camp to discuss the issue and ways to return home to Shansau.

Eventually, the men who met regularly founded the Union of Shansau Patriots. Arthur was given the position of commander-in-chief of the Patriotic Forces for the Liberation of Shansau because of his military training when he was a youth, and his desire to lead rebel troops back into Shansau to abolish Troua's government. Arthur took his position seriously and quickly assembled and trained his army of rebels, highly motivated young men who shared his goal of returning home to Shansau and giving back the land to the Lago minority.

In 2006, Arthur led his army back over the mountains separating Vilba from Shansau. All the rebels had a common goal, to rid their land of the Kani people. They were to start in the northeastern part of the country and move into the capital. The PFLS were largely outnumbered by Troua's government army, and many were killed. Arthur vowed not to stop the offensive at any cost until the PFLS toppled the Troua government. Arthur remained in charge of the PFLS until his arrest in 2008.

THE ACCUSED'S WITNESSES

THOMAS GABO

Thomas was a soldier in the PFLS for many years. He credits the PFLS and Arthur Mabo in particular, for helping his people to regain their dignity and learn to fight for their rights. He acknowledges that in times of war there are unpleasant acts, but maintains that the PFLS did not commit atrocities, and certainly did not conduct itself differently from the Shansau army.

He learned discipline and leadership in the PFLS and saw firsthand that villagers, including parents and children, relied on the PFLS to provide basic necessities and protection. Thomas progressed into positions of leadership over small PFLS forces.

THE PROSECUTOR'S WITNESSES

ANNA KABOLO

Anna Kabolo was 10 years old when the rebels came to her village. They came in the early morning and attacked the school where she was a student. She recalls how they came in with their guns and shot anyone who tried to run away. She tried to hide under her desk but was not successful because a rebel saw her and took her back to his truck. He told her not to be scared, that she would be well-cared-for if she listened to him. Anna did not want to be killed, so she followed the rebel who held her tightly by the wrist. Anna was put into the back of a large truck with some of her fellow classmates, and taken far away from her village to the rebel camp.

At the camp, Anna quickly understood that misbehaving or running away would only bring a beating or get her killed. Anna listened to the rebels and did as she was asked because she was too afraid to do otherwise. During her first month at the camp, she was a slave to the soldiers. She became a slave for the higher-in-command while continuing to be trained to operate an AK-47. As Anna was quite small when she was taken from her village, the rebels used her mainly as a slave in the first year she was with them. She became the camp leader's favourite slave and was given a bigger shelter and more food when he was happy. When Arthur Mabo, the rebel's commander-in-chief came to the camp, it was Anna who brought him food, washed his clothes and did what was asked of her. She clearly remembers him as he once pointed a gun at her for dropping his drink right in front of him.

After a year at the camp, the commanders decided she had grown sufficiently and could handle her weapon well enough to be sent into combat. Anna remembers the early morning raids that they conducted on villages. She was usually sent with the younger children first because they were small enough to hide in the bushes nearest to the village and start attacking from there. On her first attack, she was given something which the soldiers called "Bubbles." She had heard of bubbles, and thought that bubbles gave courage and strength but did not know what they were. It is only now that she is no longer with the rebels that she understands that she was given a drug called amphetamine to numb her senses while she was carrying out vicious attacks on villagers.

Anna was caught by a UN soldier almost two years after being taken by the PFLS. She was taken to a UN site, and then transferred to a rehabilitation centre for other children like herself, former child soldiers.

INTERNATIONAL CRIMINAL LAW MOCK TRIAL | THE PROSECUTOR V. MABO

PATRICK BATEMAN

Patrick Bateman is a UN soldier. He has been a soldier with the Canadian Armed Forces since he was 20 years old. He has been deployed with peacekeeping missions several times during his career. His deployment to Shansau is his first peacekeeping mission in the region. He was previously stationed in Bosnia.

Patrick is married and has two children at home. His children are now young teenagers.

FACT SCENARIO

Prior to arriving in Shansau, Patrick was briefed on the possibility of encountering child soldiers fighting with the PFLS. He was trained to deal with the threat they pose to the UN peacekeeping troops and the residents of Shansau.

Upon his arrival to Shansau in 2007, Patrick was stationed in the capital city. After six months, he was deployed to the northeastern part of the country where most of the violence was occurring between Shansau's government army and the PFLS rebel soldiers. In the northeastern part of the country, Patrick was taken with his commanding officer to a PFLS camp to attempt negotiations with PFLS commanding officers. Arthur Mabo was not present during this meeting. However, Patrick observed several children working at the camp. These children were armed and acted as soldiers. They wore various versions of army uniforms but yet some had sandals on their feet, or wore coloured t-shirts. Patrick observed a child no older than 7 years of age holding an AK-47 at the gate of the compound.

Within a month of his visit to the PFLS camp, violence was escalating and Patrick was called upon with his unit to protect a village. He took his position and during the battle with PFLS soldiers, Patrick observed between 40 to 50 children fighting with automatic weapons and machetes. The UN soldiers were confronted by these children and had to react in response. Patrick was able to stop one child, Anna, without harming her. He restrained and disarmed her and took her away from the fighting. The UN soldiers captured several of these children during this particular battle. When the PFLS retreated into the mountains, the captured children were taken to the UN camp and then on to a larger city in the northeast to a rehabilitation centre run by a non-governmental organization specializing in the rehabilitation of child soldiers.

Prior to his return to Canada, Patrick was able to meet Anna at the rehabilitation camp. He spoke to her briefly. She shared her story with him. She told him about being a slave and about her brief interactions with Arthur Mabo.

Patrick returned to Canada in 2008. He has since sought psychological help to deal with the trauma of having to fight against children. He says he cannot erase the sight of 7-year-olds holding and shooting weapons. He also has difficulty coming to terms with the idea that he had to fire back on some occasions. He has been able to maintain contact with Anna, the child soldier he captured but ultimately saved.

THE VICTIM

ALIA RUTU

Alia Rutu has lived in a village in the northeastern part of Shansau all her life. She and her husband own a small parcel of land which they farm. They live off the land and sell any extra harvest in the local market. This gives them just enough income to buy other essentials for their family. Alia had five children. Her two eldest boys were taken away from her when the PFLS raided her village at dawn on November 15, 2006. Alia and her husband are both of the Kani ethnicity. Although they support the Troua government, they have not done so openly and did not condone his troops' acts of violence against the Lago minority of the region.

On the morning of November 15, 2006, Alia was awoken by loud shouts and pleas for help. She looked out her front door to see half her small village on fire and rebels running in between the neighbouring huts and houses. She quickly told her children to run away in the field and to keep running until they reached the river. She and her husband would join them with the baby. Her husband made her hide with their baby girl while he tried to protect their house. The rebels set fire to their house and murdered her husband, simply because he had the traits of a Kani. From her hiding spot, she could see the field and saw a rebel catch and take away her eldest boy in a truck along with several other young boys from the village. She has never seen him again.

After the attack, Alia Rutu was able to make her way from her hiding spot to the river where she found her two youngest girls, hidden under a bush. The girls had lost sight of their older brother and Alia was unable to find him after several days of searching the riverside. Village elders predicted several more attacks, so Alia and her three girls followed other survivors and fled into the mountains.

In 2009, when the UN peacekeeping mission was successful in stopping the conflict and the violence, Alia returned to her village and was reunited with the younger of her two boys, Ismael. He was able to explain to her that he had joined

INTERNATIONAL CRIMINAL LAW MOCK TRIAL | THE PROSECUTOR V. MABO

FACT SCENARIO

the rebels after two weeks in the wild because they promised him food and shelter. He was 9 years old at the time and was easily convinced that joining the soldiers would be the way to find his older brother, Emmanuel, and the only way to survive. Ismael told her that he saw his brother at the rebel camp but that he was not allowed to talk to him because his brother was in what the rebels called "advanced training." The soldiers told him that if he trained well and learned quickly, he would be allowed to join his brother. Ismael was not sufficiently trained for the first offensive. Unfortunately, his brother Emmanuel did participate, and was killed. Ismael never again saw his 13-year-old brother. It was at this point that he did all that he could to escape the rebels and return home to Alia and his sisters.

Alia believes what her youngest son, Ismael, has told her about her eldest son's death in combat as a child soldier. She witnessed firsthand his abduction at the hands of the rebels of the PFLS. That horrible morning, she also saw several rebels who looked no older than 12 years of age.

Issues:

- Is Arthur Mabo guilty of having conscripted children under the age of 15 years into armed groups?
- Is Arthur Mabo guilty of having enlisted children into armed groups?
- Is Arthur Mabo guilty of having used children to participate actively in armed conflict?
- If so, what is the appropriate sentence?

THE LAW

WHAT IS A WAR CRIME?

There exists a body of international law (customs and treaties), which regulates armed conflicts. These laws seek to safeguard “protected persons” who are not involved in the conflict, including civilians, injured soldiers and prisoners of war. These persons must be protected from the violence of war. They should not be killed, tortured, raped or abused any other way.

A number of international law documents set out the rights and protections people are entitled to in times of armed conflict. Each applies in a different context. The Rome Statute creates the international Criminal Court and sets out the grounds on which an individual can be prosecuted for committing war crimes.

The Convention on the Rights of the Child and the International Labour Organization apply to the action of governments, not individuals. They can be used when the world community wants to condemn the actions of a country.

LEGISLATION TO BE RELIED ON WHEN PROSECUTING ARTHUR MABO

HOW TO USE INTERNATIONAL LEGISLATION WHEN ARGUING THE TRIAL

The Prosecutor and the Victim’s lawyer will argue that the actions of Arthur Mabo are violations of the Rome Statute (below). They will try to highlight the facts that prove the elements of the war crimes. The Defence counsel will find contradictions of gaps in the evidence that raise a reasonable doubt about the events, or show that another version of the events is plausible.

Article 8, Section 2b and 2e make it possible for the prosecutor to refer to other international law to help the court interpret the law or to explain the type of actions that are condemned by international law. Therefore, the prosecution or the victim’s lawyer could also refer to the CRC and the ILO for supporting arguments.

ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

Article 5: Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- a. The crime of genocide;
- b. Crimes against humanity;
- c. War crimes;
- d. The crime of aggression.

Article 8: War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

a. Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- i. Wilful killing;
- ii. Torture or inhuman treatment, including biological experiments;
- iii. Wilfully causing great suffering, or serious injury to body or health;
- iv. Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- v. Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- vi. Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- vii. Unlawful deportation or transfer or unlawful confinement;
- viii. Taking of hostages.

2(b). Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

xxvi. Conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities.

2(e). Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

vii. Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.

CONVENTION ON THE RIGHTS OF THE CHILD

Article 37

States Parties shall ensure that:

- a. No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age;
- b. No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- c. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

Article 38

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

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest.

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

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

Article 2

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Article 4

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article shall not affect the legal status of any party to an armed conflict.

INTERNATIONAL LABOUR ORGANISATION - C182 WORST FORMS OF CHILD LABOUR CONVENTION, 1999

Article 1

Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

Article 2

For the purposes of this Convention, the term “child” shall apply to all persons under the age of 18.

Article 3

For the purposes of this Convention, the term “the worst forms of child labour” comprises:

- a. all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- b. work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

TIME CHART FOR MOCK TRIAL

1. Registrar calls to order, calls case and counsel introduces themselves	1 min
2. Prosecutor's opening statement	2 mins
3. Defense's opening statement	2 mins
4. Victim's Counsel's opening statement	2 mins
Prosecutor's Case	
5. Prosecutor's direct examination of Prosecutor's first witness	3 mins
6. Defense's cross-examination of Prosecutor's first witness	3 mins
7. Victim's Counsel's cross-examination of Prosecutor's first witness	1.5 mins
8. Prosecutor's direct examination of Prosecutor's second witness	3 mins
9. Defense's cross-examination of Prosecutor's second witness	3 mins
10. Victim's Counsel's cross-examination of Prosecutor's second witness	1.5 mins
Defense's Case	
11. Defense's direct examination of accused	3 mins
12. Prosecutor's cross-examination of accused	3 mins
13. Victim's Counsel's cross-examination of accused	1.5 mins
14. Defense's direct examination of witness for the accused	3 mins
15. Prosecutor's cross-examination of witness for the accused	3 mins
16. Victim's Counsel's cross-examination of witness for the accused	1.5 mins
Victim's Counsel's Case	
17. Victim's Counsel's direct examination of Victim's Counsel's witness	3 mins
18. Prosecutor's cross-examination of witness	3 mins
19. Defense's cross-examination of witness	3 mins
Closing Arguments	
20. Prosecutor's closing arguments	2 mins
21. Defense's closing arguments	2 mins
22. Victim's Counsel's closing arguments	2 mins
23. Judges deliberate and render verdict	2-10 mins
24. Presiding judge gives feedback and discusses International Criminal Trial process, etc.	

TIME CHART

ARTHUR MABO, ACCUSED

Your background:

- You were the commander-in-chief of the Patriotic Forces for the Liberation of Shansau (PFLS) until your arrest.
- You are 34 years old.
- You identify yourself as a Lago.

Your version of what happened:

- Your native country, Shansau, was taken over by Philippe Troua in 2002. His troops then terrorized the Lago ethnic minority. Shortly after the beginning of this new government, your father was killed by a police officer simply because he was a Lago and not a Kani. This police officer has since become a general of the government army.
- You, your mother and your two brothers left Shansau shortly after your father's death to escape the conflict. You relocated to a refugee camp in the neighbouring country, Vilba. You were devastated to leave your home and to have lost your father.
- In the refugee camp, you met several other men and youth who thought like you and who wanted to return to Shansau to reclaim their land. There was nothing for you to do in the refugee camp except survive.
- You wanted to go back to the northeast of Shansau to reclaim your family's land, which was rich in minerals. There, you would be able to work and take care of your mother and younger brothers.
- Along with a group of refugees in Vilba, you founded the Union of Shansau Patriots. You be-

HOW CAN I PREPARE TO BE A GOOD WITNESS DURING TRIAL?

- » Learn your facts by heart.
- » You will be sworn in during the trial and need to spell your character's full name.
- » Stick to the script. Don't make up facts because this is unfair to the student lawyers.
- » Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- » If a lawyer asks a question about something that isn't in your package, you can say you don't know the answer.
- » Speak with the lawyers representing your side ahead of time, and get into character when you take the stand.

ARTHUR MABO, ACCUSED

came its president and, more importantly, you were named the commander-in-chief of the Patriotic Forces for the Liberation of Shansau. The PFLS's main goal was to reclaim the land belonging to the Lago, and to establish independence of the northeastern part of Shansau.

- In 2006, you led the PFLS's army back into Shansau. Your troops were severely outnumbered by the army of Shansau, composed mainly of Kanis. They used violent tactics to reduce your army as much as possible. You vowed never to stop until you had reclaimed the land that was rightfully yours.
- You deny having actively recruited or enlisted children in the ranks of the PFLS. The children that were around the camp were Lago children who sought the protection of the PFLS. Their parents sent them to the camps for protection and for food. Some children may also have identified themselves as Kani but they were also at the camp for protection and shelter.
- You deny having given orders to your army to kidnap children to later be used as soldiers for the PFLS.
- You deny having set up a training camp for child soldiers.
- As the commander-in-chief of the PFLS, you were usually away from the training camp attending strategic planning meetings. You usually left your second-in-command, Charles Yitu, in charge of the camps. He may have disobeyed you and given an order to kidnap children and to train them as soldiers.

THOMAS GABA, FORMER COMBATANT (WITNESS FOR THE ACCUSED)

Your background:

- You are a former combatant with the Patriotic Forces for the Liberation of Shansau (PFLS)
- You are 17 years old.
- You identify yourself as a Lago.
- You have always lived in the northeastern part of Shansau.

Your version of what happened:

- When you were 14 years old, the PFLS came into Shansau from the neighbouring country, Vilba. You did not know much about the PFLS but you knew that they wanted to reclaim land in the northeastern part of Shansau, where you lived.
- You lived in a very small village with your parents. Your father identifies himself as a Lago and your mother identifies herself as a Kani. They chose to remain in Shansau when the Troua government came into power even though they lost their land. They stayed on as hired help for a rich Kani who settled in the northeastern part of Shansau to exploit a diamond mine. Your family is very poor. The Kani landowner gave your parents just enough food to survive. You all had to work in the diamond mines.
- When the PFLS came back to Shansau, your father believed it would be a good thing. He quickly realized, however, that the PFLS was going to reclaim land through a violent and deadly conflict. He did not join them.
- You saw them walking by on a few occasions. You saw young men who were not hungry and who could hold their heads up high. They were not

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THOMAS GABA, FORMER COMBATANT (WITNESS FOR THE ACCUSED)

slaves to Kani landowners. When they invaded your village, they attacked all Kanis in sight. One soldier caught you as you tried to hide. Once you told him you were a Lago, he told you you could join them and that they would feed you and provide you with shelter. He told you you would never again have to work as a slave for a Kani landowner. You followed him back to the PFLS training camp.

- At the training camp, you stayed along with 20 other boys, some younger, some older. You were told the rules of the camp. You were all told that if you obeyed, you would be given protection.
- After a week of training, you were given an extra portion at dinner because you had performed your tasks the fastest amongst the new trainees. You understood that to get ahead, you had to be good.
- After a few months of cooking and cleaning in the camp, many of the younger boys at the camp followed you around and did what you asked of them. Eventually, a soldier asked you your age. You decided to lie and to say you were 18 years old because you wanted to be treated as one of the adults at the camp. The soldiers believed you because so many of the younger ones looked up to you. He gave you a mission, and told you that if you could accomplish this mission, you would become his assistant. As his assistant, it was your duty to manage the other children living and helping out in camp, including beating anyone who did not obey. You did not like doing this, but you understood that obedience was the way life worked in the PFLS camp.
- By the time you were 16 years old (and everyone at camp thought you were 20 years old), you had become a lieutenant in the PFLS and took command of a small troop. You were responsible for many raids on villages in the north-eastern part of Shansau. You had become an expert of sneak attacks at dawn on unsuspecting villagers. You were very good at handling your weapon quickly. One of your tasks was to round up as many youth as you could find.
- You received your orders from your superior who received his orders from the second-in-command of the PFLS, Charles Yitu.
- Overall you are proud of your involvement with the PFLS and of its accomplishments to protect the Lago culture and people. You are relieved that the fighting has died down and hope that your country will return to a peaceful state. You have learned many leadership skills and credit the people in charge of the PFLS with helping to raise you into maturity and become a man who can hold his head high.

ANNA KABOLO, FORMER CHILD SOLDIER (PROSECUTOR'S FIRST WITNESS)

Your background:

- You are 13 years old.
- You are a former child soldier with the Patriotic Forces for the Liberation of Shansau (PFLS).
- You identify yourself as Kani.

Your version of what happened:

- You lived in a small village in northeastern Shansau all of your life until you were taken by the PFLS soldiers when you were 10 years old.
- Your parents are both Kani and own a large parcel of land where they raise cattle. Your family has owned this land for many generations.
- When the PFLS came into Shansau, your parents became very nervous and afraid. You could only go out of the house to go to the school which was down the road. At night, you hid in the cellar because your parents had heard of children being abducted by the PFLS.
- The day you were taken, you were at school when gunshots rang out in the school yard. You and your friends hid under your desks. When the soldiers came in, they killed your school teacher and any students who tried to run away. Those who remained were thrown into the back of several pickup trucks full of soldiers. The truck drove away very quickly down the road, but you were able to see that your house was on fire. You could not see your mother or father. You do not know what happened to them; you have never seen them again.

HOW CAN I PREPARE TO BE A GOOD WITNESS DURING TRIAL?

- » Learn your facts by heart.
- » You will be sworn in during the trial and need to spell your character's full name.
- » Stick to the script. Don't make up facts because this is unfair to the student lawyers.
- » Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- » If a lawyer asks a question about something that isn't in your package, you can say you don't know the answer.
- » Speak with the lawyers representing your side ahead of time, and get into character when you take the stand.

ANNA KABOLO, FORMER CHILD SOLDIER (PROSECUTOR'S FIRST WITNESS)

- When you arrived at the camp, you were kept with all the other young children. For the first year at camp, you did manual labour, you cleaned, you cooked, you did whatever the soldiers told you to do. You understood that if you did not do what they asked you to do, you would be beaten or killed. You have seen it happen to other slaves who disobeyed or tried to escape.
- After a year as a slave, you were given a private hut because you were the leader's favourite slave. Sometimes, when he was in a good mood, he would bring extra food when he came to see you.
- You met Arthur Mabo when you were the slave who was chosen to serve him his food, wash his clothes and tend to him when he came to the camp. You are very afraid of him, but it was a big honour to serve 'the Leader' as he was called in camp. The first time you brought him food, you were so nervous that you dropped his drink in front of him. He reacted violently and pointed his AK-47 at you. You were certain he would shoot, but a soldier whispered something to him and he put his gun down and shooed you away.
- One day, the senior leaders told you would become a soldier like them. They had trained you since your arrival to handle a weapon, and in the tactics of war.
- From that day on, you joined other child soldiers on early morning raids in surrounding villages. You and other smaller children were good at hiding in the bush and shooting the villagers.
- You were given something called "Bubbles" which gave you strength and courage. Prior to most raids, you would take "Bubbles" and could carry out vicious attacks on villagers without feeling guilty or nauseous. You understand now that you are rehabilitated that "Bubbles" was actually a drug called amphetamine which numbed your senses. It took a long time for you to stop craving "Bubbles."
- Almost two years after you were taken by the PFLS, you went on a raid with your unit. This one was different because you were caught by a soldier with a blue helmet. He restrained you and took away your AK-47 and your knife and put you in a truck. He brought you to the UN camp. You were treated nicely there. You were given food, clean clothes and a nice bed. You then went to a larger city to another centre where people helped you to understand what had happened.

**ANNA KABOLO, FORMER CHILD SOLDIER
(PROSECUTOR'S FIRST WITNESS)**

- You no longer crave "Bubbles" but you still get very angry sometimes. You are mad that the soldiers made you take drugs and made you kill innocent people. You are sad that you have not seen your parents since that day, and you think that if they are alive, they may never want to see you because of the crimes you have committed.

WITNESS
INFORMATION

PATRICK BATEMAN, UN SOLDIER (PROSECUTOR'S SECOND WITNESS)

Your background:

- Your name is Patrick Bateman.
- You are 42 years old.
- You have been a soldier with the Canadian Armed Forces since you were 20 years old.
- Your deployment to Shanau was your first peacekeeping mission in the region.
- You are married and you have two children who are now young teenagers.

Your version of what happened:

- You are a lieutenant[c2] with the Canadian Armed Forces and have often acted as part of UN missions. You were stationed in Bosnia for several years prior to being relocated to Shansau as part of the newest UN peacekeeping mission.
- Prior to being relocated to Shansau, you received training and attended several briefing sessions on the situation in that country. You were told that there was a significant possibility of encountering child soldiers fighting with the PFLS. You were trained to deal with the specific threats posed by child soldiers. You understood that these young soldiers were both a threat to the peacekeeping mission, and to the residents of Shansau.
- You arrived in Shansau in 2007. You were stationed in the capital city. After six months there, you were deployed to the northeastern part of the country where most of the violence was occurring, and where the conflict was not resolved.

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PATRICK BATEMAN, UN SOLDIER (PROSECUTOR'S SECOND WITNESS)

- After your arrival in the northeastern part of the country, you were asked to join your commanding officer in negotiations with the PFLS at their camp. You met with PFLS commanding officers, but you did not meet Arthur Mabo, nor did you ever see him.
- When you arrived at the PFLS camp, you saw several children working there. Some carried weapons and acted as soldiers. They wore all sorts of army uniforms; some had the jackets, some had camouflage pants, while others walked around in their sandals and coloured t-shirts. You saw at least one child who looked to be no older than 7 years of age. He was carrying an AK-47 and acted as the compound guard. You have never forgotten him. He looked fierce yet scared.
- Within a month of this visit, the violence in the northeast escalated and your unit was called upon to protect a village which was the intended target of upcoming raids by the PFLS.
- When the raid occurred, you observed between 40 to 50 children fighting with automatic weapons and machetes. These children were not playing; they were at war and used their weapons to kill. You and the other UN soldiers had to react in consequence.
- You managed to surprise one girl soldier who hesitated for a moment too long. You reacted faster and took her weapon out of her hands. As she tried to take it back, she fell. This gave you the chance to restrain her, and take her out of harm's way.
- Your fellow soldiers captured other children during this battle, too. Your unit was successful in pushing back the PFLS. When they retreated back to the mountains, you and other soldiers brought the children to the UN camp.
- You understand that they were taken from the UN camp and brought to a rehabilitation centre run by a non-governmental organization specializing in the rehabilitation of child soldiers. Several of the children who were sent there were very aggressive and unhappy. They had glassy eyes and showed clear signs of withdrawal from whichever drugs they had been given to fight.
- Prior to the end of your tour of duty, you were able to meet Anna at the rehabilitation camp. You spoke to her briefly. She told you her story and explained that she had been a slave at the PFLS camp. She also told you that she had

**PATRICK BATEMAN, UN SOLDIER
(PROSECUTOR'S SECOND WITNESS)**

met the accused, Arthur Mabo, though she called him 'the Leader' and didn't know his name.

- You returned to Canada in 2008. Since then, you have met with a psychologist to help you deal with the trauma of having to fight against children. You cannot erase the sight or the memory of children as young as 7 years of age holding and shooting their weapons at villagers and UN soldiers. You've also had a lot of difficulty accepting that you had to fire back on PFLS soldiers, including child soldiers, to defend villagers.
- You know that you have at least been able to help Anna, the child soldier you were able to save.

ALIA RUTU, PARENT OF DECEASED CHILD SOLDIER (VICTIM'S COUNSEL'S WITNESS)

Your background:

- Your name is Alia Rutu.
- You are the mother of five children. Your eldest son was killed when he was 13 years old. Your other son was abducted, but managed to escape from the PFLS camp.
- You and your husband are both Kani farmers living in the northeastern part of Shansau.

Your version of what happened:

- You and your husband have lived in the northeastern part of Shansau for all of your lives. Together, you own a small parcel of land which you farm. You live off the land and you sell any extra harvest at the local market. This gave you enough money to send your children to the local school.
- You and your family are Kani and you support the Troua government. However, you do not condone the government army's acts of violence against the Lago minority of the region. You believe that the Lago and the Kani can live on the same land together.
- You have five children, two boys and three girls: Emmanuel, Ismael, Gemma, Sofia and Mona.
- On November 15, 2006, your farm and the neighbouring village were attacked at dawn. You were awoken by shouts, gunshots and pleas for help. You looked out your front door and saw that almost half the village had been set on fire. PFLS rebels were running from one hut to the next with their weapons held high. You knew they would come in a minute or two so you told your children to run away in the fields and to keep running until they reached the river. You told

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- » If a lawyer asks a question about something that isn't in your package, you can say you don't know the answer.
- » Speak with the lawyers representing your side ahead of time, and get into character when you take the stand.

ALIA RUTU, PARENT OF DECEASED CHILD SOLDIER (VICTIM'S COUNSEL'S WITNESS)

them you would come get them there.

- Your husband quickly told you to hide with your baby daughter, Mona, in the small chicken coop. He attempted to protect your house and to explain to the Lago that he was not against them. They did not listen. They shot him and set fire to your house. You heard them shout that they would kill all the Kanis.
- From your hiding spot in the chicken coop, you could see the field. You saw one rebel catch your eldest son, Emmanuel who had turned back toward the house when he heard the gunshot that killed your husband, his father. The rebels did not kill him; they took him away and shoved him in a truck with several other young boys from the village. This was the last time you saw Emmanuel.
- When the rebels left, you made your way silently through the fields and to the river where you found your two other daughters hiding in a bush. You looked in vain for your other son, Ismael.
- The village elders told you it was not safe to return to the village; the rebels would be back. You decided to flee with your three girls into the mountains.
- Three years later, when the UN peacekeeping mission was successful in re-establishing peace in Shansau, you returned to your village and your land. There, you found Ismael living with your elderly neighbour. He had been back for approximately three months.
- Ismael explained to you that after the raid, he had lived in the wild for close to two weeks. He had then met two PFLS rebels who had promised him food and shelter if he followed them back to their camp. Although he was afraid of them, he was so hungry that he went with them. He was 9 years old at that time, and so was easily convinced by the rebels. He also thought this was the way to find Emmanuel.
- Once at the camp, he was given a little bit of food and was tied to five other small soldier boys; all new recruits like him. When he first saw Emmanuel, he wasn't tied so he ran toward him but was stopped by a soldier who told him if he went to his brother, he would shoot him. The soldier then told him that Emmanuel was in "advanced training" and that he could not be disturbed. The soldier also promised him that if he trained well, he would be allowed to join his brother.

**ALIA RUTU, PARENT OF DECEASED CHILD SOLDIER
(VICTIM'S COUNSEL'S WITNESS)**

- Ismael was not sufficiently trained to join Emmanuel and the other child soldiers on their first offensive. Emmanuel did not look at Ismael before he left; he had glassy eyes and stared straight ahead. Ismael never saw his brother again; an older soldier told him that Emmanuel was killed.
- Ismael decided he did not want to be killed like his brother; he waited and planned his escape. He miraculously was able to return to his village.
- You (Alia) believe what your son Ismael told you. You believe that your son, Emmanuel was killed in combat as a child soldier when he was 13 years old. You witnessed his abduction at the hands of the PFLS rebels. That horrible morning, you also saw several rebels who looked no older than 12 years of age.

INTERNATIONAL CRIMINAL LAW MOCK TRIAL ROLE PREPARATION

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For each International Criminal Law Mock Trial, there are three packages:

- » **International Criminal Law Mock Trial Scenario**
- » **International Criminal Law Mock Trial Role Preparation Package**
- » **International Criminal Law Mock Trial Justice Sector Volunteer Package**

Students/youth need the scenario and role preparation packages.

Justice sector volunteers/teachers/organizers need all three packages.



GENERAL INFORMATION ABOUT INTERNATIONAL CRIMINAL COURT TRIALS

This mock trial is designed to help you learn more about international criminal law, the Convention on the Rights of the Child and the International Criminal Court (ICC).

WHAT IS THE INTERNATIONAL CRIMINAL COURT?

The ICC is the first permanent treaty-based court established to help end impunity for those who commit the most serious crimes of concern to the international community. The court focuses on crimes such as **genocide, war crimes** and **crimes against humanity**.

The ICC was created and is governed by an international treaty called the **Rome Statute**. It entered into force on July 1, 2002 when at least 60 states signed and ratified the treaty. Countries that recognize the ICC by signing the treaty accept its jurisdiction over its territory and its citizens.

INTERNATIONAL CRIMINAL LAW MOCK TRIAL | ROLE PREPARATION

The ICC has jurisdiction over individuals accused of committing the most serious crimes such as genocide, war crimes, crimes against humanity and aggression. This includes those directly responsible for committing the crimes, as well as others who are responsible for the crimes by aiding and abetting or otherwise assisting in the commission of a crime. The latter group includes military commanders or other superiors whose responsibility is defined in the Rome Statute. For example, a military commander who ordered his troops to kill all prisoners of war in their control could be tried for war crimes.

The **Rome Statute** is the treaty that establishes the International Criminal Court. Entered into force on 1 July 2002, the Statute establishes, among other things, the Court's functions, jurisdiction, and structure. As of 1 August 2011, 115 states are parties to it.

The ICC does not have a universal jurisdiction. It may only exercise jurisdiction if:

- The accused is a national of a state party to the Rome Statute or a state otherwise accepting the jurisdiction of the ICC;
- The crime took place on the territory of a state party to the statute or a state otherwise accepting the jurisdiction of the ICC; or
- The United Nations Security Council has referred the situation to the ICC's Prosecutor, irrespective of the nationality of the accused or the location of the crime. (An example of this is the situation in Sudan, which was referred to the Prosecutor and resulted in an arrest warrant being issued for the President of Sudan, Omar Al-Bashir.)

The ICC's jurisdiction is limited to events taking place after July 1, 2002.

HOW DOES THE ICC WORK?

States which are a party to the Rome Statute or the United Nations Security Council may refer situations of crimes which occurred within the ICC's jurisdiction to the Court's Prosecutor. The Prosecutor evaluates the available information and commences an investigation if it is determined there is a reasonable basis to do so.

Genocide is the deliberate killing of a large group of people, especially those of a particular ethnic group or nation.

The Prosecutor also has the power to begin an investigation on his/her own initiative. In doing so, the Prosecutor receives and analyzes information submitted by a variety of reliable sources. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he/she will ask the Court's Pre-Trial Chamber to authorize the investigation.

INTERNATIONAL CRIMINAL LAW MOCK TRIAL | ROLE PREPARATION

The Prosecutor's investigations cover all facts and evidence relevant to the assessment of criminal responsibility. The Prosecutor investigates incriminating and exonerating circumstances equally, and fully respects the rights of the accused.

The ICC's Pre-Trial Chamber is responsible for the judicial aspects of the proceedings. Among its functions, the Pre-Trial Chamber, on the request of the Prosecutor, may issue a warrant of arrest or a summons to appear before the ICC if there are reasonable grounds to believe an individual has committed a crime within the jurisdiction of the Court. Once a wanted person has been arrested and surrendered to, or voluntarily appears before the ICC, the Pre-Trial Chamber holds a hearing to confirm the charges which will be the basis of the trial.

Following these steps, the case is assigned to a Trial Chamber composed of three judges. The Trial Chamber is where the accused's trial will occur. The Trial Chamber is responsible for conducting fair and speedy proceedings while fully respecting all of the accused's rights. The accused is presumed innocent until proven guilty by the Prosecutor beyond a reasonable doubt. The accused has a right to defend himself, or to be represented by a counsel of his choice.

Unlike a Canadian criminal proceeding, victims are allowed to participate in ICC proceedings directly or through their lawyers. The ICC gives victims the right to participate and the right to request reparations. This means that the victims may be witnesses but may also present their own views and concerns at all stages of the trial. Victims who appear as witnesses before the ICC will receive support and protection.

When the trial is completed, the three judges of the Trial Chamber will give their decision, acquitting or convicting the accused. There are no juries at the ICC. If the accused is convicted (found guilty), the three judges of the Trial Chamber will issue a sentence of up to 30 years or, when justified by the extreme gravity of the crime, life imprisonment. The judges can also order reparations for the victims.

A **war crime** is an action carried out during an act of war that violates accepted international rules of war.

Crimes against humanity are particularly serious offenses that constitute an attack on human dignity or a grave humiliation or degradation of one or more human beings. Crimes against humanity are not isolated or sporadic events but are either part of a government policy or are a wide practice of atrocities condoned or tolerated by government or another similar authority.

INTERNATIONAL CRIMINAL LAW MOCK TRIAL | ROLE PREPARATION

GENERAL INFORMATION
ABOUT INTERNATIONAL
CRIMINAL COURT TRIALS

The ICC also has an Appeals Chamber composed of five judges. The Appeals Chamber hears all appeals from the Prosecutor, the accused or the victim's counsel. The rules pertaining to appeals are specified in the Rome Statute.

All proceedings at the ICC are filmed and can be watched on their website, <http://www.icc-cpi.int>

TIME CHART FOR MOCK TRIAL

1. Registrar calls to order, calls case and counsel introduces themselves	1 min
2. Prosecutor's opening statement	2 mins
3. Defense's opening statement	2 mins
4. Victim's Counsel's opening statement	2 mins
Prosecutor's Case	
5. Prosecutor's direct examination of Prosecutor's first witness	3 mins
6. Defense's cross-examination of Prosecutor's first witness	3 mins
7. Victim's Counsel's cross-examination of Prosecutor's first witness	1.5 mins
8. Prosecutor's direct examination of Prosecutor's second witness	3 mins
9. Defense's cross-examination of Prosecutor's second witness	3 mins
10. Victim's Counsel's cross-examination of Prosecutor's second witness	1.5 mins
Defense's Case	
11. Defense's direct examination of accused	3 mins
12. Prosecutor's cross-examination of accused	3 mins
13. Victim's Counsel's cross-examination of accused	1.5 mins
14. Defense's direct examination of witness for the accused	3 mins
15. Prosecutor's cross-examination of witness for the accused	3 mins
16. Victim's Counsel's cross-examination of witness for the accused	1.5 mins
Victim's Counsel's Case	
17. Victim's Counsel's direct examination of Victim's Counsel's witness	3 mins
18. Prosecutor's cross-examination of witness	3 mins
19. Defense's cross-examination of witness	3 mins
Closing Arguments	
20. Prosecutor's closing arguments	2 mins
21. Defense's closing arguments	2 mins
22. Victim's Counsel's closing arguments	2 mins
23. Judges deliberate and render verdict	2-10 mins
24. Presiding judge gives feedback and discusses International Criminal Trial process, etc.	

TIME CHART

COURTROOM ETIQUETTE AND PROTOCOL

The courtroom is a formal setting, and there are some specific etiquette rules to follow that may not be familiar to you. Here are some pointers:

- You must show respect for the judges and the other people in the room.
- When the judges enter, all counsel, and everyone else in the courtroom must stand up. Counsel then bow to the judges. Sit down when the registrar instructs everyone to do so.
- At the beginning of the trial, the judges may tell you how s/he wants to be addressed. Usually judges are addressed as "Your honour." The presiding judge should be addressed as "Madam President" or "Mister President."
- When facing the judges, the defense usually sits at the table to the left, and the prosecutor sits at the table to the right.
- Before addressing the judges, wait until the judges seem ready to proceed. The presiding judge may nod or may say that you can proceed. If you are not sure, ask the judges if you may proceed. Make sure to introduce yourself. You should also stand every time you are addressing or being addressed by the judges.
- If it is not your turn to address the judges, pay attention to what is happening. Take notes that you can use during closing submissions.
- During the trial, if you need to talk with your co-counsels, write a note. Do not talk to each other while a witness is giving evidence, or one of the judges is speaking. Refer to your co-counsel as "my colleague" or "my co-counsel."
- Refer to the opposing counsel as "my friend" (Canadian terminology) or "my learned friend" (British terminology) or "counsel for (add position of name of the client)."
- If one of the judges asks you a question, take your time to think about it before replying. If you do not hear the question, or are confused by it, ask the judge to repeat or restate the question. If you do not know the answer, say so. Once a question has been answered, pick up from where you were before the question.
- Do not interrupt the judges, and if a judge interrupts you, stop immediately and wait until he/she is finished before replying. Never interrupt or object while one of the opposing counsels is addressing the judges. Wait until you are specifically asked by the presiding judge to respond to a point argued by the opposing counsel.

REMEMBER TO:

- » Speak clearly
- » Use an appropriate volume
- » Try not to say "um", "ah" or "okay"
- » Do not go too fast

ROLE PREPARATION FOR PROSECUTION, DEFENSE AND VICTIM'S LAWYERS

As a prosecutor, you represent the public.

As a defense lawyer, you represent the accused.

As a victim's lawyer, you represent the victims of the alleged crimes and/or their families.

Unlike trials in Canada, where there is only a prosecution and a defence, the ICC also allows for the victim to have their own lawyer. The prosecutor might ask the questions needed to prove the overall case, while the Victim's Lawyer is only focused on the factual elements relating to his or her client. These lawyers are trying to prove similar, but not identical cases. The Victim's Lawyer will listen to the questions and then only ask those additional questions which focus on the facts relating to his or her client.

During the trial, the prosecution, the defense and the victim's lawyers:

- Present opening statements
- Conduct direct examinations of their own witnesses
- Conduct cross-examinations of the other side's witnesses
- Make closing submissions

The prosecutor will make his/her opening statement and call his/her witnesses first. Each of the prosecutor's witness will be cross-examined by the defense's counsel and the victim's counsel.

When the prosecutor is finished, the defense counsel goes next with his/her opening statement, and calls his/her witnesses. After that, the victim's counsel can call his/her witnesses.

The defense gives its closing arguments first. The prosecutor goes last.

Usually, the judges will decide at what stage the victim's lawyer can present the views and concerns of the victims, and in what manner he or she may do so.

HOW TO PREPARE FOR OPENING STATEMENTS

- Become familiar with your witnesses' fact sheets.
- Select which facts should be included in the opening statement. Include the central facts of your case that are not likely to be challenged by the other side.

- Stick to the facts! The facts are what will paint the picture for the judges.
- Check with the lawyer writing the closing submissions for your side, to make sure that both the opening and closing arguments are very similar and present the same theory of the case.
- When giving the opening statements, try to speak in short, clear sentences. Be brief and to the point.
- Have notes handy to refresh your memory.

WHAT IS A DIRECT EXAMINATION?

Direct examination is when one side puts a witness in the witness box to give evidence to support its case.

The purpose of a direct examination is to have the witness tell the judges, in a clear and logical way, what the witness observed.

HOW TO PREPARE FOR DIRECT EXAMINATION:

- Write down all the things that your side is trying to prove.
- Read the witness' testimony carefully, several times over.
- Make a list of all the facts in the witness' testimony that help your case.
- Put a star beside the most important facts that you must make sure that your witness talks about. For example an important fact for the Applicant might be that your witness saw the event at issue first-hand.
- Create questions to ask the witness that will help the witness tell a story:
 - Start with questions that will let the witness tell the judges who s/ he is; for example: What is your name? What do you do? How long have you worked in that job?
 - Move to the events in question; for example: What were you doing on the night in question? Where were you? When did you first hear there was a problem?
 - Move to more specific questions; for example: What did you see? What did you do after that happened?
 - *"Why don't you have a good relationship with your child?"*

INTERNATIONAL CRIMINAL LAW MOCK TRIAL | ROLE PREPARATION

- Remember to keep your questions short and to use simple language. It is helpful to remember that your questions should start with *who, what, where, how, why* or *when*.
- It is important not to ask leading questions. A leading question is one which suggests an answer, or puts words in the witness's mouth.
- An example of a leading question is: "Was the man six feet tall and about 25 years old?" Instead you might say: "Please describe what the man looked like." Or ask: "How old was he? And how tall?"

WHAT IS CROSS-EXAMINATION?

Cross-examination is when the counsel for the other side gets to ask your witness questions.

There are two basic approaches to cross-examinations:

1. To get favourable testimony. This involves getting the witness to agree to facts that support your case.
2. To discredit the witness. This approach is used so the judge will minimize or disregard evidence or comments that do not support your case.

HOW TO PREPARE FOR CROSS-EXAMINATION

- Make a list of all the facts in the witness's testimony that hurt your case.
- If there are a lot of facts that don't help your case, can you find a way to challenge the witness's credibility? For example, can you show that the witness made a mistake, or has a reason for not telling the truth?
- Put a star beside the facts you must make the witness talk about.
- Write short leading questions that move towards the key points you want to make.
- Try to build toward the point you want to make by asking your short leading questions. Keep in mind that you want to paint a picture.
- Depending on what the witnesses say, you might need to come up with different questions on the spot during the trial.
- Your questions should get the witness to answer with a yes or a no. For example, if you want the witness to tell the court that it was dark outside, you would ask: "It was dark outside that night wasn't it?"

HOW TO PREPARE CLOSING SUBMISSIONS

- Write down your key arguments and summarize the important facts you want to stick in the judge's mind.
- When delivering the closing submission, try to speak in short, clear sentences. Be brief and to the point.
- Only summarize evidence that actually was given at the trial. You cannot introduce new evidence during the closing statement. This may mean you have to rewrite your closing submission on the spot during the trial.
- Where a witness for the other side admitted something important to your case, point that out.
- Check with the lawyer writing the opening statement for your side to make sure that both the opening and the closing statements are similar, and present the same theory of the case.

ROLE PREPARATION FOR UN OBSERVER

The UN Observer makes recommendation to the UN Office of the High Commissioner for Human Rights (OHCHR) about how to improve the situation for children in this country. These recommendations can be about the actions of the state and can include recommendations about future treatment of children.

As UN Observer, pay special attention to the evidence in the trial listening for facts relating to the actions of the country, or problems that might be solved by the country, now that the armed conflict is over.

These recommendations should not include the prosecution of the individual war criminal. However, if you are unsatisfied with the result of the trial at the ICC, you might make recommendations to address these acts in other ways. These recommendations will not rely on the Rome Statute, but can use the other pieces of legislation.

In particular, the Convention on the Rights of the Child and the International Labour Organization can be referred when making recommendations.

An example of a recommendation would be:

Establish a registry so that child soldiers can be reunited with their families.

The OHCHR publishes reports made about all of its member countries. You can see a sample of a report at: <http://www.ohchr.org>

INTERNATIONAL CRIMINAL LAW MOCK TRIAL | ROLE PREPARATION

After the trial, prepare your recommendations in a 1–2 page report that summarizes the events, identifies the relevant articles you think are most relevant and includes your specific recommendations.

ROLE PREPARATION FOR JUDGE

As ONE of the JUDGES:

- You are one of the decision-makers at the International Criminal Court.
- You will listen to the parties and may ask them questions at any time during the trial.
- You may also ask the witnesses questions at any time during the trial.
- You are a referee. The presiding judge is in charge of the trial.
- If a counsel objects to a question by another counsel, decide whether or not the witness must answer the question.
- At the end of the trial, summarize what the law and evidence is relating to the case.
- You will make a final decision with the other two judges about the application by announcing the decision at the end of the trial.

You should summarize the evidence and make factual determinations. The chart included in the scenario package will help you to organize your decision.

ROLE PREPARATION FOR THE REGISTRAR

Your role is to help the judges to make sure that the trial runs smoothly. You will:

- Open the court
- Read the charge to the accused and ask him to plead guilty or not guilty
- Swear in the witnesses
- Close the courts.

HOW TO OPEN THE COURT:

When all participants are in their places, you will bring in the judges and say: **“Order in the court. All rise please.”**

After the judges have entered and sat down, you say: **“Court is now in session. Please be seated.”**

HOW TO READ THE CHARGES:

To prepare this section, please refer to the scenario for the mock trial you are participating in. Insert the particulars of the accused and charge(s) from the information into the script below.

Stand and say:

"[Name of accused], how do you plead to this charge? Guilty or not guilty?"

If there is more than one charge, add the following for each charge:

"[Name of accused], how do you plead to this charge? Guilty or not guilty?"

HOW TO SWEAR IN WITNESSES:

Before a witness gives his/her testimony, you will swear them in by saying:

"Will you please state your name for the court? Please spell your first and last name."

"Do you solemnly affirm that the evidence you are about to give, shall be the truth, the whole truth and nothing but the truth?"

HOW TO CLOSE THE COURT:

After the judges have deliberated and given their verdict, the court is closed and you will say:

"All rise please. Court is adjourned for the day."

ROLE PREPARATION FOR THE COURT SERVICES OFFICER

Your role is to:

- Bring the accused into the courtroom
- Help the judges in keeping order in the courtroom
- Making sure the accused is not threatened during the trial.

You can prepare for your role by reviewing the background documents and understanding what will happen during the trial.

The judges will expect you to escort anyone who becomes too loud or is not behaving out of the courtroom.

ROLE PREPARATION FOR MEMBERS OF THE PRESS

Many instances of international atrocities only receive public attention because reporters take risks to expose the war crimes and other abuses in another country. This is dangerous and difficult work. When a war crime finally results in a trial, there is often considerable media attention, both internationally, and in the country where the events took place. There will usually be opposing views and people who argue that the prosecution of one individual is unfair.

You are covering this trial for a reputable international newspaper. Consider how to report on the case in a balanced way that informs readers without being biased.

Things for you to think about reporting on:

- What is the name of the case?
- Who are the people involved?
- Why is a trial taking place?
- What crime(s) is the accused charged with?
- What are the key facts?
- What is the outcome/decision?
- Is there anything you want to ask the prosecution, defense lawyers or the victim's lawyers after the trial is completed?
- Are there any other things you want to say in general in your article about the particular types of charges?
- Did you have a position about the facts before the trial began? Has your position changed after hearing the trial? How so?
- Is there anything the public needs to know about this trial?
- Why is this trial of international importance?

INTERNATIONAL CRIMINAL LAW MOCK TRIAL JUSTICE SECTOR VOLUNTEER

THIS PACKAGE CONTAINS:	PAGE
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Mock Trial Time Chart	2
Information for:	
Lawyer Coaches	3
Judges	4 - 5

For this OJEN mock trial, there are three packages:

- » OJEN International Criminal Court Mock Trial Scenario
- » OJEN International Criminal Court Mock Trial Role Preparation Package
- » OJEN International Criminal Court Mock Trial Justice Sector Volunteer Package

Students need the **Scenario** and **Role Preparation** packages.

Justice sector volunteers/ teachers/organizers need all three packages.



PURPOSE OF A MOCK TRIAL

The purpose of a mock trial is to:

- Help students better understand how the justice system works;
- Provide students with a participatory learning experience;
- Empower students by encouraging them to have a sense of ownership over the justice system;
- Develop self-esteem and public speaking skills; and
- Encourage students to consider careers in the justice system.

Thank you for volunteering to assist with a student mock trial. Your time and enthusiasm will greatly enhance the learning process.

TIME CHART FOR MOCK TRIAL

TIME CHART

1. Registrar calls to order, calls case and counsel introduces themselves	1 min
2. Prosecutor's opening statement	2 mins
3. Defense's opening statement	2 mins
4. Victim's Counsel's opening statement	2 mins
Prosecutor's Case	
5. Prosecutor's direct examination of Prosecutor's first witness	3 mins
6. Defense's cross-examination of Prosecutor's first witness	3 mins
7. Victim's Counsel's cross-examination of Prosecutor's first witness	1.5 mins
8. Prosecutor's direct examination of Prosecutor's second witness	3 mins
9. Defense's cross-examination of Prosecutor's second witness	3 mins
10. Victim's Counsel's cross-examination of Prosecutor's second witness	1.5 mins
Defense's Case	
11. Defense's direct examination of accused	3 mins
12. Prosecutor's cross-examination of accused	3 mins
13. Victim's Counsel's cross-examination of accused	1.5 mins
14. Defense's direct examination of witness for the accused	3 mins
15. Prosecutor's cross-examination of witness for the accused	3 mins
16. Victim's Counsel's cross-examination of witness for the accused	1.5 mins
Victim's Counsel's Case	
17. Victim's Counsel's direct examination of Victim's Counsel's witness	3 mins
18. Prosecutor's cross-examination of witness	3 mins
19. Defense's cross-examination of witness	3 mins
Closing Arguments	
20. Prosecutor's closing arguments	2 mins
21. Defense's closing arguments	2 mins
22. Victim's Counsel's closing arguments	2 mins
23. Judges deliberate and render verdict	2-10 mins
24. Presiding judge gives feedback and discusses International Criminal Trial process, etc.	

LAWYER COACHES: PREPARING YOUTH FOR A MOCK TRIAL

The role of a coach in a mock trial is to prepare the participants so that they feel confident in their roles and understand the material. Coaches are not expected to produce polished young counsel, but to encourage enthusiasm and a sense of fun (this might be the first positive experience with the justice system for some participants). Trials that are overly competitive can be less rewarding experiences for students.

Although most of the coaches' time will be spent preparing counsel and perhaps witnesses, the time and efforts of coaches also have a mentoring element, as students benefit from the attention and interest paid to their lives. Simply spending the time engaging with students, regardless of their level of participation in the mock trial, is a valuable part of the experience.

KEEP IN MIND:

- Students may need coaching on proper trial etiquette and procedure (such as when to stand up, how to refer to the opposing counsel, etc.).
- For most secondary school mock trials, students will be part of either a Law or Civics course. To find out more about these courses, and the particular aspects of the justice system that students are studying, refer to the OJEN website, www.ojen.ca.
- Participants may have a wide range of education and literacy levels.
- Students may or may not be working with the material outside of the scheduled coaching sessions; confirm this by speaking with their teacher or the mock trial coordinator.
- Prompting from coaches is not permissible during most tournaments and mock trials. Students (especially those playing the part of the counsels) may become confused, shy or stuck on certain points, and you may need to help them with strategies for collecting themselves and continuing with their roles without your help during a tournament or trial.

SUGGESTIONS FOR COACHING A MOCK HEARING:

- Review all material beforehand, and assess what your team is attempting to accomplish during the trial.
- If you are working with either the Defence counsel, the Victim's counsel or the Prosecutor, begin by outlining the legal issue at play to help your group understand what they are trying to prove or defend at the trial. Review the strengths and weaknesses of your case.
- Help the group to come up with a general theory and strategy.
- Discuss opening and closing submissions by pointing out what information is critical to their party's argument.
- Come prepared to discuss all of the basic points that students will need to make in their examination in chief and cross examination.
- Keep their examination of witnesses short and focused on key points.
- Assist students in coming up with questions for witnesses.
- Help students to feel comfortable with how the trial process works.

MOCK TRIAL JUDGES: JUDGING A MOCK TRIAL

Thank you for volunteering to assist with a student mock trial. Your time and enthusiasm will greatly enhance the learning process.

The role of a judge in a mock trial is to preside over the trial and make a decision on the particular case being heard. Some teachers will provide the volunteer judge with a chart to record comments. This chart may be used when marks are assigned. In many mock trials, judges are also asked to give comments to each of the lawyers and witnesses after the trial (positive feedback and constructive criticism).

You will act as the presiding judge in this mock trial. Remember that the two other judges sitting alongside you will likely be students. You may need to guide them in their critical thinking process of the case they've just heard before rendering your verdict.

Remember that for many students, the opportunity to plead a matter before a real judge (or a lawyer sitting as a judge), will be a momentous and perhaps intimidating experience. Focus on the educational and participatory aspects of the exercise.

KEEP IN MIND:

- Students may need reminding about proper trial etiquette and procedure (such as when to stand up, how to refer to the opposing counsel, etc.).
- For most secondary school mock trials, students will be part of either a Law or Civics course. To find out more about these courses, and the particular aspects of the justice system that students are studying, refer to the OJEN website, www.ojen.ca.
- There may be a wide range in the education and literacy levels of the participants.
- Note that students are expecting a verdict! They want to know who 'won' the case.

SUGGESTIONS FOR JUDGING A MOCK HEARING:

- Be familiar with the facts of the case.
- Do not worry if students make mistakes. They may not understand some of the more complex issues relating to the legislation.
- Feel free to intervene and help with examinations or procedure.
- Try to keep students to the time restrictions as much as possible.
- Remind students to speak up or slow down.
- If you will be giving feedback to the students at the end of the trial, take note of each participant's name so that you can individualize your comments.

PREPARE FOR THE HEARING BY:

- Reading the information provided.
- Reading any trial/tournament rules, and find out the answers to issues such as:
 - Are students permitted to confer with their coaches during the trial?
 - If the opposing team deviates from the fact pattern, should students object during the trial?
 - If students go over time in a competitive event, are points deducted?

INTERNATIONAL CRIMINAL LAW MOCK TRIAL | JUSTICE SECTOR VOLUNTEER

A sample marking scheme for judges, mock trial rubric and mock trial performance rating sheet may be found in the OJEN resource, *Making the Case: Mock Trial Toolkit*, available on the OJEN website: www.ojen.ca.

