
The Child Rights Manual

Nigeria



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Foreword

"We plan our lives according to a dream that came to us in our childhood, and we find that life alters our plans. And yet, at the end, from a rare height, we also see that our dream was our fate. It's just that providence had other ideas as to how we would get there. Destiny plans a different route, or turns the dream around, as if it were a riddle, and fulfills the dream in ways we couldn't have expected." – Ben Okri

The Bar Human Rights Committee (BHRC) was set up by a small group of English barristers in 1991. Its original ethos was to provide support and remedies for judges, lawyers and legal personnel who were being persecuted or prevented from performing their professional duties. Since then, the BHRC has expanded substantially both the scope of its work and its membership. Today, the Committee counts over 150 members, including an Executive of thirteen. Members comprise academics, students and pre-eminent practising lawyers who give up their time for free to assist in countries where the rule of law is under attack and people suffer.

In recent years, the BHRC has implemented, successfully, a significant number of projects and conducted numerous missions to countries that have requested assistance. These include Afghanistan, Israel, Palestine, Syria, Bahrain, Turkey, Iran, Armenia, Belarus, Russia, Azerbaijan, Kazakhstan, Mexico, Colombia, Jamaica, South Africa, Zimbabwe, Uganda, Tanzania, Malawi, Sierra Leone and Sudan.

This is the Bar Human Rights Committee's first work with UNICEF Nigeria. It came about after discussions between Noriko Izumi of UNICEF and myself over bitter leaf soup in Abuja. I had travelled to Nigeria to gather information as to the effectiveness of the Child Rights Acts in preventing the abuse of children. I met with lawyers, NGOs, high-level Federal police and prosecutors. I attended round table discussions with representatives of NAPTIP and the Ministry of Women's Affairs and Social Development. I visited children's homes. Subsequently, I have continued meeting with the police, the National Human Rights Commission of Nigeria, magistrates, religious organisations and community leaders.

But it was the Nigerian Child Protection Networks with their genesis in UNICEF that seemed to be gaining momentum; simply by joining everyone together. These Networks are brimming with passionate Nigerians incensed at the sickening abuse of their children. They are determined to stop it. So the Child Rights Manual is launched on a wave of talented, dedicated Nigerian child rights activists who have stepped forward from a cross-section of society and professions.

The Child Rights Manual and its accompanying Training Manual and Case Materials combine to support the pioneering work of the Child Protection Networks. They provide a detailed and practical guide to domestic, regional and international child rights remedies. They are the first of their kind. The Child Rights Manual is not a book which focuses upon problems but concentrates upon solutions.

It is drafted and compiled by a team of experts. Dr. Misa Zgonec-Rozej, international law specialist, wrote the texts; Madeleine Bridgett, social worker and barrister, provided practical input from working as a BHRC intern alongside Nigerian lawyers in child rights in the Niger Delta; Martha Spurrier barrister at Mind and Doughty Street Chambers, London, is the editor. BHRC Child Protection Networks trainers have revised the manuals after each training. I readily appreciate the energy and time committed by all, but particularly by Nathan Rasiah, barrister at 23 Essex Street Chambers, London, Smita Shah, barrister at Garden Court Chambers, London, Michelle Butler, barrister at Matrix Chambers, London, and Grainne Mellon, barrister at 36 Bedford Row Chambers, London. Also, Steve Cragg QC and Tunde Okewale, barristers at Doughty Street Chambers, were an integral part of the dynamic training team and Zimran Samuel, barrister and BHRC executive committee member, provided invaluable editing assistance. BHRC project co-ordinator and lawyer Illari Aragon has taken painstaking care in presenting the final manuals, having taken over from BHRC's previous project co-ordinator Julianne Heider's detailed work. The beautiful graphics are created by Steven Ubsdell, a professional graphic designer with a work ethic which drives him through the night. All materials are written and edited under my supervision. Whilst I am confident that there are no errors, I am very happy to take responsibility for any flaw.

UNICEF Nigeria's Noriko Izumi, Maryam Enyiazu, Ugo Emeka-Ebigbo and Ann Kangas supported the production of the manuals as well as organising intensive trainings of the Child Protection Networks, conducted by BHRC, across Nigeria. To date, I have led 5 trainings of hundreds of child rights delegates from some 28 states. They could not have been achieved without the support of all UNICEF field child protection officers including Nkiru Maduechesi, Nneka Oguagha, Ladi Alabi and Rosleen Akinroye. UNICEF Nigeria's team has done much more than the visible work – it has inspired us all.

Ancient Africa is the cradle of civilisation. BHRC offers the Child Rights Manual as a tool to rebuild the cradle.

19th August 2013

Kirsty Brimelow QC

Chairwoman of the Bar Human Rights Committee of England and Wales
Queen's Counsel at Doughty Street Chambers, London, England

*In memory of the victims of the bomb
at UN House, Abuja on 26th August 2011*

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Introduction to the manual

1. Human rights of the child

The concept of human rights derives from the core principle of human dignity. The fundamental human rights are of universal application. They include, the right to life, freedom from torture or inhuman and degrading treatment, the right to liberty and a fair trial, the right to privacy, and freedom of thought, religion and expression.

These rights appear in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as in the African Charter on Human and Peoples' Rights and in the Nigerian Constitution.

Like all human beings, children are as entitled to the core human rights. Children are also entitled to special protection in the form of child rights. Child rights law recognises the particular vulnerability of children and provides special protection from harm. Child rights law places a duty on the State to promote the best interests of children, and recognises the role that parents, families and the community play in protecting and realising child rights.

The four guiding principles in implementing child rights are:

- **Provision of assistance for children's basic needs, and the right to life, survival and development;**
- **Promotion of the best interests of the child;**
- **Protection against discrimination, neglect and exploitation;**
- **Participation of children in decisions affecting their destiny.**

Child rights will be engaged when children are victims of abuse, neglect or mistreatment, and also when children come into conflict with the law. In both cases it is important to monitor and record cases of child rights abuse, in order to ensure that child rights are properly protected in Nigeria, and if necessary to use regional and international mechanisms to ensure that children's rights are properly respected by the State.

2. Purpose of the manual

This manual has been developed by the United Nations Children's Fund (UNICEF) and the Bar Human Rights Committee of England and Wales (BHRC) as part of the project to build and develop the Child Protection Networks (CPNs) in Nigeria. The manual unites international, regional and domestic law with practical considerations that will enhance the capacity of the CPNs, particularly for child rights advocates and organisations developing evidence-based advocacy.

The purpose of this manual is to provide CPN members with an overview of all international, regional and domestic legislation and human rights treaties protecting the rights of the child. The manual examines the procedures and enforcement mechanisms which can be used to bring human rights claims on behalf of children whose rights have been violated in Nigeria before the international, regional and domestic human rights bodies. Particular attention has been given to human rights in the administration of child justice. The practical guidance in this manual is intended to develop CPN members' practical skills in human rights monitoring and documentation and case management.

The goal of the manual is to increase the application of a wide range of human rights standards in domestic child rights cases in Nigeria and to encourage the progression of domestic child rights cases to domestic, regional and international human rights bodies.

3. Structure of the manual

The manual is divided into four parts:

- **Part I** outlines the Nigerian legislation and the mechanisms available for bringing complaints of violations of the rights of the child in Nigeria, child justice administration in Nigeria and selected topics on the protection of children in Nigeria;
- **Part II** provides for an overview of all African treaties and mechanisms relating to the rights of the child that have been developed at the regional level;
- **Part III** offers an overview of all international treaties and mechanisms relating to the rights of the child and explains the international human rights standards that govern the administration of child justice;
- **Part IV** provides practical information on case management and building a case.

4. How to use the manual and other training materials

This manual should be used together with the training material, which comprises case studies and practical exercises. It is recommended that participants read this manual before the training in order to familiarise themselves with the subject matter. This will enable them to follow the lectures as well as preparing them for the practical training.

Abbreviations

Abbreviations

African Charter	African [Banjul] Charter on Human and Peoples' Rights
African Children's Charter	African Charter on the Rights and Welfare of the Child
African Commission	African Commission on Human and Peoples' Rights
African Children's Committee	African Committee of Experts on the Rights and Welfare of the Child
African Human Rights Court	African Court on Human and Peoples' Rights
AU	African Union
BHRC	Bar Human Rights Committee of England and Wales
CAT	United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAT Committee	Committee against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CMW	Committee on Migrant Workers
CPNs	Child Protection Networks (These are State CPNs; there is no Federal CPN)
CRA	Child's Rights Act
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
CED	Committee on Enforced Disappearances
CRPD	Convention on the Rights of Persons with Disabilities
CRPD Committee	Committee on the Rights of Persons with Disabilities
CSW	Commission on the Status of Women
CYPA	Children and Young Persons Act
CYPL	Children and Young Persons Law
DAW	Division for the Advancement of Women

Abbreviations

DESA	Department of Economic and Social Affairs
ECOSOC	United Nations Economic and Social Council
ECOWAS	Economic Community of West African States
ECOWAS Protocol	ECOWAS Protocol relating to the Community Court of Justice
EFCC	Economic and Financial Crime Commission
FAO	Food and Agriculture Organisation of the United Nations
IASC	Inter-Agency Standing Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPC	Independent Corrupt Practices Commission in Nigeria
ICPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ILO	International Labour Organisation
MWASD	Ministry of Women Affairs and Social Development
NAPTIP	National Agency for the Prohibition of Traffic in Persons and Other Related Matters
NCRIC	National Child Rights Implementation Committee
NGO	Non Governmental Organisation
NHRI	National Human Rights Institutions
NHRC	National Human Rights Commission
NPA	National Action Plan
NPM	National Preventive Mechanism
OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the High Commissioner of Human Rights

Abbreviations

OSAGI	Office of the Special Adviser on Gender Issues and the Advancement of Women
Revised ECOWAS Treaty	Revised Treaty of the Economic Community of West African States
SPT	Subcommittee on Prevention of Torture
The Beijing Rules	United Nations Standard Minimum Rules for the Administration of Juvenile Justice
The Riyadh Guidelines	United Nations Guidelines for the Prevention of Juvenile Delinquency
The Tokyo Rules	United Nations Standard Minimum Rules for Non-custodial Measures
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Council
UNHABITAT	United Nations Human Settlements Programme
UNICEF	United Nations Children's Fund
UNMA	United Nations Mine Action
UNOG	United Nations Office at Geneva
UN Women	United Nations Women
UPR	Universal Periodic Review
WGC	Working Group on Communications
WGS	Working Group on Situations
WHO	World Health Organisation

Part I:

The Protection of Child Rights in Nigeria

A. The Legal Framework for the Protection of Child Rights in Nigeria

Learning objectives

- To familiarise participants with the main national legislation concerning the rights of the child;
- To familiarise participants with the scope of the implementation of national legislation at State level;
- To specify the rights of the child and the relevant safeguards;
- To encourage participants to develop ways of ensuring that they routinely apply these rights and safeguards when dealing with child protection cases.

Questions

- What are the main domestic instruments protecting the rights of the child?
- What legal status does the Convention on the Rights of the Child have in Nigeria?
- Does the notion of the “best interests” of the child exist in the domestic legal system that you work in?
- What problems have you encountered in your work with children?
- How did you solve these problems?
- Which rules/principles/policies did you invoke?
- Are you familiar with any particular domestic complaints procedure regarding any violations of the rights of the child in Nigeria?
- Has that procedure been effective?

Part I: The Protection of Child Rights in Nigeria

A. The Legal Framework for the Protection of Child Rights in Nigeria

1. Introduction

This section will outline the main domestic instruments for the protection of the rights of the child, including legislation that has been adopted for the implementation of international treaties ratified by Nigeria. It will also discuss some of the more important issues surrounding the protection of children and child justice administration in Nigeria.

The issue of enforcing child rights within Nigeria arises in two situations:

- When a State body or public authority is directly responsible for violating child rights such as when a child is mistreated in police custody, subject to an unfair trial or to disproportionate punishment by a court of law.
 - When the State fails to act in accordance with its positive obligations to prevent child rights violations, or to investigate and punish those responsible for harming children for example, if the police fail to properly investigate a matter of child abuse resulting in the death of a child or if the State authorities fail to take adequate measures to prevent exploitative child labour practices.
-

The most important laws dealing with children's rights and children in conflict with the law are:

- The Nigerian Constitution;
- The Child's Rights Act, or, where a State has not implemented the Child's Rights Act, the Children and Young Person Act; and
- The criminal law, both substantive and procedural.

Part I: The Protection of Child Rights in Nigeria

A. The Legal Framework for the Protection of Child Rights in Nigeria

2. Constitution

The framework of human rights protection in Nigeria is the **1999 Constitution of the Federal Republic of Nigeria**. Chapter IV guarantees the following rights:

- Right to life (Article 33)
 - Right to dignity of human person (Article 34(1))
 - Prohibition of torture or inhumane and degrading treatment (Article 34(1)(a))
 - Prohibition of slavery or servitude (Article 34(1)(b))
 - Prohibition of forced or compulsory labour (Article 34(1)(c))
 - Right to personal liberty (Article 35)
 - Right to a fair hearing (Article 36)
 - Right to privacy (Article 37)
 - Freedom of thought, conscience and religion (Article 38)
 - Freedom of expression (Article 39)
 - Freedom of assembly and association with other persons (Article 40)
 - Right to freedom of movement (Article 41)
 - Prohibition of discrimination (Article 42)
 - Right to acquire and own immovable property (Article 43)
 - Prohibition of dispossession and expropriation (Article 44)
-

Importantly, any person who alleges that any of his or her rights in this Chapter have been, are being or are likely to be violated in any State, can apply to a High Court in that State for redress. A High Court has original jurisdiction to hear and determine any application made to it in pursuance of this section and may make orders, issue writs and give directions so as to enforce or secure the enforcement, within that State, of any right to which the person making the application is entitled to under this Chapter.

Chapter II of the Constitution outlines the State's duties in respect of certain social economic rights:

Section 17 requires the State to direct its policies towards ensuring that:

- There are adequate **medical and health facilities** for all persons;
- Children and young persons are **protected against any exploitation** whatsoever, and against moral and material neglect;
- The evolution and **promotion of family life** is encouraged.

Section 18 requires the State to direct its policies towards ensuring that:

- There are equal and adequate **educational opportunities** at all levels;
 - Illiteracy is eradicated;
 - Where practicable, free, compulsory and universal primary, secondary and university education is provided;
 - Where practicable, adult literacy programmes are provided.
-

Part I: The Protection of Child Rights in Nigeria

A. The Legal Framework for the Protection of Child Rights in Nigeria

3. The Child's Rights Act 2003

In 1993, after the ratification of the Convention on the Rights of the Child in 1991, a **Children's Bill** was drafted to implement the principles enshrined in the CRC and in the AU Charter on the Rights and Welfare of the Child in Nigeria. It was assented to by the President of the Federal Republic of Nigeria, Chief Olusegun Obasanjo in September 2003, and promulgated as **the Child's Rights Act 2003**.

Implementation at State level

The provisions of the CRA supersede all other legislation that has a bearing on the rights of the child. Although the CRA was passed at Federal level, it is only effective if State Assemblies also enact it. Accordingly, States are expected to formally adopt and adapt the CRA into State law. This is because the Nigerian Constitution gives States exclusive responsibility and jurisdiction to make laws on issues of child rights protection. State laws inimical to the rights of the child should be amended or annulled to conform to the CRA and the CRC.

At the time of writing, **the CRA has been promulgated into law in 24 of the country's 36 States and the Federal Capital Territory.**

Abia
Akwa Ibom
Anambra
Benue
Cross River
Delta

Ebonyi
Edo
Ekiti
FCT
Imo
Jigawa

Kogi
Kwara
Lagos
Nassarawa
Niger
Ogun

Ondo
Osun
Oyo
Plateau
Rivers
Taraba

At the time of writing, the following thirteen states have not implemented the CRA:

Adamawa
Bauchi
Bayelsa
Borno

Enugu
Gombe
Kaduna
Kano

Katsina
Kebbi
Sokoto
Yobe

Zamfara

Structure and content of the CRA

The CRA consolidates all laws relating to children into one single piece of legislation, incorporating all the rights and responsibilities of children and specifying the duties and obligations of government, parents and other authorities, organisations and bodies.

Definition of a child

The Act defines a child as one who is **below the age of eighteen years**.

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A. The Legal Framework for the Protection of Child Rights in Nigeria

Best Interests of the Child

Section 1 of the CRA categorically provides that the child's best interests shall be paramount. A child shall be given such protection and care as is necessary for its well being, retaining the right to survival and development and to a name and registration at birth.

Basic provisions of the CRA

- The **dignity** of the child shall be respected at all times (section 11)
- Every child has the right to **survival** and **development** (section 4)
- Every child is entitled to his **privacy** (section 8)
- Every child has the right to a basic education (section 15)
- Every child has the right to **freedom of thought, conscience and religion** (section 7)
- **Freedom from discrimination** on the grounds of belonging to a particular community or ethnic group, place of origin, sex, religion, the circumstances of birth, disability, deprivation or political opinion (section 10)
- **Freedom from physical, mental or emotional injury**, abuse or neglect, sexual abuse, maltreatment, torture, inhuman or degrading punishment (section 11; section 32)
- Freedom from attacks on a child's **honour and reputation** (section 11)
- The right to **rest and leisure** (section 12)
- The right to enjoy the best possible state of **physical, mental and spiritual health** (section 13)
- Every government in Nigeria shall strive to **reduce the infant mortality rate**, provide **medical and health care**, adequate **nutrition** and safe drinking **water** and **hygienic** environments (section 13)
- The right of **mentally and physically disabled children and street children to be protected** so that they can socially integrate and develop (section 16)
- The **betrotal and marriage of children is prohibited** (sections 21 and 22)
- Causing **tattoos, marks and female genital mutilation** is **prohibited** (section 24)
- Exposing children to pornographic or other harmful materials is prohibited (section 35)
- Trafficking, abducting or unlawfully removing children from lawful custody is prohibited (section 27)
- Using **children in criminal activities** is **prohibited** (section 26)
- **Forced or exploitative labour** and the **employment of children as domestic help** outside their own home or family is **prohibited** (section 28)
- **Buying, selling, hiring** or otherwise dealing in children for the purpose of **begging, hawking, prostitution** or for other unlawful immoral purposes are prohibited (section 30)
- **Recruiting children into the armed forces** is prohibited (section 30)

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A. The Legal Framework for the Protection of Child Rights in Nigeria

Children's responsibilities

Under sections 3-20, the CRA gives children responsibilities and mandates parents, guardians, institutions and authorities to provide the necessary guidance, education and training to enable children to live up to their responsibilities. Children's responsibilities include:

- Working towards the cohesion of their families and relating to others in the spirit of tolerance, dialogue and consultation;
- Respecting their parents and elders;
- Placing their physical and intellectual capabilities at the service of the State and contributing to the solidarity and unity of Africa and the world at large;
- Contributing to the moral well-being of society;
- Strengthening social and national solidarity and preserving the independence and integrity of the country;
- Respecting the ideals of freedom, equality, humaneness and justice for all.

Family Courts

Part XIII of the CRA (sections 149-162) provides for the establishment of **Family Courts** for the purpose of hearing and determining matters relating to children. The courts are to be established for each State of the Federation and the Federal Capital Territory. They will operate at two levels – as a **Division of the High Court** and as a **Magistrates' Court**. Family courts are vested with the jurisdiction to hear all cases in which the existence of a legal right, power, duty, liability, privilege, interest, obligation or claim in respect of a child is in issue, and any criminal proceedings relating to children.

Jurisdiction

The Family Courts are able to hear and determine any proceedings relating to children. This includes both civil and criminal proceedings, and proceedings for both offences committed by children, and those committed against children (section 151).

The Family Court has exclusive jurisdiction over most matters relating to children: "no other court shall exercise jurisdiction in any matter relating to children" (section 161(1)). However, adults who are accused of committing offences against children may be tried in normal criminal courts (section 161(2)).

Composition

The Family Court operates at two levels – as a Magistrates' court and as a Division of the High Court.

High Court level

The Fundamental Rights in Chapter IV of the Constitution may be enforced by the High Court. Under Article 46 any person, including a child, who alleges a violation of one of those rights may apply to the High Court for redress:

The Family Court at High Court level can enforce the child rights set out in the CRA:

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CRA section 152(4):

“The court at High Court level shall have the power to:

(a) deal with all matters relating to the enforcement of the rights of the child as set out in this Act on the application for redress by a child who alleges that a right has been or is being or is likely to be infringed in respect of him.”

Decisions of the High Court may be appealed to the Court of Appeal, and decisions of the Court of Appeal may be appealed to the Supreme Court.

Judges	<ul style="list-style-type: none">▪ Judges of the High Court of the State and the Federal Capital Territory, Abuja▪ Assessors, who shall be officers not below the rank of Chief Child Development Officers
Composition	1 Judge + 2 Assessors
Competence	<ul style="list-style-type: none">▪ Deal with all matters relating to the enforcement of the rights of the child as set out in the application for redress by a child who alleges that his/her rights have been, are being, or are likely to be infringed;▪ Deal with all offences punishable with death, or terms of imprisonment for a term of ten years and above, deal with other matters relating to a child where the claim involves an amount of fifty thousand Naira and above, deal with divorce and custody of the child and hear appeals from the Court at the Magisterial level
Appeals	The Court of Appeal

Magistrates’ Court Level:

Judges	<ul style="list-style-type: none">▪ Magistrates, not below the rank of Chief Magistrate▪ Assessors, who shall be officers not below the rank of Senior Development officer
Composition	1 Judge + 2 Assessors
Competence	To try offences and deal with all matters not specifically assigned to the Court at the High Court level under section 156 of the CRA.
Appeals	<ul style="list-style-type: none">▪ The court at the High Court level (decision of the court at the Magisterial level)

Procedure

The CRA provides that proceedings in the Family Court shall be conducive to the best interests of the child, and shall be conducted in an atmosphere of understanding, allowing the child to express himself and participate in the proceedings (section 158). The CRA also provides for the right to free legal representation (section 155); privacy and the protection of a child’s identity (section 157); provisions relating to securing

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the attendance of parents or guardians (section 159); provisions relating to giving unsworn evidence (section 160).

Implementation

Not all the States that have implemented the CRA have established Family Courts in accordance with the Act. This is unfortunate as the Family Courts form an important part of the CRA framework for protecting child rights within the justice system.

Child justice administration

The Act provides for Child Justice Administration, to replace the Juvenile Justice Administration which has been in existence for several decades in Nigeria. The provisions prohibit the subjection of any child to the criminal justice process and guarantee that due process be given to any child subjected to the child justice system at all the stages of the investigation, adjudication and disposition of any case against such a child. It prohibits the use of capital punishment, imprisonment and corporal punishment for children under 18 years of age, and provides for the use of scientific tests in deciding paternity cases. These are all novel provisions.

The Act frowns upon the institutionalisation of pregnant children/teenagers and expectant mothers. Where institutionalisation is desirable or unavoidable, the CRA mandates the establishment of Special Mothers' Centres for pregnant mothers/teenagers, while Children Residential Centres and Children Correctional Centres are to be established to replace the present Approved Schools created under the CYPAs. Where a court decides against institutionalisation, it should utilise such disposition measures as dismissing the charge, or placing the child under care, guidance and supervision.

Children living under difficult circumstances

Following the same principles behind the creation of institutions for servicing the needs and welfare of children living under difficult circumstances (such as orphans, street children and those suffering from physical or mental disabilities) are provisions for the establishment, registration, regulation and monitoring of Community/Children's Homes. The Act vests supervisory functions and responsibilities in the ministry responsible for children in Children's homes, including monitoring, the provision of financial support, research and the gathering of information on the activities of the homes.

Institutional framework for the implementation of the CRC

The CRA provides for the establishment of Child Rights Implementation Committees at the National, State and Local Government levels: the National Child Rights Implementation Committee, the State Child Rights Implementation Committee, and Local Government Child Right Implementation Committee. The committees are to ensure that there is governmental commitment to fulfilling the implementation of the provisions of the CRA at all levels, through research, investigation and jurisprudence. They may initiate actions to ensure the observance of the rights and welfare of the child (Part XXIII of the CRA).

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4. The Children and Young Persons Act (Non-CRA States)

The following States have not implemented the CRA:

In these states, the relevant law dealing with matters affecting children and young people in Nigeria is the **Children and Young Persons Act** (CYPA). Its stated purpose is “to make provision for the welfare of the young and the treatment of young offenders and for establishment of juvenile courts.”

Section 2 of the CYPA provides the following definitions:

- **A child** means a person under the age of fourteen years;
- **A young person** is a person who has attained the age of fourteen years but is under the age of seventeen.

The Labour Act 1974 is another important piece of legislation for protecting the rights of children. It regulates child labour and protects children from exploitation and abuse.

Concerns by the Committee on the Rights of the Child

- Most northern States of Nigeria have not yet implemented the CRA in their domestic law;
- Some of the States that have implemented the legislation have adopted a definition of the child which is not in compliance with that in the CRC and CRA;
- A comprehensive review of the compatibility of the existing statutory, religious (Shari'ah) and customary laws with the CRC and the CRA has not been carried out.

At the time of writing, the following thirteen states have not implemented the CRA:

Adamawa
Bauchi
Bayelsa
Borno

Enugu
Gombe
Kaduna
Kano

Katsina
Kebbi
Sokoto
Yobe

Zamfara

B. The Role of the Criminal Law in Protecting Child Rights

1. General and specific offences

The criminal law is a mechanism for protecting children's rights. Under the criminal law general offences such as murder, rape and theft protect everyone, including children. There are also specific offences designed to protect children in particular. Such offences include the criminalisation of child prostitution, child slavery and child sexual abuse.

Nigeria has two separate criminal codes, one applying to Southern Nigeria (Criminal Code) and one applying to Northern Nigeria (Penal Code):

- **The Criminal Code Act**, Cap. 77, Vol. 5, Laws of the Federation of Nigeria 1999 (available at <http://www.unhcr.org/refworld/pdfid/49997ade1a.pdf>);
- **Penal Code (Northern States) Federal Provisions Act** (1990).

Section 1A of the Criminal Code Act provides that the provisions of the Criminal Code Act take effect subject to the provisions of the Penal Code (Northern States) Federal Provisions Act.

Chapter 21 of the Criminal Code contains specific provisions for the protection of the child and the preservation of the dignity of his person. The provisions cover the following areas of criminal behaviour towards children:

- Violence
- Sexual abuse
- Exploitation
- Witchcraft stigmatisation

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B. The Role of the Criminal Law in Protecting Child Rights

The child's right to life guaranteed under the Constitution is further strengthened by the Criminal Code provision prohibiting unlawful killing (section 306). For this purpose, a child becomes a person capable of being killed as soon as it is born (section 307-309). Section 328 of the Criminal Code protects a child from being unlawfully killed during delivery.

The Criminal Code also prescribes a set of duties for those responsible for children to protect the child's right to life, protection and preservation (sections 300-302).

2. The role of the police

The police and the prosecution service are the State bodies with responsibility for investigating and prosecuting crime. They have an important role to play in protecting child rights by ensuring that alleged offences against children are properly investigated, and those responsible are prosecuted and punished.

Effective police action should help children who have been the victims of offences obtain redress from the courts and prevent future harm to them and others.

Some police units will have specially trained officers who are assigned to deal with cases involving children.

What to do if the police fail to act

In some instances the police may not act on an allegation promptly or effectively. In such cases it may be necessary to prompt action by taking the complaint higher up the chain of command by contacting the DPO or the Police Commissioner, preferably in writing.

The National Human Rights Commission may be able to assist in cases involving potential human rights violations in which the police are failing to act.

It is also possible to bring an action in the Family court in order to compel the police to investigate a matter (s.152 (4) (a) CRA).

3. The courts

The Nigerian courts are responsible for prosecuting those who violate children's rights. The rights contained in the Nigerian Constitution and the Child Rights Act 2003 can be enforced in the High Court. The High Court has original jurisdiction to hear and determine any application made to it in relation to the rights contained in the Constitution and may make orders, issue writs and give directions so as to enforce or secure the enforcement of those rights.

The Family Court (a division of the High Court) has jurisdiction under the CRA to hear and determine applications in relation to rights contained in the CRA.

C. Children in Conflict with the Law

Learning objectives

- To familiarise participants with the main international legal rules and standards concerning the rights of the child in the administration of justice and their main purposes;
- To specify the procedural safeguards which should be accorded to the child in the administration of justice;
- To encourage participants to develop ways of ensuring that they routinely apply these rights and safeguards when confronted with children in the justice system.

Questions

- What problems have you encountered in your work with children in the course of the administration of justice?
- How did you solve these problems?
- Which courts are competent to deal with child justice administration in your State?
- Which custodial institutions exist in your State? Do these institutions offer adequate care to children?
- To what extent is the child allowed to participate in decisions concerning him or her in the Nigerian legal system?
- Are you familiar with any international rules or standards concerning the rights of the child in the administration of justice?
- Have any of these rules and standards been implemented in Nigerian domestic law?
- If not, what would you do to improve the situation?

1. Introduction

The Constitution is the main instrument that provides protection for every person in conflict with the law, including children. The Constitution guarantees due process in the pre-trial and trial phases as well as other rights, such as the prohibition of torture and inhumane and degrading treatment.

The CRA introduced **Child Justice Administration** which replaces the Juvenile Justice Administration as provided by the CYPA. Under the CRA a child is a person under eighteen years of age.

For States that have not adopted the CRA, the main instrument providing for Juvenile Justice Administration is the CYPA. Generally, the CYPA establishes a separate statutory regime for dealing with juvenile offenders which is more lenient than that relating to older offenders. Persons below the age of 17 years are dealt with under the special provisions of the CYPA while persons over 17 years are subject to the normal process of the law.

This section deals with the key issues that arise for children in conflict with the law:

- i) The age of criminal responsibility;**
 - ii) Arrest and detention;**
 - iii) Diversion from criminal justice;**
 - iv) Trial;**
 - v) Methods of dealing with children in conflict with the law.**
-

2. Age of criminal responsibility

Section 30 of the Criminal Code (South) and section 50 of the Penal Code (North) establish that a child under the age of 7 years is not criminally responsible for any act or omission. A child between the age of 7 and 12 years will not be held responsible for his actions unless it can be proved that at the time of doing the act or making the omission he had the capacity to know that he ought not to do it. A child over 12 years of age is fully responsible for his actions. However, a 12 year-old offender is not subject to the criminal jurisdiction of the ordinary courts.

Section 204 of the CRA decrees that no child should be subjected to the criminal justice process or to criminal sanctions, but a child alleged to have committed an act which would constitute a criminal offence if he were an adult shall be subjected only to the child justice system.

Under the CYPA, children are subject to criminal proceedings in a juvenile court until they are 17 years old. Where a child under the age of 7 commits an offence the State is not without a remedy. Children under 7 can still be brought before a juvenile court if they are beyond control or in need of care and protection (sections 26(1) and 27 CPYA).

Under recently introduced Islamic or Shari'ah law in parts of northern Nigeria, the age of criminal responsibility is taken to be either 18 years or puberty. In cases involving fornication or adultery, which may attract flogging or the death penalty respectively, the age of responsibility is set at 15. The implication is that, in cases where children reach puberty earlier than 18 years, no distinction is made between them and adults in dispensing Shari'ah punishments. This definition of the age of criminal responsibility may allow for discrimination against girls because they often reach puberty earlier than boys, or discrimination against those girls who have reached puberty earlier than others.

3. Arrest and detention

Arrest

The Constitution in Article 35 prohibits torture and inhumane or degrading treatment, and requires that every person must be informed in writing and within 24 hours of the facts and grounds for their arrest.

Article 35 of the Constitution:

- Any person who is arrested or detained shall have the **right to remain silent** or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.
 - Any person who is arrested or detained shall be **informed in writing within twenty-four hours (and in a language that he understands)** of the facts and grounds for his arrest or detention.
-

Criminal procedural law requires that a person must be told of the reasons for his arrest at the time of his arrest (section 5 of the Criminal Procedure Act, Cap 80. Laws of the Federation of Nigeria 1990; section 38 of the Criminal Procedure Code, Cap. 30 Laws of Northern Nigeria 1963).

Criminal procedural law also requires that a suspect should not be handcuffed or bound or subject to unnecessary restraint (section 4 of the Criminal Procedure Act; section 37 of the Criminal Procedure Code).

The CRA regulates the initial contact with the child and the police in the following terms:

211. Arrest

(1) On the apprehension of a child—

(a) the parents or guardian of the child shall—

(i) be immediately notified, or

(ii) where immediate notification is not possible, be notified within the shortest time possible after the apprehension, of the apprehension ;

(b) the Court or police, as the case may be, shall, without delay, consider the issue of release ;

c) contacts between the police and the child shall be managed in such a way as to—

(i) respect the legal status of the child,

(ii) promote the best interest and well-being of the child,

(iii) avoid harm to the child, having due regard to the situation of the child and the circumstances of the case.

(2) In this section — “harm” includes the use of harsh language, physical violence, exposure to the environment and any consequential physical, psychological or emotional injury or hurt.

The CYPA is silent on the procedure for the arrest of juveniles.

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C. Children in Conflict with the Law

Pre-trial detention

Articles 35 of the Constitution generally prohibits the deprivation of liberty. Deprivation of liberty is allowed only in certain exceptional cases and in accordance with a procedure permitted by law such as:

-
- For the purpose of bringing the person before a court;
 - Upon reasonable suspicion of his having committed a criminal offence;
 - To prevent him committing a criminal offence;
 - In the execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty.
-

International standards require that detention pending trial should be used as a measure of last resort and for the shortest period of time possible. This requirement has been implemented in the CRA:

212. Detention pending the trial

- (1) Detention pending trial shall—
 - (a) be used only as a measure of last resort and for the shortest possible period of time;
 - (b) wherever possible, be replaced by alternative measures, including close supervision, care by and placement with a family or in an educational setting or home.
- (2) While in detention, a child shall be given care, protection and all necessary individual assistance, including social, educational, vocational, psychological, medical and physical assistance, that he may require having regard to his age, sex and personality.
- (3) Where the Court authorises an apprehended child to be kept in police detention, the Court shall, unless it certifies—
 - (a) that, by reason of such circumstances as specified in the certificate, it is impracticable for him to do so; or
 - (b) in the case of an apprehended child who has attained the age of fifteen years, that no secure accommodation is available and that keeping him in some other authority's accommodation would not be adequate to protect the public from serious harm from the child, secure that the apprehended child is moved to State Government accommodation.
- (4) Classification in the place of detention pending trial shall take account of the social, educational, medical and physical characteristics and condition of the child, including his age, sex and personality.

Police detention may therefore be utilised only in very restricted circumstances.

Conditions of detention

The prohibition on torture and ill treatment in the Constitution extends to children in detention. Section 11 of the CRA prohibits physical, mental, emotional or sexual abuse. This applies to children in conflict with the law in the same way that it applies to other children.

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C. Children in Conflict with the Law

Apart from providing that pre-trial detention should be a last resort and for the shortest possible period of time, the **Beijing Rules** also provide that juveniles in pre-trial detention should be held separately from adults.

Section 5 of the CYPA requires the Inspector General of Police to make arrangements for preventing, so far as practicable, a child or young person (until the age of 17) while in custody, from associating with an adult charged with an offence.

This provision is mirrored in **section 222 of the CRA**.

In addition, juveniles are entitled to all the rights and guarantees of the **Standard Minimum Rules for the Treatment of Prisoners** adopted by the United Nations and while in custody they should receive care, protection, and all necessary social, educational, vocational, psychological, medical and physical assistance that may be required in view of their age, sex and personality (rules 13.3-13.5 of the Beijing Rules).

Section 212(2) of the CRA provides that while in detention, a child shall be given care, protection and all necessary individual assistance, including social, educational, vocational, psychological, medical and physical assistance, that he may require having regard to his age, sex and personality.

Section 7 of the CYPA deals with the remand or committal to custody of juvenile offenders, and specifies the conditions of custody or remand. The law is intended to prevent young offenders from being detained in prisons except in exceptional circumstances. However, in reality, the inadequacy of remand centres, approved schools and Borstal institutions leads to the detention and imprisonment of many young offenders in prisons.

As mentioned above, the CYPA makes a distinction between a child and a young person. While the detention of a child in prison is prohibited, the detention of a young person is permitted in exceptional circumstances. The places of detention referred to in the CYPA are remand homes, approved institutions - including Borstal institutions - and prisons (sections 14-15 CYPA).

The **CRA** regulates this area in **section 218**: where the court does not release on bail a child who admits to committing one or more offences, the court shall remand the child to State Government accommodation.

A court shall not impose a security requirement except in respect of a child who has attained the age of 15 years and:

-
- Is charged with or found to have committed a violent or sexual offence; or
 - Is charged with or found to have committed an offence punishable in the case of an adult with 14 years imprisonment or more; or
 - Has a recent history of absconding; or
 - If there is need to protect the public from serious harm from the child.
-

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C. Children in Conflict with the Law

Access to court/length of detention

Article 35 of the Constitution requires that any person who is arrested or detained upon reasonable suspicion of having committed a criminal offence shall be brought before a court of law within a reasonable time. This means:

-
- In the case of an arrest or detention in any place where there is a court of within a radius of forty kilometres, a period of one day; and
 - In any other case, a period of two days or such longer period as may be considered by the court to be reasonable.
-

Any person who is **unlawfully arrested** or detained shall be entitled to **compensation and a public apology** from the appropriate authority or person.

Bail

Nigerian law appears to conform to the principle that detention is not in the best interests of the child by providing in section 3 of the CYPA that a juvenile who has been arrested but cannot immediately be brought before a court must be released on bail.

This bail condition, however, does not apply to a person:

-
- Accused of homicide or another grave crime;
 - To a situation where “it is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute”; or
 - To a situation where “the officer has reason to believe that the release of such person would defeat the ends of justice”.
-

There is, however, no definition of “grave crimes” or “defeating the ends of justice”. It appears that the police and the courts have almost unlimited discretion to deny bail to juvenile offenders (see sections 17-20 and section 30 of the Criminal Code and section 422 of the Criminal Procedure Act).

4. Diversion from criminal justice

The CRA section 209 provides for the disposal of cases involving child offenders without resorting to the criminal justice system.

For offences that are not serious, the police, prosecutor or any person dealing with a case involving a child offender has the power to dispose of the case by means of settlement rather than by formal trial. It is important to remember that adjudication before the court shall be used as a last resort.

5. Trial

Courts dealing with children in conflict with the law

CRA States: Family courts

The CRA establishes family courts for the purpose of hearing and determining matters relating to children (see section 1.1 above).

Non-CRA States: Juvenile courts

Under section 6(1) of the CYP A a juvenile court for the purpose of the hearing and determination of cases relating to children and young persons is constituted by a magistrate either sitting alone or with any other person appointed by the Chief Judge of a State (such persons are referred to as assessors). Many States of the Federation do not have permanently constituted juvenile courts. In most cases designated magistrates' courts exercise the jurisdiction to hear juvenile cases on an ad hoc basis.

Magistrates hear cases involving juveniles outside the normal courtrooms or outside normal court sessions either in the courtrooms or in their chambers. This is to protect the privacy of the young offenders and to protect them from the effects of stigmatisation that may result from a public trial.

Section 6(2) of the CYP A provides that a court, when hearing charges against children or young persons shall, unless the child or young person is charged jointly with any other person not being a child or young person, sit either in a different building or room from that in which the ordinary sittings of the court are held or on different days or at different times from those at which the ordinary sittings are held.

The right to a fair trial

The Constitution guarantees fair trial rights.

Article 36 of the constitution guarantees the right to:

- Be informed of the charges against him in a language he understands;
- Be presumed innocent until proven guilty;
- Remain silent;
- Time to prepare a defence;
- A fair hearing within a reasonable time by an independent and impartial court established by law;
- Make representations;
- Examine the witnesses against him and call witnesses to testify on his behalf;
- An interpreter if necessary.

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C. Children in Conflict with the Law

The CRA implements the guarantees in the Constitution by providing in section 213 that a child who is accused of having committed a criminal act shall be tried in court and his fair trial rights shall be observed (sections 214-215). The procedures established by the system shall respect the legal status, promote the best interests of the child and avoid harm.

Section 210 of the CRA requires that the fundamental rights of the child as set out in Part 20 of the CRA must be respected in the administration of child justice, in particular:

-
- The presumption of innocence;
 - The right to be notified of the charges;
 - The right to remain silent;
 - The right to the presence of a parent or guardian;
 - The right to legal representation and free legal aid;
 - Right to privacy: no information that may lead to the identification of a child offender shall be published (section 205 CRA).
-

The Criminal Procedure Act, Part 46, provides a procedure for dealing with juvenile offenders.

Age verification

In order to ensure that only juvenile courts deal with children and young persons, section 29 of the CYPA provides for an age verification procedure:

“Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence and it appears to the court that he is a child or young person, the court shall make due inquiry as to the age of that person...”

This provision is aimed at preventing anyone who has not attained the age of seventeen years from being tried in the adult courts.

The Criminal Procedure Code provides for a procedure for verification of the age of a person who appears to be a child under sections 208-209.

If the court does not raise the issue of person's age, where it appears that that person is a child, the lawyer representing the child must ensure that the issue of age is raised before the child enters a plea.

Notification of alleged offences

Section 217(1) of the CRA requires a child to be told about the substance of any allegation against him:

Where a child is brought before the court, the court shall, as soon as possible, explain to him and his parents or guardian in a language the child and the child's parent or guardian understands, the substance of the alleged offence.

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The CRA prohibits the joint trial of children with adults under any circumstances (section 204).

Section 8(1) of the CYPA mirrors section 217(1) of the CRA:

Where a child or young person is brought before a juvenile court for an offence it shall be the duty of the court as soon as possible to explain to him in simple language the substance of the alleged offence.

Legal representation

The Constitution provides that every accused person is entitled to defend himself either in person or with a lawyer of his choice.

Section 155 of the CRA enshrines the right of a child to be represented by a lawyer at court:

A child has the right to be represented by a legal practitioner and to free legal aid in the hearing and determination of any matter concerning the child in the court.

The parents or guardian of a child who is charged with a criminal offence shall attend all stages of the proceedings and be entitled to participate except where the court is of the opinion that it is not in the best interests of a child for his or her parents to attend. The court may, where necessary, make an order to enforce attendance by parents.

Under the CYPA a juvenile may be represented by a lawyer. If he is not, the court must allow his parents or guardian to assist him in the conduct of his defence including in the cross-examination of witnesses (section 8).

Exclusion of the public

The public is excluded from court proceedings involving juveniles.

The CRA contains the following provisions with regard to the exclusion of the public from hearings involving juveniles:

156. No person, other than—

- (a) the members and officers of the court;
- (b) the parties to the case, their solicitors and counsel ;
- (c) parents or guardian of the child ; and
- (d) other persons directly concerned in the case, shall be allowed to attend the court, and, accordingly, members of the press are excluded from attending a court.

157. (1) No person shall publish the name, address, school, photograph, or anything likely to lead to the identification of a child whose matter is before the court, except in so far as is required by the provisions of this Act.

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C. Children in Conflict with the Law

(2) A person who acts in contravention of the provisions of this section commits an offence and is liable on conviction to a fine of fifty thousand naira or imprisonment for a term of five years or to both such fine and imprisonment.

It should also be remembered that children have a right to privacy under section 8 of the CRA.

Section 6 of the CYPA provides the following:

- In a juvenile court no person other than the members and officers of the court and the parties to the case, their solicitors and counsel, and other persons directly concerned in the case shall be allowed to attend without leave of the court;
- Bona fide representatives of a newspaper or news agency shall not be excluded, except by special order of the court;
- No person shall publish the name, address, school, photograph, or anything likely to lead to the identification of the child or young person before a juvenile court, except with the permission of the court.

6. Methods of dealing with children in conflict with the law

Section 219 of the CRA provides that before a case, other than that involving a minor offence, is finally disposed of by the court, the appropriate officer must properly investigate the child's background, living situation and the circumstances in which the offence was committed. This officer then informs the court of all relevant facts relating to the child.

The CRA provides that a person who makes a determination in respect of child offenders shall exercise discretion at all stages of the proceedings and shall be trained to exercise discretion judiciously:

208. Use of discretion

- (1) In view of the varying special needs of children and the variety of measures available, a person who makes determination on child offenders shall exercise such discretion, as he deems most appropriate in each case, at all stages of the proceedings and at the different levels of child justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.*
- (2) Every person who exercises discretion shall be specially qualified or trained to exercise the discretion judiciously and in accordance with his functions and powers.*

Power of the court to order a parent or guardian to pay a fine (CRA section 220)

Where a child is charged before the court and the court decides that the case would be best disposed of by the imposition of a fine, damages, compensation or costs, the court shall order the child's parent or guardian to pay unless they cannot be found or they were not involved in the commission of the offence. The parent or guardian may be ordered to give security for the child's good behaviour.

Part I: The Protection of Child Rights in Nigeria

C. Children in Conflict with the Law

◆ **Restriction on punishment (CRA section 221)**

The CRA prohibits the imprisonment of a child, the corporal punishment of a child and the imposition of death penalty on a child.

◆ **Detention in the case of certain serious crimes (CRA section 222)**

Where a child is found to have attempted to commit treason, murder, robbery, wounding with intent to cause grievous harm or manslaughter, the court may order the child to be detained.

◆ **Methods of dealing with child offenders (CRA section 223)**

The court should consider the following methods of dealing with child offenders:

- Dismissing the charge;
- Discharging the child offender once he has entered into a recognisance;
- Placing the child under a care order, guidance order and supervision order;
- Sending the child to an approved institution or accommodation under a corrective order;
- Ordering the child to pay a fine or undertake community service;
- Ordering the child to have counselling;
- Ordering the child's parent or guardian to pay a fine, give security for the child's good behaviour or enter into a recognisance to take proper care of him and maintain their control over him;
- Making a hospital order for the child to have treatment;
- Making an order for the child to be placed in foster care or live in a community or educational setting.

◆ **Conditional discharge order and supervision order (CRA section 242)**

Where a child is charged with an offence, other than homicide, and the court is satisfied that the charge is proved, the court may make an order discharging the child on the condition that he enters into a recognisance to be of good behaviour and to appear to be further dealt with when called upon at any time for a period not exceeding 3 years. The recognisance shall contain a condition that the child offender be under supervision (known as a supervision order).

◆ **Institutional order (CRA section 223)**

Placement of a child in an approved accommodation or Government institution shall be a disposition of last resort and may only be made if there is no other way of dealing with the child.

Under section 14 of the CYPA, where a child or young person is found guilty, the juvenile court has at its disposal a wide range of disposition measures aimed at furthering the main objective of juvenile justice, namely the welfare of the child rather than the punishment of the child. The courts are prohibited from using the words "conviction" and "sentence" in relation to children and young persons dealt with by the juvenile courts (section 16 of the CYPA; section 213(2) of the CRA).

Part I: The Protection of Child Rights in Nigeria

C. Children in Conflict with the Law

Under **section 14 of the CYPA**, the juvenile court may:

- Dismiss the charge;
- Discharge the offender on his entering into recognisance;
- Discharge the offender and place him under the supervision of a probation officer;
- Commit the offender by means of a corrective order to the care of a relative or other fit person;
- Send the offender by means of a corrective order to an approved institution;
- Order the offender to be caned;
- Order the offender to pay a fine, damages or costs;
- Order the parent or guardian of the offender to pay a fine, damages or costs;
- Order the parent or guardian of the offender to give security for his good behaviour;
- Commit the offender to custody in a remand home;
- Where the offender is a young person (as opposed to a child), order him to be imprisoned; or
- Deal with the case in any other manner in which it may be legally dealt with.

Section 11 of the CYPA provides that no child (a person under the age of 14) shall be put in prison and no young person (a person between the ages of 14 and 17 years) shall be put in prison if he can be suitably dealt with in any other way, for example, probation, a fine, corporal punishment, or committal to a place of detention or an approved institution.

7. Custodial institutions

The CRA

Objective of institutional treatment

The objective of institutional treatment is defined by the CRA in section 236:

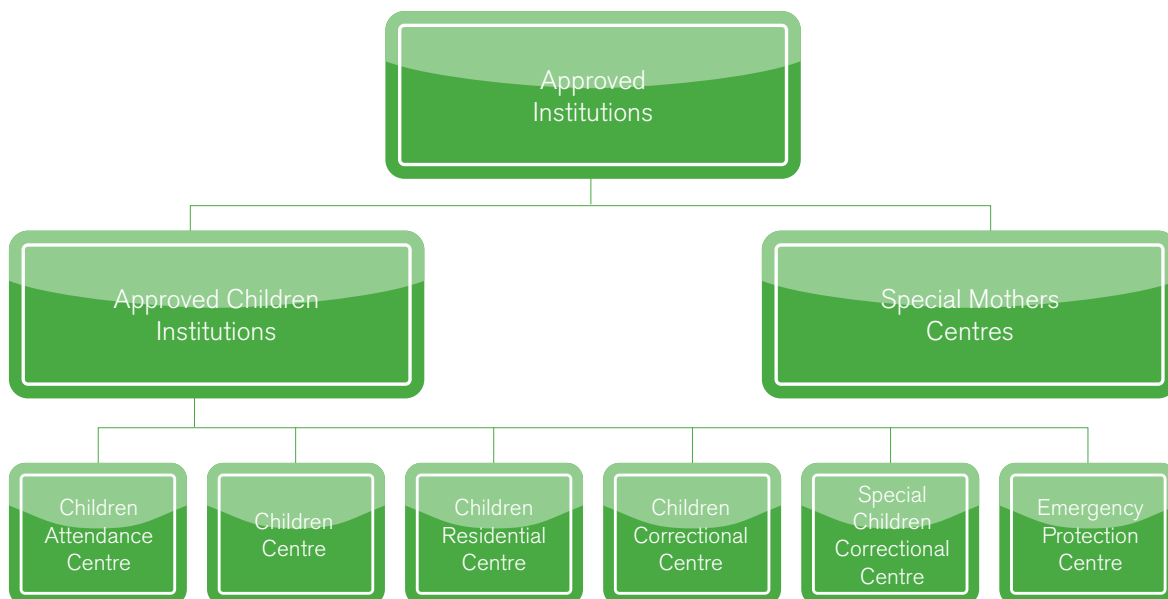
- The objective of training and treatment of a child offender in an institution is to provide care, protection, education and vocational skills.
- A child offender in an institution shall be given care, protection and all necessary assistance, including any social, educational, vocational, psychological, medical and physical assistance, that he may require, having regard to his age, sex, personality and in the interest of his development.
- A female child offender placed in an institution shall receive no less care, protection, assistance, treatment and training than a male child.
- The parents and guardian of a child offender placed in an institution shall have the right of access to the child in the interests and well being of the child.
- Inter-Ministerial and Inter-Departmental co-operation shall be encouraged for the purpose of providing adequate academic or vocational training for any child offender placed in an institution and to ensure that the child does not leave the institution at an educational disadvantage.

Approved Institutions

The CRA envisages the establishment of approved institutions to perform custodial functions. Under sections 247 and 248, approved institutions consist of Approved Children Institutions and Special Mothers Centres.

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C. Children in Conflict with the Law



Purpose and tasks of the approved institutions

Children Attendance Centre	A non-residential place for children to be given training and instruction.
Children Attendance Centre	A place for the detention of children who are remanded in custody for trial or for the making of a disposition order after trial, or awaiting adoption or fostering.
Children Residential Centre	A place in which child offenders may be detained and given regular education and other training conducive to their reformation.
Children Correctional Centre	A place in which child offenders may be detained and given training conducive to their re-socialisation.
Emergency Protection Centre	A place in which a child taken into police protection or in respect of whom an emergency protection order is made shall be accommodated until the expiration of the order.
Special Children Correction Centre	A place in which children who are found to be incorrigible or to be exercising a bad influence on other inmates detained in a Children Correctional Centre may be detained.
Special Mothers Centre	A place in which expectant and nursing mothers are held for purposes of remand, re-socialisation and rehabilitation into society in an atmosphere devoid of the regime of institutional confinement which may be damaging for the proper development of their children.

The Children and Young Persons Act

The Children and Young Persons Act empowered local authorities and local government councils to establish remand homes (section 15) and State governments to establish approved institutions (section 18). In addition, the Borstal Institutions and Remand Centre Act (Cap. 38 Laws of the Federation of Nigeria 1990) established Borstal and remand centres as federal juvenile correctional institutions.

Juvenile offenders may be confined to any of the following institutions:

- ◆ Remand home
 - Serves primarily as a place of detention for juvenile offenders awaiting trial (section 4 of the CYPA);
 - A juvenile offender may also be committed to a remand home after a finding of guilt by a juvenile court (sections 14(j) and 15(2) of the CYPA);
 - Serves as a centre where children may be detained for observation when an inquiry report is required by the court to assist in its determination of how best to deal with a juvenile offender (section 8(7) of the CYPA);
 - Rules regulating the operation of remand homes require inmates be provided with reasonable occupation and recreation but do not specifically require any vocational or literacy education be provided.
- ◆ Approved institution (school)
 - Any institution established for the purpose of taking into care juvenile offenders or juveniles found in need of care and protection (sections 14(e) and 26(2)(a)(i) of the CYPA);
 - An approved institution is required to provide education to every inmate according to his age and development.
- ◆ Borstal institutions
 - Provide for the detention of convicted offenders between the ages of 16-21 years;
 - Their purpose is to provide such training and instruction to the inmates as will be conducive to their reformation and the prevention of crime;
 - Serves as a place of detention for the 'oldest' young offenders as defined by the CYPA and as an intermediate place of detention for young adults who do not fall within the provisions of the CYPA, but may benefit from specialised treatment.

Comments by the CRC Committee on juvenile justice administration in Nigeria

On several occasions, the CRC Committee has expressed serious concerns about the imposition of the death penalty on persons under 18 years of age under Shari'ah law (CRC/C/15/Add.257, para.32), about the lack of a minimum age of criminal responsibility, and about the fact children under 18 years of age can be tried and deprived of their liberty in rehabilitation centres or detention facilities. The Committee has also expressed concerns at the number of children in adult prisons, the ill-treatment of children in custody by the police, and the absence of penal procedural rules before the family courts.

Recommendations by the CRC Committee

The Committee reiterates its previous recommendation that the State Party brings the system of juvenile justice fully in line with the Convention, in particular articles 37, 39 and 40, and with other relevant standards including the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), the Vienna Guidelines for Action on Children in the Criminal Justice System; and Committee's general comment No. 10 (2007) on the rights of the child in juvenile justice. In this regard, the Committee recommends the State Party, inter alia, to:

- ▶ Ensure with immediate effect that neither the death penalty nor life sentence are imposed for offenses committed by persons under 18 years of age;
- ▶ Consider fixing the minimum age of criminal responsibility to at least 12 years with a view to raising it further as recommended in the Committee's general comment No. 10 (2007) on the rights of the child in juvenile justice;
- ▶ Consider the establishment of specialized procedural rules to ensure that all guarantees are respected in proceedings before the family courts;
- ▶ Limit by law the length of pre-trial detention of children;
- ▶ Continue efforts to ensure that children deprived of liberty in rehabilitation centres or in detention facilities are never kept with adults, that they have a safe, child-sensitive environment, and that they maintain regular contact with their families;
- ▶ Ensure that children are held in detention only as a measure of last resort and for the shortest period possible and that detention is subject to regular review;
- ▶ Establish an independent body for the monitoring of placement conditions and receiving and processing complaints by children in facilities;
- ▶ Adopt a national policy in prevention and promotion of alternative measures to detention such as diversion, probation, counselling, community service or suspended sentences, wherever possible, in line with the provisions of the Child Rights Act;
- ▶ Provide children, both victims and accused, with adequate legal and other assistance at an early stage of the procedure and throughout the legal proceedings;
- ▶ Establish special police units dealing with children in all states of the federation and ensure that they receive training on the Child Rights Act and Convention;
- ▶ Expedite the establishment of family courts in all states and ensure that they are provided with adequate human and financial resources;
- ▶ Request further technical assistance in the area of juvenile justice and police training from the Interagency Panel on Juvenile Justice, which includes UNODC, UNICEF, OHCHR, and NGOs.

D. Enforcing child's rights domestically

1. The courts

In the first instance, **child rights should be enforced in the High Court.**

The rights contained in the Nigerian Constitution and the Child Rights Act 2003 can be enforced in the High Court. The High Court has original jurisdiction to hear and determine any application made to it in relation to the rights contained in the Constitution and may make orders, issue writs and give directions so as to enforce or secure the enforcement of those rights.

The Family Court (a division of the High Court) has jurisdiction under the CRA to hear and determine applications in relation to rights contained in the CRA.

2. The National Human Rights Commission

National Human Rights Commission

- To promote human rights
- To monitor violations of human rights
- To investigate violations of human rights

Special Rapporteur on Child Rights

- To monitor and collect data on violations of children's rights

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D. Enforcing child's rights domestically

Recommendations by the CRC Committee

The National Human Rights Commission of Nigeria was established by the **National Human Rights Commission Act 1995** in line with the resolution of the General Assembly of the United Nations which enjoins all Member States to establish Human Rights Institutions for the promotion and protection of human rights.

The Commission is responsible for human rights promotion and monitoring, as well as the investigation of violations of the rights of children, as provided under the Constitution, the CRA and international human rights instruments, such as the CRC and the African Union Charter on the Rights and Welfare of the Child.

The Act was amended by the **National Human Rights Commission Act (Amendment) Bill 2010** in order to secure the independence and funding of the NHRC.

Mandate and powers of the NHRC

The key functions of the NHRC are set out in section 5 of the National Human Rights Commission Act 1995, as amended:

- To deal with all matters relating to the protection of human rights as guaranteed by the Constitution of the Federal Republic of Nigeria, and international and regional human rights instruments to which Nigeria is a party (section 5(a)).

Monitoring and investigation; making determinations

- To monitor and investigate all alleged cases of human rights violations in Nigeria and make appropriate recommendations to the Federal Government for prosecution and such other actions as it may deem expedient in each circumstance (section 5(b));
- To receive and investigate complaints concerning violations of human rights and to make appropriate determinations (section 5(j)).

Assisting with redress; intervening; referring matters for prosecution

- To assist victims of human rights violations and seek appropriate redress and remedies on their behalf (section 5(c));
- To refer any matter of human rights violation requiring prosecution to the Attorney-General of the Federation or a State (section 5(p));
- To act as a conciliator between parties to a complaint where it considers it appropriate to do so (section 5(q));
- To intervene in any proceedings that involve human rights where it considers it appropriate to do so; (section 5(r)).

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D. Enforcing children's rights domestically

Examining legislation and administrative provisions; reporting on action required

- To examine existing legislation, administrative provisions and proposed bills or by-laws for the purpose of ascertaining whether they are consistent with human rights law (s.5(j));
- To report on action that should be taken by the Federal, State or Local Governments to comply with provisions of any relevant human rights instruments (s.5(k)).

Seminars, workshops and reports

- Undertake studies and publish reports on human rights protection in Nigeria (section 5(d) and (e));
- Organise seminars conferences and workshops on human rights issues (section 5 (f));
- Liaise and cooperate with local and international organisations on human rights section 5(g));
- Participate in international activities relating to human rights (section 5(h));
- Collect and disseminate information on human rights (section 5 (i)).

Powers of the NHRC:

General investigative power

- Conduct its investigations and inquiries in such manner as it considers appropriate.

Civil actions

- Institute any civil action on any matter it deems fit in relation to the exercise of its functions under this Act.

Visiting places of detention

- Visit persons, police cells and other places of detention in order to ascertain the conditions thereof and make recommendations to the appropriate authorities.

Damages and compensation

- Make determinations as to the damage or compensation payable for any violation of human rights where it deems this necessary in the circumstances of the case.

Cooperation with other agencies

- Co-operate with and consult with other agencies and organisations, governmental and non-governmental, as it may deem appropriate.

Interpretation

- Appoint any person to act as an interpreter in any matter brought before it and to translate any such books, papers or writing produced or writing produced to it.

General residual power

- Do such other things as are incidental, necessary, conducive or expedient for the performance of its functions under the Act.

In exercising its functions and powers under the Act, the Commission is not subject to the direction or control of any other authority or person (section 7(3) of the Amendment Bill).

Part I: The Protection of Child Rights in Nigeria

D. Enforcing child's rights domestically

Obstruction of the NHRC

The NHRC Act creates offences relating to a refusal to cooperate with, obstruction of or interference with the NHRC in the exercise of its functions (section 6(4)) and provides for investigative powers where there is reasonable cause to suspect the commission of such an offence (section 6(2)).

Such investigative powers include the ability to obtain a court order to:

- Enter upon any land or premises or by any agent or agents duly authorised in writing for any purpose which, in the opinion of the Council is material to the functions of the Commission, and in particular, for the purpose of obtaining evidence or information or of inspecting or taking copies of any document required by, or which be of assistance to, the Commission and for safeguarding any such document or property which in the opinion of the Council ought to be safeguarded for any purpose of its investigations or proceedings.
- Summon and interrogate any person, body or authority to appear before it for the purpose of public inquiry aimed at the resolution of a complaint of human rights violations.
- Issue a warrant to compel the attendance of any person who, after having been summoned to attend, fails, refuses or neglects to do so and does not excuse such failure, refusal or neglect to the satisfaction of the Commission.
- Compel any person, body or authority who, in its opinion, has any information relating to any matter under its investigation to furnish it with any information or produce any document or other evidence which is in his or her custody and which relates to any matter being investigated.
- Compel the attendance of witnesses to produce evidence before it.

Constitution of the NHRC

The Chairperson, the Executive Secretary and members of the Commission shall be persons of proven integrity appointed by the President on the recommendation of the Attorney-General.

There is a Governing Council which is responsible for the discharge of the functions of the Commission. The Council consists of 16 members made up of:

- A Chairperson who shall be a retired judge or senior lawyer;
- A representative of the Ministry of Justice, Foreign Affairs, and Internal Affairs (ex-officio members do not have voting powers in the Council);
- Three representatives of registered human rights organisations in Nigeria;
- Two experienced legal practitioners;
- Three representatives of the media to represent the public and private media;
- One representative of organised labour;
- Two women with sufficient experience in human rights issues; and
- The Executive Secretary of the Commission.

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D. Enforcing child's rights domestically

Zonal and State Offices

The Commission is based in Abuja but it has six zonal offices representing the six geo-political zones of the country as well as fifteen state offices (see page 57-58):

- North West Zone (Kano)
- North East Zone (Borno)
- North Central (Plateau)
- South West (Lagos)
- South East (Enugu)
- South (Port Harcourt)

How to file a complaint with the NHRC

You can report any human rights violation to the NHRC. You can report in person or write to the Head Office or any of the Zonal Offices and also send an email to the Commission.

A complaint form is also available online at:

http://www.nigeriarights.gov.ng/index.php?option=com_smartformer&formid=3&Itemid=77

The Commission has recently established a Public Interest Litigation Unit to take up deserving cases of human rights violations before the courts. The Unit also refers complaints to other relevant stakeholders such as the Legal Aid Council or private lawyers for representation in court.

The services of the Commission are free.

The steps involved in the complaints management procedure are described in the 2011 NHRC Annual Report. The NHRC has the mandate to receive and investigate complaints on all cases of human rights abuses. It treats the admissible cases while inadmissible cases are referred to appropriate agencies for redress.

1. Preliminary investigation

The investigation officer to whom the complaint is assigned conducts a preliminary investigation through visits, invitations, discussions and consultations with all the parties involved in the matter.

The investigation process may require introducing a third party such as security agents, corporate bodies or individuals. Reports of such complaints are put together along with the recommendations arising out of them and forwarded to the Council.

2. Governing Council/ Complaint Management Committee

The governing council meets once every month to consider different issues, including consideration of complaints. The complaints management committee is the alternative committee that looks into complaints and takes final decision on the complaints.

3. Complaints received at the Zonal Offices

At both the head office and the zonal offices complaints can be determined after the preliminary investigation but where necessary some complaints are referred for further investigation. Preliminary reports and recommendations on such cases from the zonal offices that require further investigations are made by the zonal office and forwarded to the Headquarters.

Part I: The Protection of Child Rights in Nigeria

D. Enforcing children's rights domestically

All complaints received by the zonal offices are documented appropriately before they are forwarded to the Headquarters.

Contact information

The Executive Secretary

National Human Rights Commission
19, Aguiyi-Ironsi Street, Maitama
P.M.B 444 Garki, Abuja, Nigeria

Tel: +234(0)8077091123,
+234(0)8077091124,
+234(0)8077091126,
+234(0)8075697449.

Email: nhrconigeria@yahoo.com
Website: www.nhrc.gov.ng

Zonal Offices

NORTH – CENTRAL ZONAL OFFICE (PLATEAU)

Plateau State, Nassarawa State, Niger State, Kogi State, Benue State and Kwara State

Plot 12677, Lamingo/Liberty Dam Road
Opp. Civic Registration Office
Rikkos Village, Jos,
Plateau State.

Coordinator: Mrs. Grace Pam
Phone: 08033453245 or 08072449323

NORTH-WEST ZONAL OFFICE (KANO)

Kano State, Kaduna State, Jigawa State, Kebbi State, Katsina State, Zamfara State and Sokoto State

Plot 313, Gyadi-Gyadi Road
Opp. Mal. Aminu Kano Teaching Hospital
Kano
Kano State

Coordinator: Hagiya Hauwa S. Jauro
Phone: 08033711345 or 08075381787

NORTH-EAST ZONAL OFFICE (BORNO)

Borno State, Yobe State, Bauchi State, Gombe State, Taraba State and Adamawa State

No. 4, Bama Road
Maiduguri
Borno State
Coordinator: Babangida U. Labaran
Phone: 08035332628
Hot Line: 08076974382

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D. Enforcing children's rights domestically

SOUTH – EAST ZONAL OFFICE (ENUGU)

Enugu State, Anambra State, Abia State, Imo State and Ebonyi State

No. 3, Ezeagu Street

New Heaven

Enugu

Enugu State

Coordinator: Barr Uche Nwokocha

Phone: 08072763456

SOUTH-SOUTH ZONAL OFFICE (PORT HARCOURT)

Rivers State, Bayelsa State, Edo State, Delta State, Akwa Ibom State, Cross River State

Plot H, block 157, Flat 203

Bonny Street

Port Harcourt Township

Rivers State.

Coordinator: Mr. Nduka Ezenwugo

Phone: 08033427443

Hot Line: 08056513203

SOUTH – WEST ZONAL OFFICE (LAGOS)

Lagos State, Ogun State, Oyo State, Odo State , Ekiti Ibom State and Osun River State

No. 11, Oba Akinjobi Street

G.R.A. Ikeja,

Lagos State.

Coordinator: Mrs. M.E. Segun

Phone: 08054707559

ABUJA METROPOLITAN OFFICE

Abuja – Keffi Road

Mararaba,

Nassarawa State

Coordinator: Mrs. Yetunde Hanstrop

Phone: 08152402858

State Offices

ADAMAWA STATE

Sainana Plaza

No. 80, Mohammed Mustapha Way

Jemata, Yola

Adamawa State

Coordinator: Abdurasaq Salihu Gombir

Phone: 08035008906

Part I: The Protection of Child Rights in Nigeria

D. Enforcing children's rights domestically

AKWA IBOM STATE

No. 160, Nwaniba Road
Uyo, Akwaibom State
Coordinator: Tony Iji
Phone: 08035403780

ANAMBARA STATE

Block 21
Government House
Old Secretariate
Awka, Anambra State
Coordinator: Ofong Nkechi Laura
Phone: 08067874450

BENUE STATE

MDGs Office Complex
Kuanum Acka Street
Old GRA, Makurdi
Benue State
Coordinator: Barr. Josiah Atu
Phone: 08037007223

CROSS RIVER STATE

No. 7, Ndidem Usang Iso Road,
Calabar
Cross River State
Coordinator: Mrs. Ebele Ebo
Phone: 08037135494

EDO STATE

No. 41A, 2nd East Circular Road
Benin,
Edo State.
Coordinator: Barr. Sani Momodu
Phone: 08035970230

EKITI STATE

Iyin Road, Basiri,
Ado-Ekiti
Ekiti State.
Coordinator: Lucas B. Koyejo
Phone: 08037213380.

GOMBE STATE

No. 15, Buhari Housing Estate
Old G.R.A, Gombe
Gombe State
Coordinator: Yakubu Usman
Phone: 08032862220

IMO STATE

No. 14, Orlu Road
Near Government House
Owerri, Imo State
Coordinator: Valentine Ekeoma Maduboho
Phone: 08037722569

KADUNA STATE

Boron House,
Muhammadu Buhari Way
Formally No. 14 Waff Road, Kaduna
Kaduna State.
Coordinator: Christopher Eneji
Phone: 08169493099

KATSINA STATE

No. 3, Nagogo Road,
G.R.A, Katsina
Katsina State
Coordinator: Nura Sani D. Tofa
Phone: 08060112370

KWARA STATE

No. 3, Old Jebba Road,
Opp. Ministry of Agriculture
Ilorin.
Coordinator: Akinwumi Patrick O.
Phone: 08032481000

NASSARAWA STATE

Old Lafia Hotel
By Government House
Shedam Road
Lafia.
Coordinator: Chia Nor
Phone: 08033639276

NIGER STATE

Abdullahi Kure House
Muazu Mohammed Road
(Old Airport Road)
Minna, Niger State
Coordinator: Barr. Kabiru Elayo
Phone: 08034354537

SOKOTO STATE

Investment House
Kano Road
Sokoto State
Coordinator: Barr. Hamza Liman
Phone: 08039356635

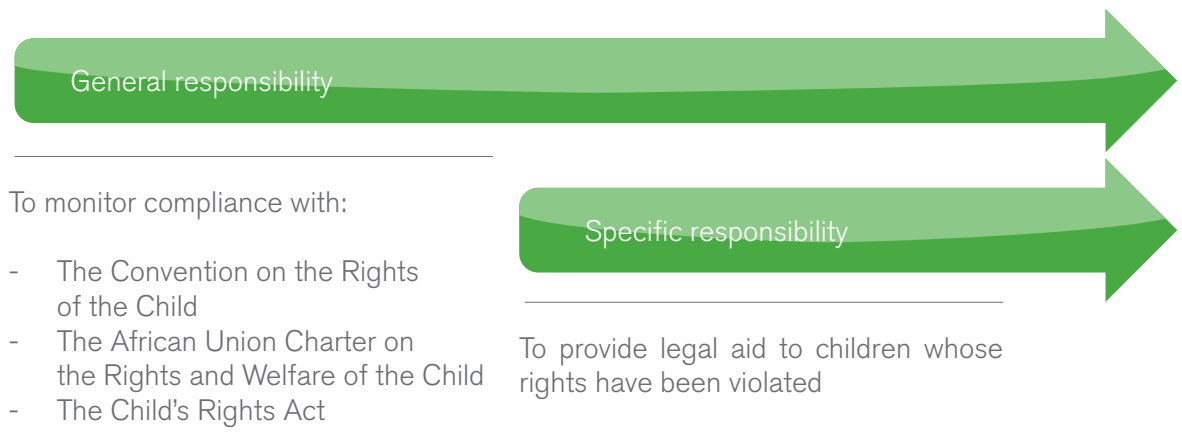
3. The Ministry of Women Affairs and Social Development

The Ministry of Women Affairs and Social Development is responsible for the promotion and protection of children's rights at all levels in Nigeria. Currently 36 Nigerian States have specific ministries responsible for women and children's affairs. The Federal Capital Territory, Abuja, also has a department responsible for child rights protection and promotion.

Note: A bill which proposes the establishment of a Child Protection Agency, envisaged as the main coordinating body on children's rights in Nigeria is pending before the National Assembly.

4. The Special Rapporteur on Child Rights

The National Human Rights Commission has a Special Rapporteur on Children responsible for ensuring that children's rights are effectively promoted and protected in Nigeria.



Part I: The Protection of Child Rights in Nigeria

D. Enforcing child's rights domestically

The Special Rapporteur on Child Rights at the Commission is responsible for monitoring compliance with the Convention on the Rights of the Child, the African Union Charter on the Rights and Welfare of the Child and the Child's Rights Act, and for providing legal aid to children whose rights have been violated.

In June 2010 the CRC Committee adopted the following concluding observations with regard to independent monitoring in Nigeria of human rights, including the rights of the child (the report is available at

<http://www2.ohchr.org/english/bodies/crc/crcs54.htm>):

Independent monitoring

14. The Committee reiterates its appreciation (CRC/C/15/Add.257, para.20) of the appointment of a Special Rapporteur on Child Rights within the National Human Rights Commission (NHRC) with the mandate to monitor and collect data on violations of children's rights in the State Party. The Committee remains concerned, however, at the adequacy of the human and financial resources available to the Special Rapporteur and regrets that the State Party's report lacked information on the independence of and activities undertaken by the Special Rapporteur, especially in light of the decision of International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights on October 2007 to downgrade the NHRC to B status.

15. The Committee urges the State Party to ensure that the NHRC complies with the Paris Principles and is provided with adequate financial and human resources, including by ensuring that the Special Rapporteur on Child Rights within the NHRC is accessible to children and adequately resourced, taking into account general comment No. 2 on the role of independent national human rights institutions in the promotion and protection of the rights of the child.

Sources:

- Constitution of the Republic of Nigeria, 1999
 - The Criminal Code Act, Cap. 77, Vol. 5, Law of the Federation of Nigeria (1999) available at <http://www.unhcr.org/refworld/pdfid/49997ade1a.pdf>
 - Penal Code (Northern States) Federal Provisions Act (1990)
 - UNICEF Information Sheet: The Child's Rights Act (August 2007), available at <http://www.ovcsupport.net/s/library.php?id=1077>
 - Rights of the Child in Nigeria, Report by OMCT and CLEEN on the implementation of the Convention on the Rights of the Child by Nigeria, Geneva, June 2004) available at http://www.cleen.org/nigeria_ngo_report_OMCT.pdf
 - National Human Rights Commission, official website <http://www.nigeriarights.gov.ng/>
 - P. Ehi Oshio: The Legal Rights of the Child in Nigeria
 - Committee on the Rights of the Child, Consideration of reports submitted by States Parties under Article 44 of the Convention. <http://tb.ohchr.org/default.aspx?country=ng>;
 - Third and fourth periodic report of State Parties due in 2008: Nigeria, CRC/C/NGA/3-4 (5 January 2009)
 - Concluding observations: Nigeria, CRC/C/NGA/CO/3-4 (21 June 2010).
-

E. Selected topics

Learning objectives

- To familiarise participants with some of the more common violations of the rights of the child in Nigeria;
- To specify the rights to which the child who is a victim of these violations is entitled;
- To familiarise participants with the specific comments of the Committee on the Rights of the Child (CRC Committee) about certain child's rights violations;
- To encourage participants to develop ways of ensuring that they routinely apply these rights and safeguards when working in child protection.

Questions

- What are the more common violations of the rights of the child in Nigeria?
- What are the root causes of these violations?
- Does the national and/or State legislation deal with these violations and offer any particular safeguards to the child victims?
- Can you think of any other ways to effectively prevent these violations and improve the situation?

1. The Death penalty

The CRA section 221 prohibits the death penalty:

“(1) No child shall be ordered to be –
(c) subjected to the death penalty or have the death penalty recorded against him.”

Despite the fact that the death penalty is prohibited, in its 2010 report, the CRC Committee expressed concern at reports related to an estimated forty prisoners reportedly on death row for crimes committed when they were under the age of 18. The CRC Committee reiterated the strong concern expressed by the African Committee on the Rights and Welfare of the Child concerning the mandatory death penalty for offences in Shari’ah Penal Codes (including Hadd punishments) which, given the absence of definition of the child as a person under the age of 18, could be imposed on children under Shari’ah jurisdiction. Shari’ah penal codes in 12 northern States of Nigeria may allow the Shari’ah courts to impose the death penalty on juvenile offenders.

Section 12 of the CYP A states that a sentence of death “shall not be pronounced or recorded against an offender who had not attained the age of seventeen years at the time the offence was committed, but in lieu thereof the court shall order the offender to be detained during the President’s pleasure [...]”

Article 319(2) of the Criminal Code, which deals with murder committed by a juvenile offender, contains an identical provision:

- 319.** (1) Subject to the provisions of this section any person who commits the offence of murder shall be sentenced to death.
(2) Where an offender who in the opinion of the court had not attained the age of seventeen years at the time the offence was committed has been found guilty of murder such offender shall not be sentenced to death but shall be ordered to be detained during the pleasure of the President and upon such an order being made the provisions of Part 44 of the Criminal Procedure Act shall apply.

Recommendations by the CRC Committee

The Committee recommends the State Party to take the opportunity of its ongoing constitutional review to include an express prohibition of the application of the death penalty to persons under 18 years of age. The Committee urges the State Party to:

- ▶ Review the files of all prisoners on death row for crimes committed before the age of 18, as recommended by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions;
- ▶ Prohibit the death penalty for all persons under the age of 18 in domestic legislation, including through the appropriate adaptations in the interpretation of Shari’ah Penal Codes and in conformity with the Convention;
- ▶ Include comprehensive information in its next periodic report on all measures taken to guarantee to children their right to life, survival and development.

2. Terrorism

In recent practice, particularly in the northern States of Nigeria, children have been accused of involvement in terrorist acts and related offences. The main legislation dealing with terrorism is the Prevention of Terrorism Act 2009. In June 2011 a new Act was approved by the Senate which amends the 2009 Act. Both Acts are discussed below.

The Prevention of Terrorism Act 2009

The Prevention of Terrorism Act 2009 as amended by the Prevention of Terrorism Act 2011 provides measures for the prevention, prohibition and combating of acts of terrorism, the financing of terrorism in Nigeria and for the effective implementation of the Convention on the Prevention and Combating of Terrorism and the Convention on the Suppression of the Financing of Terrorism. It prescribes penalties for violating any of its provisions.

Detention for offences related to terrorism

Under section 28 of the 2009 Act if a person is arrested under reasonable suspicion of having committed acts of terrorism and related offences, a law enforcement officer may direct that the person arrested be detained in custody for a period not exceeding 48 hours from his arrest, without having access to any person other than a doctor.

Under the 2011 Act, the terrorist suspect may be detained in custody for a period not **exceeding 24 hours** from his arrest without having access to any person other than his doctor and legal counsel. The detainee must be informed of his right to see a doctor.

Such a direction may be made only if the law enforcement officer has reasonable grounds to believe that giving any person other than the doctor access to the suspect will:

- Lead to interference with, or harm to, evidence connected with an offence, or to interference with, or physical injury to, another person;
- Lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
- Hinder the tracking, search and seizure of terrorist property.

Prosecution

Without prejudice to the general powers of the Attorney-General of the Federation to institute and undertake criminal proceedings on behalf of the Government, any agency charged with responsibility for terrorist investigations shall be able to institute criminal proceedings against any person in respect of offences related to terrorism.

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Jurisdiction

The Federal High Court has jurisdiction to try a terrorist offence and impose the penalties provided that the alleged offender is Nigerian, or the victim is Nigerian, or the offender is in Nigeria and is not extradited. The Federal High Court has jurisdiction to impose any penalty that does not exceed 20 years' imprisonment. The Federal High Court also has the power to order a sentence to be served consecutively, provided that the total term to be served does not exceed 30 years.

Penalties

A person convicted of an offence under the 2011 Act is liable to punishments varying from life imprisonment to the imposition of a fine. A mandatory life imprisonment is prescribed for terrorist acts that cause death.

Economic and Financial Crime Commission (Establishment) Act 2004

It has been reported that some of the children accused of being involved in terrorism are being charged under section 15(2) of the Economic and Financial Crime Commission (Establishment) Act No.1 2004 (EFCC), which provides the following:

Offences relating to terrorism (Section 15)

- (1) A person who wilfully provides or collects by any means, directly or indirectly, any money by any other person with intent that the money shall be used for any act of terrorism commits an offence under this Act and is liable on conviction to imprisonment for life.*
- (2) Any person who commits or attempts to commit a terrorist act or participates in or facilitates the commission of a terrorist act, commits an offence under this Act and is liable on conviction to imprisonment for life.*
- (3) Any person who makes funds, financial assets or economic resources or financial or other related services available for use of any other person to commit or attempt to commit, facilitate or participate in the commission of a terrorist act is liable on conviction to imprisonment for life.*

Certain criminal conduct, for example theft, possession of a firearm, robbery and assault, should not qualify as terrorist offences under the anti-terrorism legislation. For such offences, the regular Criminal/Penal Codes should apply. In any event, **family courts have jurisdiction to deal with any child in conflict with law regardless of how the criminal conduct is characterised.**

If children are charged under the Prevention of Terrorism Act, Economic and Financial Crime Commission Act, or any similar legislation, they must be dealt with in accordance with the child justice administration as provided in the CRA. Where the case proceeds to a trial, they must be brought before the family court and must not be tried by regular courts.

3. Street children

In Nigeria there are two main kinds of so-called street children: those who live and work on the street and those who work on the streets full or part-time but who retire to their homes at night. Street children are found in large numbers in urban and rural areas across Nigeria.

The “Almajirai” are found in Northern cities where some strands of Koranic education encourage Islamic tutors to send their pupils to beg in the street. A few are found in southern cities although in a different form, usually as guides leading physically disabled adults. In the east, children from eight years of age begin street training. In the south-west, particularly in Lagos, children work as vendors or hawkers, beggars, shoe-shiners, car-washers and watchers, head-loaders, scavengers, street traders and bus conductors. The majority are boys; but there are also girls.

In Nigeria, mostly due to poverty, problems at home, hunger, insecurity, abuse and violence from parents, insecurity, instability in the home, lack of parental care or insufficient parental care, death of parent(s), need for income in the family, parents' unemployment, abandonment by parents, and inability to continue school, there has been an increase in the number of children on the streets. There have been concerns that these children can be penalised under criminal law for “status offences”, such as vagrancy, truancy or wandering.

Criminal Code Act

Street children are often arrested for the unconstitutional offence of “wandering”, for which the police arrest mostly homeless people who frequent bus stops, bridges and market places to eke out a living. The police's action is founded upon sections 249 and 250 of the Criminal Code Act (also for example in Criminal Code law of Lagos and other States).

Chapter 24 of the Criminal Code Act

249. Idle and disorderly persons

The following persons-

- (a) every common prostitute-*
 - (i) behaving in a disorderly or indecent manner in any public place;*
 - (ii) loitering and persistently importuning or soliciting persons for the purpose of prostitution;*
- (b) every person wandering or placing himself in any public place to beg or gather alms, or causing or procuring or encouraging any child or children so to do;*
- (c) every person playing at any game of chance for money or money's worth in any public place;*
and
- (d) every person who, in any public place, conducts himself in a manner likely to cause a breach of the peace, shall be deemed idle and disorderly persons, and may be arrested without warrant, and shall be guilty of a simple offence, and shall be liable to imprisonment for one month.*

250. Rogues and Vagabonds

The following persons-

- (1) *every person convicted of an offence under the last preceding section after having been previously convicted as an idle and disorderly person;*
- (2) *every person wandering abroad and endeavouring by the exposure of wounds or deformation to obtain or gather alms;*
- (3) *every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence;*
- (4) *every suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself;*
- (5) *every person who exercises control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting, or controlling, her prostitution with any man, whether a particular man or not;*
- (6) *every person found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose; shall be deemed to be a rogue and vagabond, and is guilty of a misdemeanour, and is liable on summary conviction for the first offence to imprisonment for three months, and for every subsequent offence to imprisonment for one year.*

An offender may be arrested without warrant.

These sections are often used to arrest street children. As can be seen, sections 249(b)-(d) and section 250(2)-(4) and (6) provide the basis for street children arrests.

In view of the human rights abuses that these sections caused, the government declared in 1989 that it was wrong for the police to arrest anyone for “wandering” because it was contrary to the Constitution. Following this declaration, the Government amended the Criminal Code with the Minor Offences (Miscellaneous Provisions) Act. The main provision provides as follows:

1. Abolition of the offence of wandering, etc.

Notwithstanding anything to the contrary in the Criminal Code, Penal Code, Criminal Procedure Act, Criminal Procedure Code or any other enactment or law, as from the commencement of this Act-

- (a) a person shall not be accused of or charged with-
 - (i) the offence of wandering (by whatever name called), or
 - (ii) any other offence by reason only of his being found wandering (by whatever name called), and, accordingly, any person accused of or charged with such offence shall be released or discharged, as the case may be, forthwith;
- (b) a person who is accused of a simple offence shall not, by reason only of being accused of such offence, be detained in police or prison custody.

In spite of this clear statement of the law some police still conduct raids and people, street children in particular, are still arrested for “wandering”.

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The CRA

There is no legislation specifically targeted at street children as a vulnerable group of society or a specific group among children. Street children are covered by umbrella legislation, such as the CRA.

The CRA defines a street child as:

- A child who is homeless and forced to live on the streets, in market places, and under bridges; or
- A child who, although not homeless, is on the streets engaged in begging for alms, child labour, prostitution, and other criminal activities that are detrimental to the his or her well-being.

Under section 26(1) of the CYPA any local authority or local government council, any police officer or authorised officer, may bring a child or young person before a juvenile court if they have reasonable grounds for believing that the child or young person:

- Is wandering and has no home or settled place of abode or visible means of subsistence; or
- Is begging or receiving alms, whether or not there is any pretence of singing, playing, performing or offering anything for sale, or is found in any street, premises, or place for the purpose of so begging or receiving alms.

Section 50 of the CRA mirrors section 26(1) of the CYPA.

Recommendations by the CRC Committee

- ▶ Undertake an in-depth study and statistical analysis on the causes and scope of the phenomenon of children in street situations in Nigeria;
 - ▶ Develop a national strategy to support children in street situations;
 - ▶ Prevent other children from living and working in the street, including the alamajiri children, by ensuring that children in street situations are provided with adequate nutrition, clothing, housing, health care and educational opportunities, including vocational and life-skills training, in order to support their full development;
 - ▶ Abrogate laws which criminalise vagrancy, truancy or wandering and other “status offences” for children.
-

4. Witchcraft stigmatisation

The belief in child witches is widespread in Nigeria and children are particularly vulnerable to accusations of witchcraft and the resulting stigmatisation. There have been reports of child witchcraft stigmatisation from many areas. Those children that have been stigmatised as witches or wizards face serious violence and persecution such as torture, severe beatings, burns caused by fire and acid, poisoning by local berries, attempts to bury them alive, abandonment in forests or on streets, rape and trafficking for the purpose of forced labour and sexual exploitation. They may also be killed.

The long-term discrimination faced by a child stigmatised as a witch includes being denied access to medical treatment, schooling and the job market. Due to exclusion and abandonment these children are denied a family life, access to and participation in a local community and religious freedom. A Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that “being classified as a witch is tantamount to receiving a death sentence” (A/HRC/11/2, 27 May 2009, para.43).

The offences related to witchcraft are prohibited under Criminal Code:

Chapter 20 Ordeal, Witchcraft, Juju and Criminal Charms

207. (1) *The trial by the ordeal of sasswood, esere-bean, or other poison, boiling oil, fire, immersion in water or exposure to the attacks of crocodiles or other wild animals, or by any ordeal which is likely to result in the death of or bodily injury to any party to the proceeding is unlawful.*

(2) *The State Commissioner may by order prohibit the worship or invocation of any juju which may appear to him to involve, or tend towards the commission of any crime or breach of peace, or to the spread of any infectious or contagious disease.*

208. *Any person who directs or controls or presides at any trial by ordeal which is unlawful is guilty of a felony, and is liable, when the trial which such person directs, controls or presides at results in the death of any party to the proceeding, to the punishment of death, and in every other case to imprisonment for ten years.*

209. *Any person who-*

(a) *is present at or takes part in any trial by ordeal which is unlawful; or*

(b) *makes, sells or assists or takes part in making or selling, or has in his possession for sale or use any poison or thing which is intended to be used for the purpose of any trial by ordeal which is unlawful; is guilty of a misdemeanour, and is liable to imprisonment for one year.*

210. *Any person who-*

(a) *by his statements or actions represents himself to be a witch or to have the power of witchcraft; or*

(b) *accuses or threatens to accuse any person with being a witch or with having the power of witchcraft; or*

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(c) makes or sells or uses, or assists or takes part in making or selling or using, or has in his possession or represents himself to be in possession of any juju, drug or charm which is intended to be used or reported to possess the power to prevent or delay any person from doing an act which such person has a legal right to do, or to compel any person to do an act which such person has a legal right to refrain from doing, or which is alleged or reported to possess the power of causing any natural phenomenon or any disease or epidemic; or
(d) directs or controls or presides at or is present at or takes part in the worship or invocation of any juju which is prohibited by an order of the State Commissioner; or
(e) is in possession of or has control over any human remains which are used or are intended to be used in connection with the worship or invocation of any juju; or
(f) makes or uses or assists in making or using, or has in his possession anything whatsoever the making, use or possession of which has been prohibited by an order as being or believed to be associated with human sacrifice or other unlawful practice;
is guilty of a misdemeanour, and is liable to imprisonment for two years.

211. *Any chief who directly or indirectly permits, promotes, encourages or facilitates any trial by ordeal which is unlawful, or the worship or invocation of any juju which has been prohibited by an order, or who, knowing of such trial, worship or invocation, or intended trial, worship or invocation, does not forthwith report the same to an administrative officer is guilty of a felony, and is liable to imprisonment for three years.*

212. *Any house, grove or place in which it has been customary to hold any trial by ordeal which is unlawful, or the worship or invocation of any juju which is prohibited by an order, may, together with all articles found therein, be destroyed or erased upon the order of any court by such persons as the court may direct.*

213. *Any person who-*

(a) makes, sells or keeps for sale or for hire or reward, any fetish or charm which is pretended or reputed to possess power to protect burglars, robbers, thieves or other malefactors, or to aid or assist in any way in the perpetration of any burglary, housebreaking, robbery or theft, or in the perpetration of any offence whatsoever, or to prevent, hinder or delay the detection of or conviction for any offence whatsoever; or

(b) is found having in his possession without lawful and reasonable excuse (the proof of which excuse shall lie on such person) any such fetish or charm as aforesaid, is guilty of a felony, and is liable to imprisonment for five years.

In December 2008, the Akwa Ibom State Government both enacted the CRA and added a clause to the CRA making it illegal to stigmatise children as witches. The offence is punishable with imprisonment of 10-15 years.

Recommendations by the CRC Committee

The Committee urges the State Party to strengthen efforts to combat the belief in and accusation of children of witchcraft. Specifically, the Committee urges the State Party to:

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- ▶ Criminalize making accusations against children of witchcraft and related abuse at national and state level and ensure that authors of crimes on the basis of witchcraft are prosecuted;
- ▶ Ensure training to law enforcement agencies and prosecutors on existing relevant penal provisions criminalizing such acts;
- ▶ Undertake appropriate sensitization and awareness-raising programs, including in cooperation with civil society organisations and with the media, to address the belief in child witchcraft, for the general public as well as for religious leaders;
- ▶ Regulate those religious institutions found to engage in such practices and request them to adopt child protection policies;
- ▶ Undertake a comprehensive research study on the causes and effects of the phenomenon.

5. Child marriage

Child marriage is a fundamental violation of human rights. Many girls (and a small number of boys) are married without their free and full consent. Poverty leads many families to withdraw their daughters from school and arrange for them to be married at a young age. These girls are denied the benefits of education and having children at a young age carries particular risks for both the mother and child. Child marriage may also put girls at greater risk of contracting HIV.

Nigeria, particularly northern Nigeria, has some of the highest rates of child marriage in the world. In the northwest region, 48 per cent of girls were married by the age of 15, and 78 per cent were married by the age of 18. Although the practice of polygyny is decreasing in Nigeria, 27 per cent of married girls aged 15–19 are in polygynous marriages. Virtually no married girls attend school; only 2 per cent of 15–19 year old married girls go to school, compared to 69 per cent of unmarried girls. Some 73 per cent of married girls compared to 8 per cent of unmarried girls receive no schooling, and three out of four married girls cannot read.

Situation before the enactment of the CRA

Section 18 of the ***Marriage Act***, Chapter 218, Law of the Federation of Nigeria 1990, allows persons under the age of 21 to get married, provided that parental consent is given:

“If either party to an intended marriage, not being a Consent widower or widow, is under twenty-one years of age, the written consent of the father, or if he be dead or of unsound mind or absent from Nigeria, of the mother, or if both be dead or of unsound mind or absent from Nigeria, of the guardian of such party, must be produced annexed to such affidavit as aforesaid before a licence can be granted or a certificate issued.”

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However, the age of marriage is a controversial issue and varies from place to place:

- In the north-west and some north-central states of Nigeria, the age of marriage is 14 years;
- In other north-central parts the age of marriage falls between the girl's second and third menstruation;
- In the southern States it varies from between 16 to 18 years. The Federal authorities seek to make 18 the minimum age of marriage, not only in law, but also in practice.

The CRA

The CRA strives to prevent child marriage by the following provisions:

21. No person under the age of 18 years is capable of contracting a valid marriage, and accordingly, a marriage so contracted is null and void and of no effect whatsoever.

22. - (1) No parent, guardian or any other person shall betroth a child to any person.
(2) A betrothal in contravention of Subsection (1) of this section is null and void.

23. A person—
(a) who marries a child; or
(b) to whom a child is betrothed; or
(c) who promotes the marriage of a child; or
(d) who betroths a child commits an offence and is liable on conviction to a fine of NGN500,000 (five hundred thousand Naira) or imprisonment for a term of five years or to both such fine and imprisonment.

In its report to the CRC Committee, the Government claimed that there were no discrepancies between the Shari'ah legal system operating in some northern States of Nigeria and the CRC/CRA system with regard to the rights of children. With regards to child marriages, the Government has referred to the following judicial decision under Shari'ah:

In the celebrated case of *Karimatu Yakubu v. Alh. Paiko*, (Appeal No.CA/K/80s/85 – unreported, Court of Appeal, Kaduna), the Court of Appeal, Kaduna division, allowing the appeal in favour of the teenage appellant, reiterated that her father could not compel her to marry a man contrary to her choice and right to consent. The court clearly indicated that under the Shari'ah Family Law the need for the girl's consent to marriage is both an indispensable requirement and contractual right or at least a desirable one, notwithstanding her father's right to exercise the power of *Ijbar* (compulsion), according to the Maliki school of law widely followed in the North Nigeria.

With regard to forced and child marriages, the **Committee on the Elimination of Discrimination Against Women** (CEDAW) has issued General Recommendation 21 on "Equality in marriage and family relations." The Committee has noted that a woman's right to freely choose her spouse and enter into marriage is central to her life and dignity. The CEDAW Committee, the Human Rights Committee (in General Comment 28) and the CRC Committee have noted their concerns over 'crimes of honour', which include forced and child marriages.

In international human rights law, the rights of men and women to marry and found a family can be found in Article 16(1) of the UDHR; Article 10(1) of the ICESCR; and Article 23(2) and (3) of the ICCPR. The underlying emphasis in these articles is that for a man and woman to marry, they must reach the age of majority and enter into a marriage with free and full consent.

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Article 16(1) of CEDAW outlines measures for States Parties to eliminate discrimination against women arising out of marriage and ensure that women have the same rights as men:

- To enter into marriage;
- To freely choose a spouse and enter into marriage only with their free and full consent;
- During marriage and at its dissolution;
- As husband and wife.

In Article 16(2) of CEDAW states that a child marriage shall have no legal effect and that necessary steps shall be taken to specify a minimum age for marriage.

Articles 2(f)-(g) and 5 of CEDAW place a duty on the State to modify customs that discriminate against women. Article 24(3) of the CRC calls on States to take effective measures to abolish traditional practices that are prejudicial to the health of children.

In its report of 2010, the CRC Committee noted that the CRA defines the child in accordance with the Convention and establishes the legal minimum age of marriage at 18 years. However, the Committee expressed serious concern that the definition of the child in some legislation implementing the CRA at State level sets the age at 16 years (Akwa Ibom State) or defines the child not by age but by “puberty” (Jigawa State), reportedly for the purposes of child marriages. The Committee also reiterated its earlier concern (expressed in 2005) about the variety of low minimum ages at State level (CRC/C/15/Add.257, para.27).

Recommendations by the CRC Committee

The Committee urges the State Party to ensure that the definition of the child in legislation domesticating the Child Rights Act at state level is in full compliance with that of the Convention, including by amending the recently adopted Child Rights Laws in Akwa Ibom and Jigawa states. To this end, the Committee urges the State Party to intensify its ongoing dialogue with traditional and religious leaders and state authorities to enhance the understanding of the importance of conceptualizing persons under the age of 18 as children with special rights and needs guaranteed under the Convention. The State Party is recommended to use the example of the recent polio eradication campaign in this respect.

The Committee urges the State Party, as a matter of priority, to:

- ▶ Take prompt measures to address the practice of child marriages in the northern states;
- ▶ Undertake sensitization programs on the prohibition of child marriages in the Child Rights Act and ensure that state legislation incorporates such prohibition of all children under the age of 18;
- ▶ Develop and undertake comprehensive awareness-raising programs on the negative implications of child marriage for the girl child's rights to health, education and development, targeting in particular traditional and religious leaders, parents and state parliamentarians, and the prohibition by law of withdrawal of children from school because of marriage;

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In 2003, the **Special Rapporteur on Violence Against Women** identified ideologies that perpetuate cultural practices that are violent towards women, and stated:

“Child marriage, forced marriage and incest are additional forms of direct abuse that regulate female sexuality. Ignoring women and young girls as individuals capable of making choices about their lives, these practices subject many women to unwanted sex and rape, thus destroying their lives and their life potential.”

The practice of **forced marriage as a form of gender-based violence** has been recognised in **General Recommendation No. 19** which is available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>

General Recommendation No. 21 explicitly deals with **equality in marriage** and family relations and emphasises the **right of a woman to choose a spouse** and to **enter into marriage freely** as it is central to her dignity and equality as a human being. It is available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>

6. Female genital mutilation/cutting

Other harmful traditional practices that violate children's rights have been widespread in Nigeria, including cutting tattoos and marks and female genital mutilation/cutting (FGM/C). These are now punishable offences under the CRA:

- 24.—(1) No person shall tattoo or make a skin mark or cause any tattoo or skin mark to be made on a child.
- (2) A person who tattoos or makes a skin mark on a child commits an offence under this Act and is liable on conviction to a fine not exceeding five thousand Naira or imprisonment for a term not exceeding one month or to both such fine and imprisonment.

It has been reported that a number of States (in 2008 it was approximately 11 States) adopted bills prohibiting FGM/C. Nevertheless, the CRC Committee, in its report of 2010, expressed concern about the high percentage of women who had undergone FGM/C.

Recommendations by the CRC Committee

The Committee urges the State Party, as a matter of priority, to:

- ▶ Eliminate FGM/C and other harmful traditional practices, including by enacting legislation to prohibit FGM/C and to conduct awareness raising programmes for, and involving, parents, women and girls, heads of families, religious leaders and traditional dignitaries.

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The **Resolution on the Elimination of violence against women**, 2003 (available at [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.2003.45.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.2003.45.En?Opendocument)):

“Strongly condemns physical, sexual and psychological violence occurring in the family, which encompasses, but is not limited to, battering, sexual abuse of women and girls in the household, dowry-related violence, marital rape, female infanticide, female genital mutilation/cutting, crimes committed against women in the name of honour, crimes committed in the name of passion, traditional practices harmful to women, incest, early and forced marriages, non-spousal violence and violence related to commercial sexual exploitation as well as economic exploitation.”

The **Resolution on the Elimination of violence against women**, 2003 stresses that:

“States have an affirmative duty to promote and protect the human rights of women and girls and must exercise due diligence to prevent, investigate and punish acts of all forms of violence against women and girls, and calls upon States [...] to condemn violence against women and not invoke custom, tradition or practices in the name of religion or culture to avoid their obligations to eliminate such violence.”

7. Child labour

In Nigeria, there is reportedly a very high number of children engaged in child labour, particularly in agriculture, construction, mining and quarrying, involving the trafficking of children from neighbouring countries. Extended family networks and the practices of fostering and apprenticeship can provide the framework for exploitative child labour; but many cases of abuse of children as domestic workers also occur within immediate families.

The CRA

The CRA prohibits subjecting children to forced or exploitative labour and employing children to work in any capacity except by a member of their family in light work. Children must not be required to lift, carry or move any heavy objects. They may not be employed as a domestic help outside their family environment or work in an industrial setting. The CRA prescribes penalties for those who contravene these prohibitions:

28 – (1) Subject to this Act, no child shall be—

- (a) subjected to any forced or exploitative labour; or
- (b) employed to work in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural or domestic character; or
- (c) required, in any case, to lift, carry or move anything so heavy as to be likely to adversely affect his physical, mental, spiritual, moral or social development; or
- (d) employed as a domestic help outside his own home or family environment.

(2) No child shall be employed or work in an industrial undertaking and nothing in this subsection shall apply to work done by children in technical schools or similar approved institutions if the work is supervised by the appropriate authority.

(3) Any person who contravenes any provision of Subsection (1) or (2) of this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand Naira or imprisonment for a term of five years or to both such fine and imprisonment.

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(4) Where an offence under this section is committed by a body corporate, any person who at the time of the commission of the offence was a proprietor, a director, general manager or other similar officer, servant or agent of the body corporate shall be deemed to have jointly and severally committed the offence and may be produced against and liable on conviction to fine of two hundred and fifty thousand Naira.

- 29.** *The provisions relating to young persons in Sections 58, 59, 60, 61, 62 and 63 of the Labour Act shall apply to children under this Act.*

The CRA also provides for a general prohibition of “other forms of exploitation” in section 33.

The Labour Act

The Labour Act, Chapter 198, Laws of the Federation of Nigeria 1990, provides for the following provisions with regard to child labour:

Young persons

- 59.** – (1) No child shall-
- (a) be employed or work in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural or domestic character approved by the Minister; or
 - (b) be required in any case to lift, carry or move anything so heavy as to be likely to injure his physical development.
- (2) No young person under the age of fifteen years shall be employed or work in any industrial undertaking:
Provided that this subsection shall not apply to work done by young persons in technical schools or similar institutions if the work is approved and supervised by the Ministry of Education (or corresponding department of government) of a State.
- (3) A young person under the age of fourteen years may be employed only-
- (a) on a daily wage;
 - (b) on a day-to-day basis; and
 - (c) so long as he returns each night to the place of residence of his parents or guardian or a person approved by his parents or guardian:
Provided that, save as may be otherwise provided by any regulations made under section 65 of this Act, this subsection shall not apply to a young person employed in domestic service.
- (5) No young person under the age of sixteen years shall be employed in circumstances in which it is not reasonably possible for him to return each day to the place of residence of his parent or guardian except-
- (a) with the approval of an authorized labour officer; and
 - (b) on a written contract (which, notwithstanding any law to the contrary, shall not be voidable on the ground of incapacity to contract due to infancy) conforming with Part I of this Act:
Provided that, save as may be otherwise provided by any regulations made under section 65 of this Act, this subsection shall not apply to a young person employed in domestic service.

Part I: The Protection of Child Rights in Nigeria

E. Selected topics

(6) No young person under the age of sixteen years shall be employed-

- (a) to work underground; or
- (b) on machine work; or
- (c) on a public holiday.

(7) No young person shall be employed in any employment which is injurious to his health, dangerous or immoral; and, where an employer is notified in writing by the Minister (either generally or in any particular case) that the kind of work upon which a young person is employed is injurious to the young person's health, dangerous, immoral or otherwise unsuitable, the employer shall discontinue the employment, without prejudice to the right of the young person to be paid such wages as he may have earned up to the date of discontinuance.

(8) No person shall continue to employ any young person under the age of sixteen years after receiving notice either orally or in writing from the parent or guardian of the young person that the young person is employed against the wishes of the parent or guardian:

Provided that this subsection shall not apply to a young person employed under a written contract entered into with the approval of an authorized labour officer.

(9) No young person under the age of sixteen years shall be required to work for a longer period than four consecutive hours or permitted to work for more than eight working hours in any one day:

Provided that, save as may be otherwise provided by any regulations made under section 65 of this Act, this subsection shall not apply to a young person employed in domestic service

60. - (1) Subject to this section, no young person shall be employed during the night.

(2) Young persons over the age of sixteen years may be employed during the night in the following industrial undertakings or activities which by reason of the nature of the process are required to be carried on continuously day and night, that is to say-

- (a) in the manufacture of iron and steel, in processes in which reverberatory or regenerative furnaces are used and in the galvanizing of sheet metal or wire (except the pickling process);
- (b) glass works;
- (c) manufacture of paper;
- (d) manufacture of raw sugar; and
- (e) gold mining reduction work.

(3) Young persons over the age of sixteen may be employed during the night in cases of emergency which-

- (a) could not have been controlled or foreseen;
- (b) are not of a periodical character; and
- (c) interfere with the normal working of an industrial undertaking.

(4) In this section, "night" means a period of at least twelve consecutive hours, including-

- (a) in the case of young persons under the age of sixteen years, the interval between ten o'clock in the evening and six o'clock in the morning; and
- (b) in the case of young persons over the age of sixteen years but under the age of eighteen years, a prescribed interval of at least seven consecutive hours falling between ten o'clock in the evening and seven o'clock in the morning.

(5) For the purposes of subsection (4) (b) of this section, the Minister may prescribe different intervals for different areas, industries, undertakings or branches of industries or undertakings, but shall consult the employers' and workers' associations or organisations concerned before prescribing an interval beginning after eleven o'clock in the evening.

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- 61.** - (1) No young person under the age of fifteen years shall be employed in any vessel, except where-
- (a) the vessel is a school or training vessel and the work on which the young person is employed is-
 - (i) work of a kind approved by the Minister, and
 - (ii) supervised by a public officer or by a public department; or
 - (b) only members of the young person's family are employed.
- (2) No young person shall be employed in a vessel as a trimmer or stoker: Provided that, where a trimmer or stoker is required in a place in which only young persons are available, young persons of and over the age of sixteen years may be employed in that capacity, so however that two such young persons shall be engaged and employed in the place of each trimmer or stoker required.
- (3) No young person shall be employed in any vessel other than a vessel in which only persons of his family are employed unless he is in possession of a certificate signed by a registered medical practitioner to the effect that he is fit for the employment or work; and, where such a certificate is issued, then-
- (a) subject to paragraph (b) of this subsection, the certificate shall be valid for one year from the date of issue, or, if it would otherwise expire in the course of a voyage, until the end of the voyage in question; and
 - (b) the certificate may at any time be revoked by a qualified medical practitioner if he is satisfied that the young person is no longer fit for the employment or work.
- (4) There shall be included in every agreement with the crew of a vessel a list of young persons who are members of the crew, together with particulars of the dates of their births; and, in the case of a vessel in which there is no such agreement, the master shall keep a register (which shall at all times be open to inspection by an authorized labour officer or customs officer) of such young persons as may be employed in the vessel with particulars of the dates of their births and the dates on which they became or ceased to be members of the crew.
- 62.** Every employer of young persons in an industrial undertaking shall keep a register of all young persons in his employment with particulars of their ages, the date of employment and the conditions and nature of their employment and such other particulars as may be prescribed, and shall produce the register for inspection when required by an authorized labour officer.
- [...]
- 64.** - (1) Any person who employs a young person in contravention of sections 59 to 62 of this Act or any regulations made under section 63 of this Act, the proprietor, owner and manager of any undertaking in which a young person is so employed and any parent or guardian of a young person who permits the young person to be so employed shall be guilty of an offence and on conviction shall be liable to a fine not exceeding N100.
- (2) If in the case of a charge for an offence under subsection (1) of this section it is alleged by the person conducting the prosecution that the person in respect of whom the offence was committed was under the age of twelve, fourteen, fifteen, sixteen or eighteen years at the date of commission of the alleged offence, the magistrate or other person presiding at the hearing shall, after such enquiry as he may think necessary and after hearing any evidence that may be tendered by any party to the proceedings, determine the age of the young person; and any such determination shall be final.

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The CRC Committee observed in its report of 2010 that despite the fact that the Labour Act 1990 and the CRA contain provisions prohibiting the worst forms of child labour, the Committee remains concerned that Nigeria lacks a comprehensive list determining the types of hazardous work that must not be performed by children under 18 years of age.

Recommendations by the CRC Committee

83. The Committee urges the State Party to take all appropriate steps to eliminate exploitative child labour. Specifically, the Committee urges the State Party to:

- ▶ Ensure that the child labour units are adequately resourced so as to strengthen their monitoring activities, in close cooperation with the Child Development Department within the Federal Ministry of Women Affairs and Social Development;
- ▶ Adopt a comprehensive list of exploitative and hazardous work prohibited to persons under the age of 18 as recommended by the ILO Committee of Experts on the Application of Conventions and Recommendations;
- ▶ Ensure the effective enforcement of applicable sanctions against persons violating existing legislation on child labour, including by raising awareness of international standards relating to child labour among labour inspectors, the general public and law enforcement agencies.

8. Trafficking in children

Nigeria has a reputation for being one of the worst African countries for human trafficking, with both cross-border and internal trafficking. Trafficking of persons is the third largest crime after economic fraud and the drugs trade. Nigeria is a country of origin, transit and destination for human trafficking but there is also evidence of internal trafficking. Women, girls and some boys are trafficked for sexual exploitation, forced labour and organ harvesting. Poverty is the principle driving force behind this trade, propelling vulnerable people into the hands of traffickers.

The UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnationally Organized Crimes (2000), which Nigeria ratified, provides the first internationally agreed definition of trafficking:

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

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- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age.

Section 34 of the Constitution prohibits slavery and forced labour.

The CRA prohibits buying, selling, hiring, disposing or otherwise dealing in children:

- 30.**—(1) *No person shall buy, sell, hire, let on hire, dispose of or obtain possession of or otherwise deal in a child.*
- (2) *A child shall not be used—*
- (a) *for the purpose of begging for alms, guiding beggars, prostitution, domestic or sexual labour or for any unlawful or immoral purpose ; or*
 - (b) *as a slave or for practices similar to slavery such as sale or trafficking of the child, debt bondage or serfdom and forced or compulsory labour;*
 - (c) *for hawking of goods or services on main city streets, brothels or highways;*
 - (d) *for any purpose that deprives the child of the opportunity to attend and remain in school as provided for under the compulsory, Free Universal Basic Education Act;* (e) *procured or offered for prostitution or for the production of pornography or for any pornographic performance ; and*
 - (f) *procured or offered for any activity in the production or trafficking of illegal drugs and any other activity relating to illicit drugs as specified in the National Drug Law Enforcement Agency Act.*
- (3) *A person who contravenes the provisions of Subsection (1) of this section commits an offence and is liable on conviction to imprisonment for a term of ten years.*

Sections 223-225 of the Criminal Code and Articles 278-280 of the Penal Code contain sanctions against human trafficking.

In addition, the **Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003** prohibits human trafficking and provides for the rehabilitation of victims of trafficking. In line with this Act, Nigeria established the National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP) in August 2003. This agency is responsible for investigating and prosecuting people traffickers and provides those who have been trafficked with counselling and rehabilitation.

By an amendment to the legislation in 2005, section 54 established a Trafficked Victim's Fund for NAPTIP into which all proceeds of the sale of traffickers' assets and properties are channelled for victims' rehabilitation.

In spite of the legislation and administrative measures that Nigeria has put in place in recent years, the CRC Committee, in its report of 2010, expressed concern about widespread child trafficking. The Committee noted with particular concern that the overwhelming majority of rescued victims of trafficking are girls who have been trafficked for the purposes of sexual exploitation and that the number of successful prosecutions remains low.

Recommendations by the CRC Committee

The Committee urges that the State Party continues its efforts to protect children from trafficking and sale. Specifically, the State Party is strongly recommended to:

- ▶ Conduct media campaigns and continuous dialogue and advocacy to raise awareness on victim identification indicators and reporting mechanisms;
 - ▶ Tackle the root causes and improve the situation of children at risk, especially the girl child, through economic reintegration and rehabilitation of victims;
 - ▶ Strengthen training programs addressing law enforcement officers and public awareness campaign targeting, in particular, parents;
 - ▶ Invite both the Special Rapporteur on Trafficking of Persons, especially in Women and Children and the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography to visit the State Party;
 - ▶ Reinforce prevention of trafficking of children abroad, including in the framework of the European Development Fund agreement 2009-2013;
 - ▶ Take all measures to ensure investigation, prosecution and conviction of perpetrators of child trafficking in accordance with national legislation;
 - ▶ Establish a referral mechanism between the asylum system and the victims of trafficking protection system, in order to ensure that child victims of trafficking have access to the asylum procedure and that child asylum-seekers who may have been victims of trafficking access and receive specialized assistance for their recovery and reintegration;
 - ▶ Consider ratifying the Protocol to Prevent, Suppress and Punish Traffickers in Persons, especially Women and Children.
-

9. Sexual abuse and exploitation

Many children in Nigeria have experienced some form of sexual abuse. This abuse sometimes takes place at home or in schools. It often goes undocumented or is not reported to the police. There are a high number of trafficked children who fall victim to sexual exploitation or who are trafficked and sold abroad, primarily to Europe, for the purposes of sexual exploitation. There are also reports of young girls, including street children and orphans, being forced into prostitution in urban centres of Nigeria.

Section 31 of the CRA prohibits sexual intercourse with a child, with or without the child's consent. A person who has sexual intercourse with a child will be charged with rape and, if convicted, is liable to life imprisonment.

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Section 32 of the CRA prohibits other forms of sexual abuse and exploitation.

- 32** - (1) A person who sexually abuses or sexually exploits a child in any manner not already mentioned under this Part of this Act commits an offence.
(2) A person who commits an offence under Subsection (1) of this section is liable on conviction to imprisonment for a term of fourteen years.

Recommendations by the CRC Committee

89. The Committee strongly recommends the State Party to take effective measures to prevent and combat sexual exploitation of children. Specifically, the Committee recommends the State Party to:

- ▶ Develop appropriate policies and strategies to effectively address sexual exploitation of children, including by disseminating the findings of the National Baseline Survey on Child Protection regarding sexual exploitation of children among relevant authorities;
- ▶ Develop an awareness-raising campaign on schools free from sexual violence and abuse in close cooperation with parents, teachers, school administrators and children;
- ▶ Undertake extensive trainings and other forms of sensitization programs for law enforcement agencies on sexual exploitation and abuse of children and consider the appointment of staff unit with specialized expertise on this topic;
- ▶ Develop and implement appropriate policies and programs for prevention, recovery and social reintegration of child victims, in accordance with the Declaration and Agenda for Action and the Global Commitment adopted at the 1996, 2001 and 2008 World Congresses against Commercial Sexual Exploitation of Children as well as the outcome of other international conferences on this issue.

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Learning objectives

- To familiarise participants with the main African regional human rights instruments protecting the rights of the child;
- To specify the rights of the child that are protected by the African regional human rights instruments;
- To familiarise participants with the main African regional human rights bodies that deal with the rights of the child;
- To examine all the procedures which can be used to bring a human rights claim to the African regional human rights bodies on behalf of children whose rights have been violated in Nigeria;
- To encourage participants to develop ways of ensuring that they apply these procedures when dealing with children whose rights have been violated in Nigeria.

Questions

- What are the main African regional human rights instruments protecting the rights of the child?
- Are you familiar with any of the procedures at the African regional level which can be used to bring a claim for violations of the rights of the child?
- If yes, have you applied any of these procedures in practice? What was the result? Was it effective?
- Do you know which African regional treaties have been ratified by Nigeria?
- Have they been effectively implemented in Nigerian domestic law? If not, what would you do to improve the situation?

A. The African Charter on Human and Peoples' Rights

1. The African Charter on Human and Peoples' Rights

The African Charter on Human and People's Rights (African Charter) was adopted in 1981 and entered into force on 21 October 1986; it was ratified by Nigeria on 22 June 1983.

The Charter was inspired by the UDHR, the ICCPR and the ICESCR. The African Charter contains a comprehensive list of human rights, including civil, political, economic, social and cultural rights.

Article 1 of the African Charter provides that the States Parties "shall recognize the rights, duties, and freedoms enshrined [therein] and shall undertake to adopt legislative or other measures to give effect to them." Article 25 provides that the States Parties "shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter, and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood," Article 26 requires States Parties to "allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the [...] Charter."

Importantly, many of the rights and freedoms guaranteed by the African Charter are qualified: in some cases the rights can be limited in pursuance of specific aims, in others they can be limited by the provisions of domestic law. However, unlike the ICCPR and ICESCR, the African Charter does not provide for any right of derogation for the States Parties.

The African Charter

- Protects not only the rights of individual human beings, but also the rights of peoples;
- Emphasises individuals' duties towards other individuals and groups;
- While certain limitations may be imposed on the exercise of the rights guaranteed by the Charter, no derogations are allowed from the obligations imposed under the Charter.

Part II: The protection of Child Rights in Africa

A. The African Charter on Human and Peoples' Rights

Individual rights

The African Charter recognises the following civil, political, economic, social and cultural rights of individual human beings:

- Article 2** The right to **freedom from discrimination** in the enjoyment of Charter rights
- Article 3** The right to **equality before the law** and to equal protection of the law
- Article 4** The right to respect for a person's **life and personal dignity**
- Article 5** The right to respect for a person's inherent **dignity** as a human being, including **freedom from slavery**, the slave trade, torture, cruel, **inhuman or degrading treatment** and punishment
- Article 6** The right to **liberty and security** of the person and freedom from arbitrary arrest or detention
- Article 7** The right to have one's **cause heard** and the **right to appeal** to competent national organs against acts of violating human rights. The right to be **presumed innocent** until proved guilty by a competent court or tribunal; the right to **defence**; the **right to be tried within a reasonable time** by an **impartial** tribunal; and the right to be free from ex post facto laws
- Article 8** The right to freedom of **conscience, profession and religion**
- Article 9** The right to receive information and the right to express and disseminate one's **opinions**
- Article 10** The right to freedom of **association**
- Article 11** The right to **assemble** freely with others
- Article 12** The right to **freedom of movement** and residence within the borders of a State
- Article 13** The right to **participate** freely in the **government** of one's country
- Article 14** The right to **property**
- Article 15** The right to **work** and the right to **equal pay** for equal work
- Article 16** The right to enjoy the best attainable state of **physical and mental health**
- Article 17** The right to **education** and to freely to participate in the cultural life of one's country
- Article 18** The right to the **family**, and of the aged and disabled to special measures of **protection**
-

Peoples' rights

The African Charter recognises the following peoples' rights:

- Article 19** The right to **equality**
- Article 20** The right to existence of all peoples, including the right to **self-determination** and the right of all peoples to assistance in their **liberation** struggle against foreign domination
- Article 21** The right of all peoples to freely dispose of their **wealth and natural resources**
- Article 22** The right of all peoples to **economic, social and cultural development**
- Article 23** The right of all peoples to national and international **peace** and security
- Article 24** The right of all peoples to a general **satisfactory environment** favourable to their development

Part II: The protection of Child Rights in Africa

A. The African Charter on Human and Peoples' Rights

Individual duties

Article 27(1) stipulates individuals' duties toward certain groups by providing that "every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community."

Article 28 concerns individuals' duties towards other individuals by providing that "every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance."

Article 29 lists specific individuals' duties, including the duty to preserve the harmonious development of the family, the duty to serve one's national community and the duty to preserve and strengthen positive African cultural values.

2. The African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights (African Commission) is a quasi-judicial body that monitors the implementation of the African Charter. It consists of 11 members and meets bi-annually. The Commission was established under the African Charter to promote and protect human rights, including by receiving communications of human rights violations from States and other sources.

The African Commission has the power to make determinations on particular communications (Articles 47 and 55) and to issue advisory opinions on the interpretation of the African Charter (Article 45(3)).

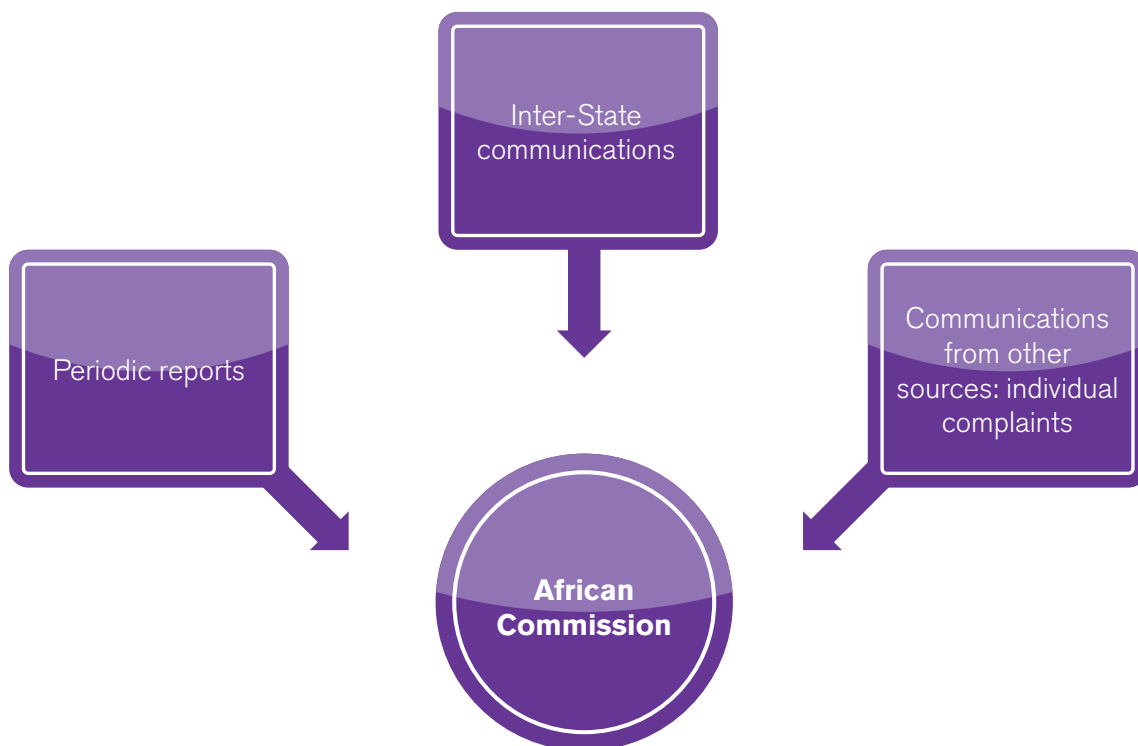
The African Commission collects documents, undertakes studies and research on African problems, organises conferences, encourages domestic human rights institutions, and gives views and recommendations to governments. It also formulates and lays down principles and rules aimed at solving legal problems relating to human and people's rights and cooperates with other African and international institutions concerned with the promotion and protection of these rights (Article 45(1)).

Part II: The protection of Child Rights in Africa

A. The African Charter on Human and Peoples' Rights

Procedures before the African Commission

The African Commission has established the following procedures to ensure the implementation of human and peoples' rights as protected by the African Charter:



Periodic Reports

Every two years States Parties to the African Charter are required to submit a report on the legislative or other measures taken with a view to giving effect to the terms of the Charter (Article 62). The African Commission examines the reports in public session.

Nigeria submitted its first report in 1990, which was considered by the African Commission in 1993, its second report was submitted in 2004 and considered by the Commission in 2006. The third report was submitted by Nigeria in October 2008 covering the period from 2005 to 2008. The African Commission examined the report in November 2008 and made the following recommendations:

Recommendations by the African Commission

- ▶ To make a declaration under Article 34(6) of the Protocol to the African Charter on the Establishment of the African Court on Human and People's Rights, allowing individuals to have standing and to bring cases before the African Court;
- ▶ To introduce appropriate policies to address the high incidence of infant and maternal mortality, especially in the Northern part of the Country;
- ▶ Take the necessary steps to amend its constitutional provisions on sanctioning the death penalty and instead provide for its abolition;

Part II: The protection of Child Rights in Africa

A. The African Charter on Human and Peoples' Rights

- ▶ To establish an effective monitoring mechanism for the implementation of decisions of regional and domestic bodies on violations of human rights in the Niger Delta, especially those decisions taken against transnational corporations;
- ▶ Take steps to ease the difficulties of access to justice occasioned by the high cost of litigation and the complex court processes, by measures such as the provision of mobile courts, introduction of para-legal officers in the judicial system and the use of interpreters and local languages in Courts.

Inter-State communications

If a State Party has good reason to believe that another State Party to the African Charter has violated the provisions of the Charter, it may submit a written communication to that State. The State to which the communication is addressed has three months to provide a written explanation. If the matter has not been settled between the two States through negotiations or any other peaceful procedure, either State can bring it to the attention of the Commission (Article 48).

Notwithstanding these provisions, a State Party may refer the matter directly to the Commission (Article 49), but the Commission can only deal with the matter after all domestic remedies have been exhausted in the case, unless the procedure of achieving these remedies would be unduly prolonged (Article 50). After having tried all appropriate means to reach an amicable solution, the Commission prepares a report stating the facts and findings which is sent, together with recommendations, to the States concerned and to the Assembly of the Heads of State and Governments (Articles 52 and 53).

Communications from other sources: Individual complaints

The African Charter is silent as to whether individuals can bring complaints for violations of the Charter.

However, the practice is that complaints from individuals as well as NGOs are accepted. Indeed, according to guidelines issued by the African Commission, the complainant need not be related to the victim of the abuse in any way; the only requirement is that the victim must be mentioned. The communication must invoke the provisions of the African Charter alleged to have been violated and must include particularised facts and allegations with relevant documents attached.

The African Commission will only consider a case if all domestic remedies have been exhausted. However, the domestic remedies must be available, effective, sufficient and not unduly prolonged. The African Commission's relatively flexible approach to the need to exhaust domestic remedies is demonstrated by the case of Purohit and Moore (Comm. No.241/2001 (2003), where it was held that:

"The category of people being represented in this present communication are likely to be people picked up from the streets or people from poor backgrounds and as such it cannot be said that the remedies available in terms of the Constitution are realistic remedies for them in the absence of legal aid services."

Recommendations by the African Commission

- ▶ The fourth periodic report covering the period from 2008 – 2010 was submitted in August 2011.

Part II: The protection of Child Rights in Africa

A. The African Charter on Human and Peoples' Rights

The African Commission may, either at the request of the author of the communication or on its own initiative, facilitate **access to free legal aid** to the complainant for legal representation in the case.

Rule 104 of the Rules of Procedure of the African Commission specifies that free legal aid shall only be facilitated where the Commission is convinced:

1. That it is essential for the proper discharge of the Commission's duties, and to ensure equality of the parties before it; and
2. The complainant does not have sufficient means to meet the costs involved.

Procedure for considering individual complaints

The African Commission's procedure for considering individual communications is found in Section 4 of the Rules of Procedure:

- The African Commission may request that the State concerned adopt **provisional measures** to prevent irreparable harm to the victim or victims of the alleged violation as urgently as the situation demands (Rule 98 of the Rules of Procedure).
- The African Commission decides that the communication is **admissible** if it complies with the requirements of admissibility under Article 56 of the African Charter, which are cumulative.
- Once a communication has been declared admissible, the Commission decides on the **merits** of the communication. The Commission deliberates in private and all aspects of the discussions are confidential.
- The decision of the African Commission remains **confidential** and is not transmitted to the parties until its publication is authorised by the Assembly.
- Once the Assembly adopts the Commission's decision, the decision is **published and becomes binding** on the State Party concerned.
- The State Party must **report back** to the Commission on the steps taken to implement the Commission's decision.
- Although the African Commission's recommendations are binding, they are not **enforceable in domestic courts** and there is **no provision for reparations**.

Criteria for submitting a communication

Article 56 of the African Charter outlines seven conditions that must be met before the Commission can consider a communication. These are as follows:

- The communication must include the author's name even if the author wants to remain anonymous;
- The communication must be compatible with the Charter of the OAU and with the present Charter;

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- The communication must not be written in insulting language;
- The communication must not be based exclusively on news from the media;
- The complainant must have exhausted all available domestic legal remedies;
- The communication must be submitted within a reasonable time from the date of exhaustion of domestic remedies;
- The communication must not deal with a matter which has already been settled by some other international human rights body.

What a communication should include in order to be valid

- All communications must be **in writing**, and addressed to the Secretary or Chairman of the African Commission on Human and Peoples' Rights.
- There is no form or special format that must be followed, but a communication should contain all the **relevant information**.
- If the communication is submitted by an individual or group of individuals, it should include the **name(s) of the complainant or complainants**, their nationalities, occupation or profession, addresses and signatures.
- If the communication comes from an **NGO**, it should include the **address of the institution** and the **names and signatures** of its legal representatives.
- If the communication is from a State Party, the **names and signature of the State representative**, together with the national seal are required.
- Each communication should **describe the violation** of human and/or peoples' rights that took place, indicate the date, time (if possible), and place where it occurred. It should also **identify the State** concerned.
- The communication should also include the victims' names (even if the latter wish to remain anonymous, in which case, this fact should be stated), and if possible, the names of any authority familiar with the facts of the case.
- It should also provide information showing that all domestic legal remedies have been exhausted. If all remedies were not exhausted, the communication should indicate the reasons why it was not possible to do so.
- The complaint should also indicate whether the communication has been or is being considered before any other international human rights body, for instance, the UN Human Rights Committee.

Communications not issued by states

Communications not issued by States must include the following information:

- A. Complainant(s)** (Please indicate whether you are acting on your behalf or on behalf of someone else. Also indicate in your communication whether you are an NGO and whether you wish to remain anonymous.)
- Name
 - Age
 - Nationality
 - Occupation and/or Profession
 - Address
 - Telephone/Fax no

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A. The African Charter on Human and Peoples' Rights

- B. Government accused of the Violation** (Please make sure it is a State Party to the African Charter.)
 - C. Facts constituting alleged violation** (Explain in as much a factual detail as possible what happened, specifying place, time and dates of the violation.)
 - D. Urgency of the case** (Is it a case which could result in loss of life/lives or serious bodily harm if not addressed immediately? State the nature of the case and why you think it deserves immediate action from the Commission.)
 - E. Provisions of the Charter alleged to have been violated**
(If you are unsure of the specific articles, please do not mention any.)
 - F. Names and titles of government authorities who committed the violation**
(If it is a government institution please give the name of the institution as well as that of the head.)
 - G. Witness to the violation** (Include addresses and if possible telephone numbers of witnesses.)
 - H. Documentary proofs of the violation** (Attach e.g. letters, legal documents, photos, autopsies, tape recordings etc., to show proof of the violation.)
 - I. Domestic legal remedies pursued** (Also indicate for example, the courts you've been to, attach copies of court judgments, writs of habeas corpus etc.)
 - J. Other international avenues** (State whether the case has already been decided or is being heard by some other international human rights body; specify this body and indicate the stage at which the case has reached.)
-

Contact Information

African Commission on Human & Peoples' Rights Secretary/Chairman of the Commission

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Western Region
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Banjul
Gambia
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Fax: (220) 441 05 04
E-mail: achpr@achpr.org
Website: <http://www.achpr.org>

Situations of serious or massive violations of human rights

When the Commission considers that one or more communications relate to a series of serious or massive human rights violations, it will bring the matter to the attention of the Assembly of Heads of State and Government of the African Union and the Peace and Security Council. The Commission may refer the matter to the African Human Rights Court (Rule 84 of Rules of Procedure, see below).

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A. The African Charter on Human and Peoples' Rights

Advantages and disadvantages of submitting a communication to the African Commission

Advantages	<ul style="list-style-type: none">▪ Victims can remain anonymous.▪ NGOs and individuals can make oral representations before the Commission if they hold observer status.▪ The Commission may issue provisional measures to prevent irreparable harm to the victim(s) of the alleged violations.▪ The process is not reliant upon co-operation with the State. If the State refuses to participate, the Commission has the power to proceed on the evidence available or to seek information from third party sources.▪ Given that it is a regional body it may place additional political pressure on Nigeria to act.
Disadvantages	<ul style="list-style-type: none">▪ The African Commission will only act on communications received from individuals or NGOs if requested to do so by a majority of its members.▪ Recommendations by the African Commission only become binding if they are adopted by the African Union Assembly of Heads of State and Government.▪ There is no possibility of obtaining reparations for human rights violations for individual victims.▪ Although the recommendations are binding, there is no effective enforcement mechanism apart from political pressure by the OAU.▪ The process is heavily politicised and the outcome is highly dependent on other OAU member States.

Participation of NGOs in the procedures by the African Commission

Non-Governmental Organisations (NGOs) with observer status may participate in the procedures of the African Commission. NGOs may apply for observer status which may be granted by the African Commission in accordance with the 1999 Resolution on the Criteria for Granting and Maintaining Observer Status with the African Commission on Human and Peoples' Rights to Non-Governmental Organisations Working in the Field of Human and Peoples' Rights (ACHPR/Res.33 (XXV) 99).

Criteria for the granting of and for maintaining observer status with the African Commission

All NGOs applying for observer status with the African Commission must submit an application to the Secretariat of the Commission to demonstrate their willingness and capability to work towards the realisation of the objectives of the African Charter on Human and Peoples' Rights.

All organisations applying for observer status must:

- Have objectives and activities in line with the fundamental principles and objectives of the OAU Charter and in the African Charter on Human and Peoples' Rights;
- Be working in the field of human rights;
- Declare their financial resources.

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A. The African Charter on Human and Peoples' Rights

In order to apply for observer status, an organisation must provide the following documents:

- A written application addressed to the Secretariat stating its intentions, at least three months prior to the Ordinary Session of the Commission which shall decide on the application;
- Its statutes, proof of its legal existence, a list of its members, its constituent organs, its sources of funding, its last financial statement and a statement on its activities;
- The statement of activities must cover the past and present activities of the organisation, its plan of action and any other information that may help to determine the identity of the organisation, its purpose and objectives, as well as its field of activities.

The CPNs may apply for observer status with the African Commission, which would allow them to participate in the proceedings of the African Commission.

The African Commission's Bureau will designate a rapporteur to examine the documents and the applicant organisation will be notified of the Commission's decision without delay.

Observer status may be suspended or withdrawn from any organisation that does not fulfil the criteria.

Participation of observers in proceedings of the African Commission

- All observers are invited to be present at the opening and closing sessions of all sessions of the African Commission;
- All observers have access to the Commission documents as long as they (i) are not confidential and, (ii) deal with issues that are relevant to their interests;
- The distribution of general information documents of the African Commission is free of charge but the distribution of specialised documents is on a paid-for basis, except where reciprocal arrangements are in place;
- Observers may be invited to be present at closed sessions dealing with issues of particular interest to them;
- Observers may be authorised to make a statement on an issue that concerns them, subject to the text of the statement having been provided to the Chairperson of the Commission through the Secretary to the Commission;
- The Chairperson of the Commission may give the floor to observers to respond to questions directed at them by participants;
- Observers may request to have issues of particular interest to them included in the provisional agenda of the African Commission.

Relations between the African Commission and Observers

- Organisations enjoying observer status must undertake to establish close relations of co operation with the African Commission and engage in regular consultations with it on all matters of common interest;
- NGOs enjoying observer status must present their activity reports to the Commission every two years;
- The Commission can take the following measures against NGOs that are in default of their obligations: non-participation in sessions; denial of documents and information; denial of the opportunity to propose items to be included in the Commission's agenda.

3. The African Court on Human and People's Rights

The African Court on Human and Peoples' Rights was established by the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights (African Human Rights Court). The Court's mission is to complement and reinforce the functions of the Commission in promoting and protecting human and peoples' rights, freedoms and duties in African Union Member States. The Court is composed of 11 judges and nationals of Member States of the African Union elected by the Assembly of Heads of State and Government of the OAU for a renewable period of six years. The Court is based in Arusha, Tanzania.

The African Human Rights Court has the following jurisdiction:

◆ Contentious jurisdiction

The Court has jurisdiction to deal with all cases and disputes submitted to it concerning the interpretation and application of the African Charter, the Court's Protocol and any other relevant human rights instrument ratified by the States concerned (Article 3 of the Protocol).

Only certain bodies are able to invoke the African Human Rights Court's contentious jurisdiction:

- African Union States which are parties to the Protocol;
- The African Commission;
- African inter-governmental organisations (Article 5 of the Protocol);
- NGOs with observer status in certain circumstances.

The capacity of individuals and NGOs to bring a complaint against a State depends both on a special declaration by the State Party to the Protocol allowing such direct applications, and on the discretion of the Court (Articles 5 and 34).

Nigeria signed and ratified the Protocol in 2004, but it has not made the declaration under Article 35(6) accepting the competence of the African Human Rights Court to receive cases from individuals or NGOs with observer status.

The admissibility criteria for the African Human Rights Court are the same as those for the African Commission (Article 6 of the Protocol). That is, the author's names must be provided; the complaint must not be based on news articles, the author must exhaust local remedies unless these are unduly prolonged; and the dispute must not have been submitted to another international dispute settlement mechanism (Article 56 African Charter). The Court may order provisional measures in cases of extreme gravity and when necessary to avoid irreparable harm to persons (Article 27(2) of the Protocol).

Free legal representation may be provided where the interests of justice so require (Rule 31 of the Rules of the Court and Article 10(2) of the Protocol).

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A. The African Charter on Human and Peoples' Rights

Unlike the African Commission, all hearings before the African Human Rights Court generally take place in public (Article 10 of the Protocol). However, the Court may hold its hearings in private if it is in the interests of public morality, safety or public order to do so. The parties or their legal representatives shall be permitted to be present and heard in camera (Rule 43 of the Rules of the Court).

The Court also has the power to issue binding decisions and order specific remedies, including compensation (Article 27(1) of the Protocol).

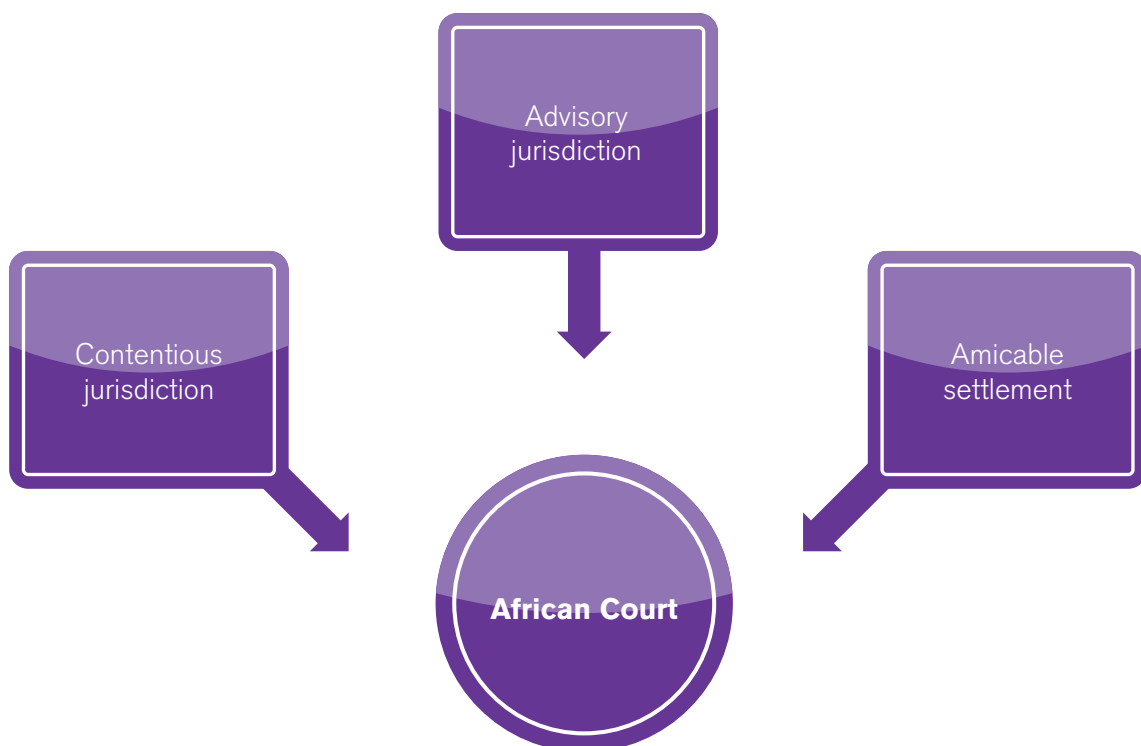
The Court gives its judgment within 90 days of having completed its deliberations. The judgments of the Court are final and are not subject to appeal (Article 28 of the Protocol). However, where new evidence comes to light which was not available at the time the judgment was delivered, a party may apply for the judgment to be reviewed.

◆ **Advisory jurisdiction**

At the request of a Member State of the OAU, any organ of the OAU, or any African organisation recognised by the OAU, the Court may provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the African Commission.

◆ **Amicable settlement**

The Court has jurisdiction to promote amicable settlement in cases pending before it in accordance with the provisions of the Charter.



Part II: The protection of Child Rights in Africa

A. The African Charter on Human and Peoples' Rights

Seizure of the Court by the African Commission

If the African Commission has taken a decision with respect to a communication submitted by an individual or an NGO, and considers that the State has not complied or is unwilling to comply with its recommendations within the prescribed period, it may submit the communication to the African Human Rights Court and inform the parties accordingly (Rule 118(1) of the Rules of Procedure).

The African Commission may also submit a communication to the African Human Rights Court against a State Party if a situation that constitutes a serious or massive violation of human rights has come to its attention (Rule 118(3) of the Rules of Procedure). Additionally, the Commission may seize the Court at any stage of the examination of a communication if it deems it necessary to do so (Rule 118(4) of the Rules of Procedure).

Advantages and disadvantages of bringing a case before the African Human Rights Court

Advantages	<ul style="list-style-type: none">▪ The claim can be based on any international or African legal document that the State is a party to.▪ The Court proceedings are conducted in public and are therefore high profile.▪ When the Court finds that there has been a violation of human and peoples' rights, it will issue appropriate orders to remedy the violation, including the payment of fair compensation or reparation.▪ In cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons the Court can adopt the necessary provisional measures.▪ The Court may provide free legal representation and/or legal assistance to any party.▪ The Court is relatively prompt and is required to give its judgment within 90 days of having completed its deliberations. The Court's judgment is final and not subject to appeal.
Disadvantages	<ul style="list-style-type: none">▪ As the African Human Rights Court's proceedings are public, this may have confidentiality implications for children unless the Court decides to hold the hearing in camera.▪ An individual or an NGO with observer status before the African Commission can only make a complaint to the African Human Rights Court if the State concerned has lodged a declaration giving permission for this (Article 5 and 34). Since Nigeria has not lodged such a declaration, individuals and NGOs may not directly submit a complaint to the African Human Rights Court and are therefore reliant on the African Commission lodging a complaint to the Court on their behalf.

4. The African Court of Justice and Human Rights

The African Human Rights Court will eventually be merged with the African Court of Justice of the African Union, which was designed to resolve inter-state disputes.



Court of Justice of the African Union

Article 19 of the Protocol of the Court of Justice of the African Union provides that African Court of Justice has competence over all disputes and applications referred to it in accordance with the Constitutive Act of the African Union which relate to:

- The interpretation and application of the Constitutive Act of the African Union;
- The interpretation, application or validity of African Union treaties and all subsidiary legal instruments adopted within the framework of the African Union;
- Any question of international law;
- All acts, decisions, regulations and directives of the organs of the African Union;
- All matters specifically provided for in any other agreements that States parties may conclude among themselves or with the Union and which confer jurisdiction on the Court;
- The existence of any fact which, if established, would constitute a breach of an obligation owed to a State Party or to the African Union;
- The nature or extent of the reparation to be made for the breach of an obligation.

The Assembly of the African Union may confer on the Court jurisdiction over any dispute other than those referred to in this Article.

The Court delivers its judgments by a majority of the judges present (Article 35). Judgments are final and binding on the parties and in respect of that particular case (Article 37) and States Parties must guarantee the execution of the judgment (Article 51).

Article 52 of the Protocol provides that if a party fails to comply with a judgment, the Court may refer the matter to the Assembly, which may decide upon measures to be taken to give effect to the judgment, including sanctions. The African Court of Justice submits a report on its work during the previous year to each ordinary session of the Assembly of Heads of State and Government of the African Union (Assembly). The report must specify the cases in which a State has not complied with the Court's judgment (Article 53).

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A. The African Charter on Human and Peoples' Rights

The Court of Justice may also give an advisory opinion on any legal question at the request of the Assembly, the Parliament, the Executive Council, the Peace and Security Council, the Economic, Social and Cultural Council of the African Union, any of the Financial Institutions, a Regional Economic Community or such other organs of the African Union as may be authorized by the Assembly.

The New African Court of Justice and Human Rights

The new joint court will be the main judicial organ of the African Union and it will be named the African Court of Justice and Human Rights.

The Protocol on the Statute of the African Court of Justice and Human Rights and the Statute annexed to it was adopted on 1 July 2008. The Protocol and the Statute will enter into force thirty days after the deposit of the instruments of ratification by 15 Member States. The Protocol was signed by Nigeria on 22 December 2008.

The Statute as it is presently drafted indicates that the new Court will operate in a very similar fashion to the African Human Rights Court. Article 28 of the Statute specifies that the Court will have jurisdiction over cases relating to the interpretation and application of the African Charter and the Charter on the Rights and Welfare of the Child and any other legal instruments relating to human rights which have been ratified by the State Parties. Individuals and NGOs accredited to the African Union or one of its organs will be able to submit human rights cases to the Court where States have made a declaration to that effect under Article 8 of the Protocol to the Statute (Article 30 of the Statute).

Judgements will be rendered within 90 days of the completion of deliberations (Article 43 of the Statute) and the Executive Council will monitor the execution of the judgments. The Court has the power to order compensation for violations of human rights (Article 45 of the Statute). The decision of the Court is final and binding on the parties. Failures to comply with a judgment will be referred to the Assembly which can impose sanctions (Article 46 of the Statute).

B. The ECOWAS Court of Justice

1. The Economic Community of West African States (ECOWAS)

ECOWAS is a regional group of 15 countries created in 1975. The Revised Treaty of the Economic Community of West African States (Revised ECOWAS Treaty), guarantees, among other things, the recognition, promotion and protection of human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights (Article 4).

Article 4: Fundamental principles

"The High Contracting Parties, in pursuit of the objective stated in Article 3 of this Treaty, solemnly affirm and declare their adherence to the following principles:
[...]

g. recognition promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights..."

The Revised Treaty entered into force in 1995 and was signed by Nigeria on 24 July 1993.

Sanctions may be imposed for non-compliance with the Revised ECOWAS Treaty (Article 77). These sanctions may include:

- Suspension of new Community loans or assistance;
- Suspension of disbursement on on-going Community projects or assistance programmes;
- Exclusion from presenting candidates for statutory and professional posts;
- Suspension of voting rights; and
- Suspension from participating in the activities of the Community.

Sanctions, however, are not imposed if it is shown that the failure to fulfil its obligations is due to causes and circumstances beyond the control of the Member State.

2. The ECOWAS Court of Justice as a Human Rights Court

The ECOWAS Community Court is the principal legal organ of ECOWAS pursuant to provisions of Article 6 and 15 of the Revised Treaty of ECOWAS. The judges of the Community Court of Justice were not appointed until 30 January 2001. Protocol A/P.1/7/91 on the Community Court of Justice of 6 July 1991 (Protocol), amended by Supplementary Protocol A/SP.1/01/05 of 19 January 2005 amending certain provisions of the Protocol A/P.1/7/91 (Supplementary Protocol), spells out the organisation, functioning and procedure followed before the ECOWAS Community Court.

The ECOWAS Community Court is composed of seven independent judges, each nationals of a different State. They are selected and appointed by the Authority of Heads of State and Government of ECOWAS, for a renewable five-year term of office (Article 2 of the Supplementary Protocol). The Court is mandated to ensure the observance of law and the principles of equity and human rights in the Community zone.

The ECOWAS Community Court's seat is in Abuja, Nigeria. However, the Court may choose to hold one or more sessions elsewhere in accordance with Article 26(2), which prescribes that "where circumstances or the facts of the case so demand, the Court may decide to sit in the territory of another member State."

Competence of the ECOWAS Court of Justice

Initial jurisdiction

The initial jurisdiction of the Court was very limited.

The Court received its first case in 2004. *Olajide Afolabi v. Federal Republic of Nigeria* (ECW/CCJ/JUD/01/04) was filed by an individual businessman against the government of Nigeria for a violation of Community law in the closing of the border with Benin. The ECOWAS Community Court ruled that under the Protocol only member States could institute cases. The Court's ruling began a discussion, headed by the Judges themselves, over the need to amend the Protocol to allow for legal and natural persons to have standing before the Court.

Current jurisdiction

In January 2005, the ECOWAS adopted the Supplementary Protocol to permit individuals to bring cases against member States.

In the area of human rights protection, the Court applies the Treaty, the Conventions, Protocol and Regulations adopted by the community and the general principles of law as set out in Article 38 of the Statute of the International Court of Justice. In the area of human rights protection, the Court applies, among other things, international instruments relating to human rights that have been ratified by the State Party to the case.

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B. The ECOWAS Court of Justice

Article 9 of the Supplementary Protocol specifies the jurisdiction of the ECOWAS Community Court:

Article 9: Jurisdiction of the Court

1. The Court has competence to adjudicate on any dispute relating to the following:
 - a.) The interpretation and application of the Treaty, Conventions and Protocols of the Community;
 - b.) The interpretation and application of the regulations, directives, decisions and other subsidiary legal instruments adopted by ECOWAS;
 - c.) The legality of regulations, directives, decisions and other legal instruments adopted by ECOWAS;
 - d.) The failure by Member States to honour their obligations under the Treaty, Conventions and Protocols, regulations, directives, or decisions of ECOWAS;
 - e.) The provisions of the Treaty, Conventions and Protocols, regulations, directives or decisions of ECOWAS Member States;
 - f.) The Community and its officials; and
 - g.) The action for damages against a Community institution or an official of the Community for any action or omission in the exercise of official functions.
2. The Court shall have the power to determine any non-contractual liability of the Community and may order the Community to pay damages or make reparation for official acts or omissions of any Community institution or Community officials in the performance of official duties or functions.
3. Any action by or against a Community Institution or any Member of the Community shall be statute barred after three (3) years from the date when the right of action arose.
4. The Court has jurisdiction to determine case of violation of human rights that occur in any Member State.
5. Pending the establishment of the Arbitration Tribunal provided for under Article 16 of the Treaty, the Court shall have the power to act as arbitrator for the purpose of Article 16 of the Treaty.
6. The Court shall have jurisdiction over any matter provided for in an agreement where the parties provide that the Court shall settle disputes arising from the agreement.
7. The Court shall have the powers conferred upon it by the provisions of this Protocol as well as any other powers that may be conferred by subsequent Protocols and Decisions of the Community.
8. The Authority of Heads of State and Government shall have the power to grant the Court the power to adjudicate on any specific dispute that it may refer to the Court other than those specified in this Article.

Accordingly, the ECOWAS Community Court has jurisdiction to determine cases of violations of human rights that occur in any Member State; to adjudicate on any dispute relating to the interpretation and application of the Treaty, Conventions and Protocols of ECOWAS, including the African Charter on Human and Peoples' Rights; and to adjudicate on Member States' failures to honour their obligations under the Treaty, Conventions and Protocol, including the African Charter on Human and Peoples' Rights.

Part II: The protection of Child Rights in Africa

B. The ECOWAS Court of Justice

Any disputes relating to the interpretation or the application of the provisions of the Treaty are to be amicably settled through direct agreement. Failing this, either party, any other Member State or the Authority may refer the matter to the ECOWAS Community court of Justice (Article 76 of the Revised Treaty).

The Effect of ECOWAS judgments

Article 15(4) of the Revised Treaty gives binding effect to the judgments of the ECOWAS Community Court:

“Judgments of the Court of Justice shall be binding on the Member States, the Institutions of the Community and on individuals and corporate bodies.”

Article 22(3) of the Protocol enjoins all Member States and Institutions of the Community to immediately take all necessary measures to ensure the execution of the decisions of the Court.

Currently there is no right of appeal.

On 9 June 2011, the Federal Republic of Nigeria announced that it had designated the Minister of Justice as the competent National Authority responsible for implementing decisions of the ECOWAS Community Court of Justice.

Access to the ECOWAS Court of Justice

Article 10 of the Supplementary Protocol holds that the ECOWAS Community Court is open to the following:

- a.) Member States, and unless otherwise provided in a Protocol, the Executive Secretary, where action is brought for failure by a Member state to fulfil an obligation;
- b.) Member States, the Council of Ministers and the Executive Secretary in proceeding for the determination of the legality of an action in relation to any community text;
- c.) Individuals and corporate bodies in proceedings from the determination of an act or inaction of a Community official which violates the rights of the individuals or corporate bodies;
- d.) Individuals on application for relief for violation of their human rights; the submission of application for which shall:
 - i. Not be anonymous; nor
 - ii. Be made whilst the same matter has been instituted before another International Court for adjudication;
- e.) Staff of any Community institution, after the Staff Member has exhausted all appeal processes available to the officer under the ECOWAS Staff Rules and Regulations;
- f.) Where in any action before a court of a Member State, an issue arises as to the interpretation of a provision of the Treaty, or the other Protocols or Regulations, the national court may on its own or at the request of any of the parties to the action refer the issue to the Court for interpretation.

An individual can bring a case before the ECOWAS Community Court for relief for violation of their human rights provided that their application is not anonymous and that the same claim is not being adjudicated by another international court.
(Article 10(d)(ii) of the Supplementary Protocol)

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B. The ECOWAS Court of Justice

In the 2008 case of *Hadijatou Mani Koroua v. Niger* (ECW/CCJ/JUD/06/08), which is one of the few judgments of the Court to address serious human rights violations (see below), the ECOWAS Community Court ruled that at present there is no requirement to exhaust domestic remedies.

The ECOWAS Community Court of Justice underlined that since human rights are inherent to human beings, they are inalienable, imprescriptable and sacred and should therefore not be subject to any form of limitation.

The Community Court of Justice has the power to award damages for breaches of rights (as it did in the case *Hadijatou Mani*) but the applicant will be required to justify the amount of reparations sought.

Importantly, the Supplementary Protocol also gave national courts of Member States the right to apply to the ECOWAS Court for a ruling on the interpretation of Community law.

How to access the ECOWAS Community Court

- Cases are filed with the ECOWAS Community Court by written applications addressed to the registry.
- Such applications must indicate the name of the applicant, the party against whom the proceedings are being brought, a brief statement of the facts of the case, and the orders being sought.

Contact Information

Community Court of Justice
The ECOWAS
10 Dar es Salaam Crescent,
Off Aminu Kano Crescent,
Wuse II,
Abuja,
Nigeria.
Tel: (234) (9) 5240781
Fax: (234) (9) 6708210
website: www.courtecowas.org.
email : info@courtecowas.org or president@courtecowas.org

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B. The ECOWAS Court of Justice

Advantages	<ul style="list-style-type: none">▪ Individuals can take cases directly to the ECOWAS Community Court.▪ The ECOWAS Community Court does not appear to be under the same pressure and workload as the African Commission or African Court and therefore a judgment may be obtained more speedily through this mechanism.▪ At present, there is no requirement to exhaust domestic/local remedies before filing a petition.▪ The ECOWAS Community Court's judgments are binding and may result in reparations being ordered for individual victims.▪ The ECOWAS Community Court has issued adverse judgments against Nigeria in the past and is therefore unlikely to be reticent about doing so again.▪ In its jurisprudence, the ECOWAS Community Court has granted standing to NGOs to bring cases before the Court.▪ The ECOWAS Court can sit in the State where the alleged violations occurred, which enables victims, witnesses and civil societies to have better access to proceedings.
Disadvantages	<ul style="list-style-type: none">▪ To date, there have been very few decisions of the court handed down in relation to alleged violations of human rights.▪ As there is a requirement for petitions not to be filed anonymously, and in light of the Court's practice of public hearings, it appears that there is no possibility of victim anonymity.

Case law of the ECOWAS Court of Justice

Hadijatou Mani Koroua v. Niger (ECW/CCJ/JUD/06/08)

In this case, the ECOWAS Community Court found Niger responsible for failing to protect 24-year-old Hadijatou Mani from slavery and thereby breaching its own laws and international obligations. The Court has made clear that Niger is obliged to take positive measures to protect its citizens from slavery. The Court order Niger to pay Hadijatou Mani compensation of 10 million CFA, the equivalent of £12,300/\$19,000 in damages.

This is the first time that the ECOWAS Community Court has heard a slavery case and it is the first time that a slavery case has been brought against Niger in an international or regional court. The ECOWAS Court decisions are binding and apply to all Member States. The judgment reaffirms the long established absolute prohibition of slavery in international law. As one of the few slavery cases ever brought on the international level, it makes a significant contribution to the body of jurisprudence on this subject.

Niger criminalised slavery in 2003, but five years on at least 43,000 people remain enslaved across the country. Hadijatou Mani was born into an established slave class and like all slaves in Niger, was inherited, sold and made to work without pay. Her master also used her as a sexual slave. Hadijatou Mani brought the case to the regional ECOWAS court after she failed to obtain redress in Niger's domestic legal system and from the State authorities.

Part II: The protection of Child Rights in Africa

B. The ECOWAS Court of Justice

This is the first judgment of the ECOWAS Community Court to address serious human rights violations. Importantly, the Court sat in Niger, therefore allowing the victim, witnesses and civil society access to the proceedings, and raising the profile of the debate on slavery in Niger. The Court also managed to issue its judgement in a relatively short period of time after the hearing. This case highlights the important role that this and other regional economic courts can play in the determination of human rights issues in West Africa.

More information about the judgement is available at:

- <http://www.interights.org/niger-slavery/index.html#analysis>;
- http://www.adh-geneva.ch/RULAC/pdf_state/ECOWAS-judgment-Mani-v-Niger-1-.pdf (unofficial translation of the judgement into English)

SERAP v. Federal Republic of Nigeria and Universal Basic Education Commission (ECW/CCJ/APP/08/08)

The plaintiff, the Socio-Economic Rights and Accountability Project (SERAP), a Human Rights NGO registered under Nigerian Law, filed an application against the Defendants, the Federal Republic of Nigeria and Universal Basic Education Commission on 24 July 2009. The application alleged that Nigeria had violated its obligations under the African Charter to realise the following rights:

The right to education (Article 17);

The right to dignity (Article 5);

The right of peoples to freely dispose of their wealth and natural resources (Article 21); and

The right of peoples to economic and social development (Article 20).

SERAP contended that corruption among high-level officials and theft within the rank of the Universal Basic Education Commission had left the education sector woefully underfinanced and therefore unable to provide free and compulsory education to all Nigerian children. It further alleged that the Nigerian Government was complicit by its failure to investigate allegations of corruption or confront the culture of free license.

In its application, SERAP sought, among others things, a declaration that every Nigerian child is entitled to free and compulsory education pursuant to Nigeria's own domestic legislation and an order compelling the Government to replenish the funds available to the education sector, prosecute those responsible for theft or corruption, and monitor the recovery of stolen funds.

The defendants alleged that the ECOWAS Community Court lacked jurisdiction to judge this case because the laws in question were not part of a treaty, convention or protocol of ECOWAS, the provision for education in Nigeria was non-justiciable and SERAP did not have standing to bring the claim.

The ECOWAS Court rejected these objections in a ruling that has been celebrated for affirming the Court's jurisdiction over States Parties' human rights obligations and NGOs ability to bring cases in a representative capacity.

On 6 December 2010, the ECOWAS Community Court delivered a judgment stating that it would hold ECOWAS States accountable if they denied their people the right to education. The Court held that the right to education can be enforced before it. The Court required the Government of Nigeria to ensure that the right to free and compulsory basic education was upheld and confirmed that the right to education should not be undermined by corruption. The Court stated that while

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B. The ECOWAS Court of Justice

steps were taken to recover funds lost to corruption and/or prosecute the suspects, the Nigerian Government was required to provide the funds necessary to cover the shortfall in order to avoid denying any of its people the right to education.

Further information about the judgement is available at:

- <http://hrbrief.org/2011/03/ecowas-community-court-of-justice-ruling-holds-the-government-of-nigeria-accountable-for-fulfilling-the-right-to-education-despite-corruption/>
- http://www.worldcourts.com/ecowasccj/eng/decisions/2010.12.10_SERAP_v_Nigeria.htm.

ECOWAS Child Policy and Strategic Plan of Action

The purpose of the ECOWAS Child Policy is, broadly, to strengthen and re-confirm the commitment to children through the formulation of programmes which will ensure their development. (Chapter 1, para.1.1 of the ECOWAS Child Policy and Strategic Plan of Action)

The ECOWAS Child Policy defines a child as a person under 18 years, in accordance with the UN Convention on the Rights of the Child and the African Charter on the Welfare and Rights of the Child, which have been ratified by virtually all the ECOWAS countries. Over half of the ECOWAS countries have complied with this definition.

The ECOWAS Treaty does not include a specific section on children. This has been, to some extent, compensated for by the Declaration on the Decade of a Culture of the Rights of the Child in West Africa (2001-2010). The Declaration affirms the critical role of children in the future of the region, and acknowledges that investing in children will ensure peace, stability, security and sustainable development.

The Child Policy is addressed to all persons under 18 years with the following groups being given special attention:

- | | |
|---|--|
| <ul style="list-style-type: none">▪ Orphans▪ Children infected or affected by HIV/AIDS▪ Children abused or neglected▪ Children in need of alternative family care▪ Children in hard-to-reach areas▪ Disabled children▪ Children in child labour▪ Children affected by harmful traditional practices▪ Children living on the streets | <ul style="list-style-type: none">▪ Trafficked children▪ Children who have been sexually exploited and used in the sex trade and pornography▪ Children in conflict with the law▪ Victims of violence▪ Children involved in cults and gangs▪ Children forced into armed forces as soldiers and prostitutes▪ Refugees and migrant children |
|---|--|

A Strategic Plan of Action has been developed for the ECOWAS Child Policy for the period of 2009-2012. The aim of the Strategic Plan of Action is to translate the Fifteen Policy Goals into time-bound sustainable programmes that will promote the development and rights of ECOWAS children.

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B. The ECOWAS Court of Justice

The **Fifteen Policy Goals** are:

- Child survival
 - The right to development
 - Protection of children with disabilities
 - Protection from child labour
 - Protection from child trafficking
 - Protection from sexual exploitation and abuse
 - Protection from involvement with drugs
 - Protection children from HIV/AIDS
 - Protection from violence
 - Safeguarding children in conflict with the law
 - Child participation
 - Creating child friendly environment
 - Legal framework
 - Sustainable resource mobilisation for the implementation of the ECOWAS Child policy
-

Sources:

- Malcolm Evans and Rachel Murray: The African Charter on Human and Peoples' Rights, the System in Practice, 1986-2000, Cambridge University Press, Cambridge, 2000.
 - Fatsah Ouguergouz: La Charte africaine des droits de l'homme et des peuples – Une approche juridique des droits de l'homme entre tradition et modernité, Presses Universitaires de France, Paris, 1993 (Publications de l'Institut universitaire de haute études internationales Genève).
 - Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutor and Lawyers, United Nations, New York, Geneva, 2003 ECOWAS Child Policy and Strategic Plan of Action, ECOWAS, 2009.
 - African Committee of Experts on the Rights and Welfare of the Child, <http://www.africa-union.org/child/home.htm>
 - African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.
 - Institutions and case law in Africa: <http://www.ihrda.org/african-court-of-justice-and-human-rights-acjhr/>
 - African international courts and tribunals: http://www.aict-ctia.org/courts_subreg/ecowas/ecowas_home.html
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C. The African Charter on the Rights and Welfare of the Child

1. The African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child (African Children's Charter) was adopted by the OAU on 11 July 1990 and came into force on 29 November 1999. The African Children's Charter provides a list of rights of the child which is very similar to the one contained in the Convention on the Rights of the Child (CRC). Unlike the CRC, the Charter also imposes duties on the child. The Charter was ratified by Nigeria on 23 July 2001.

States Parties must recognise the rights, freedoms and duties enshrined in the Charter and take the necessary steps to adopt such legislative or other measures as may be necessary to give effect to the provisions of the Charter (Article 1(1) of the Charter).

- **Article 4** of the Charter holds that in all actions concerning the child undertaken by any person or authority, the best interests of the child are to be the primary consideration;
- **Article 1(3)** of the Charter states that any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the Charter shall be discouraged;
- Under the Charter a child is any person below the age of 18 years (**Article 2**).

Other relevant provisions of the African Children's Charter include:

- Article 3** Principle of non-discrimination: children are entitled to the rights guaranteed in the Charter without discrimination on grounds of race, ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, fortune, birth or other status
- Article 5** State Parties have an obligation to ensure children's right to survival and development, including the right to life and prohibition of the death penalty
- Article 6** The right to a name and a nationality
- Article 7** The right to freedom of expression

Part II: The protection of Child Rights in Africa

C. The African Charter on the Rights and Welfare of the Child

- Article 8** The right to freedom of association and of peaceful assembly
- Article 9** The right to freedom of thought, conscience and religion
- Article 10** The right to protection of one's privacy, family, home and correspondence
- Article 11** The right to education
- Article 12** The right to leisure, recreation and cultural activities
- Article 13** The right to special protection of handicapped children
- Article 14** The right to health and health services
- Article 15** Every child must be protected from all forms of economic exploitation and from performing any work that is hazardous or likely to interfere with the child's mental, spiritual, moral, or social development
- Article 16** States are required to take legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while the care of the child
- Article 17** The administration of juvenile justice. This includes the obligation to:
- Ensure that no child who is detained or imprisoned or otherwise deprived of his her liberty is subject to torture, inhuman or degrading treatment or punishment;
 - Ensure that children are separated from adults in their place of detention or imprisonment;
Ensure that every child accused in infringing the penal law shall be presumed innocent until proven guilty, informed promptly in a language that he understands and in detail of the charge against him, shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence and shall have the matter determined as speedily as possible by an impartial tribunal and be entitled to an appeal.
 - Prohibit the press and the public from trial.
 - Promote the reformation, re-integration and social rehabilitation of the child;
 - Set an age of criminal responsibility below which children cannot be tried for a criminal offence.
- Article 18** The right to protection of the family unit
- Article 19** The right to parental care and protection
- Article 20** Parental responsibilities
- Article 21** Protection against harmful social and cultural practices including child marriage.
- Article 22** The protection of children during armed conflicts
- Article 23** The protection of refugee children
- Article 24** Adoption
- Article 25** Separation from parents
- Article 26** Protection against apartheid and discrimination
- Article 27** Protection from sexual exploitation
- Article 28** Protection from drug abuse
- Article 29** Prevention of sale, trafficking and abduction and the use of children for begging.
- Article 30** Protection of children of imprisoned mothers by:
- Ensuring that a custodial sentence is only used as sentence of last resort;
 - Establishing and promoting measures alternative to institutional confinement for the treatment of such mothers;
 - Establishing special alternative institutions for holding such mothers;
 - Ensuring that mothers are not imprisoned with their children;
 - Preventing the death penalty from being imposed on such mothers;
 - Promoting the aim of reforming, rehabilitating and reintegrating the mother.

Part II: The protection of Child Rights in Africa

C. The African Charter on the Rights and Welfare of the Child

Article 31 Responsibilities of the child towards his family and society, the State and the international community. Such responsibilities include the duty to work for the cohesion of the family, to serve the national community, to preserve and strengthen social and national solidarity and to contribute to the promotion of African unity.

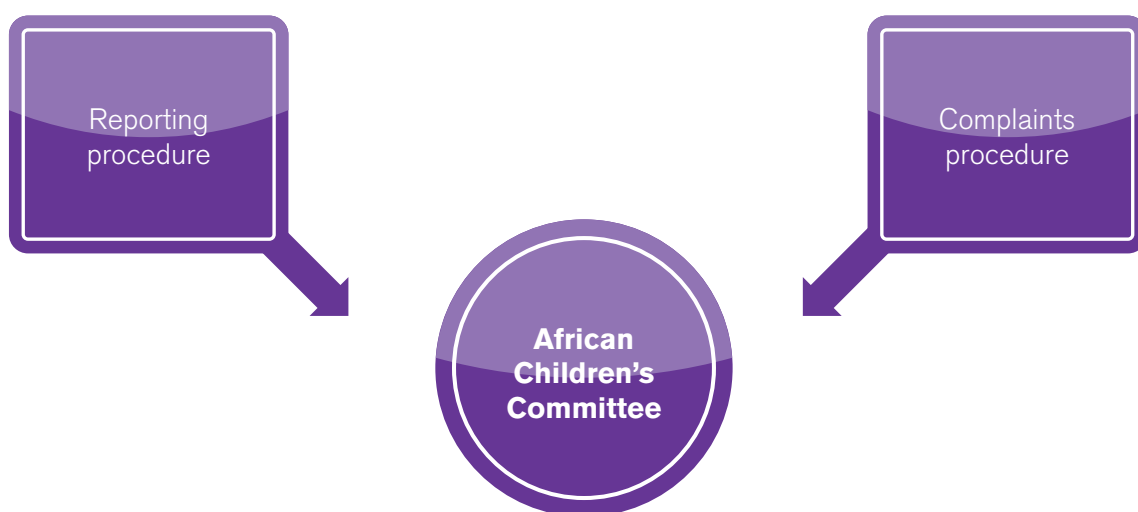
2. African Committee of Experts on the Rights and Welfare of the Child

Article 32 of the African Children's Charter provides for the establishment of an African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) to promote and protect the rights and welfare of the child. This Committee consists of eleven independent and impartial members (Article 33). These members are elected for five-year terms by the African Union Assembly of Heads of States and Government and may not be re-elected (Articles 34 and 37). The Committee meets bi-annually. It started operating in July 2001.

The African Children's Committee has two mandates: first, to promote and protect the rights enshrined in the African Children's Charter and second, to monitor the implementation and ensure the protection of these rights (Article 42).

The Committee provides two procedures for the monitoring of the implementation of the Charter:

- ◆ The reporting procedure;
- ◆ The complaints procedure.



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C. The African Charter on the Rights and Welfare of the Child

The reporting procedure

According to Article 43, States Parties have an obligation to submit reports to the African Children's Committee on their implementation of the Charter, the measures that they have adopted which give effect to the provisions of the African Children's Charter and the progress made in the enjoyment of these rights. The first comprehensive report is due in two years and thereafter every three years.

The Complaints procedure

The African Children's Committee may receive communications, also referred to as "complaints", from any person, group or NGO recognised either by the African Union, a Member State or the United Nations relating to any matter covered by the African Children's Charter. Every communication must contain the name and address of the author and shall be treated in confidence (Article 44).

Once a communication is received, it is sent to all Committee members three months prior to each ordinary session so that the Committee may set up a working group to consider whether the communication will be accepted. The Committee, working group or rapporteur then brings the communication to the attention of the State concerned and requests an explanation or written statement within six months.

The Committee may also request the presence of the person or group submitting the communication and the State Party concerned in order to obtain more information, clarification or observations.

The African Children's Charter provides that the Committee may resort to any "appropriate method" of investigating any matter falling within the ambit of the Charter.

The Committee is to submit reports on its activities to the Ordinary Session of the African Union Assembly of Heads of State and Government every two years. After being considered by the Assembly this report is made public. States Parties have an obligation to make these reports available to the public in their countries (Article 45).

How to contact the African Children's Committee

Contact information:

The Secretariat of the Committee is based within the Department of Social Affairs of the Commission of the African Union in Addis Ababa. The Committee can be reached with the following contact details:

The Director

Department of Social Affairs

Commission of the African Union

African Union Headquarters

P. O. Box 3243

Roosevelt Street (Old Airport Area)

W21K19 Addis Ababa

Ethiopia

Tel.: +(251) 1 51 35 22 (Direct) and +(251) 1 51 77 00 Ext. 300

Fax: +(251) 1 53 57 16

Email: dsocial@africa-union.org

Part II: The protection of Child Rights in Africa

C. The African Charter on the Rights and Welfare of the Child

Advantages and disadvantages of making a communication to the African Children's Committee

Advantages	<ul style="list-style-type: none">▪ There are no admissibility requirements (there is no requirement to exhaust domestic remedies or to ensure that the same complaint is not being dealt with by another dispute resolution mechanism).▪ At the time of writing, the African Children's Committee has a Nigerian member - Mrs Maryam Uwais, and therefore may be able to exert additional political pressure on Nigeria.
Disadvantages	<ul style="list-style-type: none">▪ It is not guaranteed that a communication will be acted upon by the Committee.▪ Even if a communication were to be substantively considered, the African Children's Committee has no power to issue binding recommendations or to ensure the implementation of such recommendations.▪ The procedure is untested; the Committee has so far considered only one communication from Uganda.▪ The procedure is underfunded.

Part III:

International Protection of Child Rights



A. Introduction to International Human Rights Law

Learning objectives

- To familiarise participants with the main international human rights instruments protecting the rights of the child;
- To specify the rights of the child that are protected by the international human rights instruments;
- To familiarise participants with the main international and UN human rights treaty bodies that deal with the rights of the child;
- To examine all the procedures that can be used to bring a human rights claim to the UN human rights treaty bodies on behalf of children whose rights have been violated in Nigeria;
- To encourage participants to develop ways of ensuring that they apply these procedures when dealing with children whose rights have been violated in Nigeria.

Questions

- What are the main international human rights instruments protecting the rights of the child?
- Are you familiar with any of the procedures at international level which can be used to bring a claim for violations of the rights of the child?
- If yes, have you applied any of these procedures in practice? What was the result? Was it effective?
- Do you know which UN human rights treaties have been ratified by Nigeria?
- Have they been effectively implemented in Nigerian domestic law? If not, what would you do to improve the situation?

1. The International Bill of Rights

Human rights belong to all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, sexual orientation or any other status. Every individual is entitled to their human rights without discrimination. Human rights apply to all age groups, and children have the same human rights as adults. However, as children are considered a vulnerable group they have particular rights that recognise their special need for protection. As a result, the international community has adopted standards on the rights of the child that reflect a variety of cultural traditions.

Universal human rights are often expressed and guaranteed by law, in the form of treaties, customary international law, general principles and other sources of international law. International human rights law places obligations on States to act in certain ways or to refrain from doing certain things, in order to promote and protect the human rights and fundamental freedoms of individuals or groups.

Human rights entail both rights and obligations. States have obligations and duties under international law to respect, protect and fulfil human rights. At the individual level, while we are entitled to our human rights, we should also respect the human rights of others.

The international human rights movement was strengthened when the United Nations (UN) General Assembly adopted the Universal Declaration of Human Rights (UDHR) on 10 December 1948. Drafted as “a common standard of achievement for all peoples and nations”, the UDHR spelt out, for the first time in human history, basic civil, political, economic, social and cultural rights that all human beings should enjoy.

When States become members of the UN, they agree to accept the obligations of the Charter of the United Nations 1945, an international treaty that sets out the basic rules of international relations. Article 1 of the UN Charter (available at <http://www.un.org/aboutun/charter/>) states that:

The UN's purpose is to:

- Maintain international peace and security;
- Develop friendly relations among nations;
- Cooperate in solving international problems and in promoting respect for human rights; and
- Be a centre for harmonising the actions of all nations.

Article 55 of the UN Charter provides that the UN shall promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion”. Article 55 was given content through the adoption of the Universal Declaration of Human Rights in 1948.

Although the UDHR is not a legally binding treaty, its importance should not be underestimated. It has been the most important and far-reaching of all United Nations declarations and a fundamental source of inspiration for national and international efforts to promote and protect human rights and fundamental freedoms.

Part III: International Protection of Child Rights

A. Introduction to International Human Rights Law

Many of the provisions of the UDHR are now widely accepted as forming part of customary international law. The UDHR sets out basic rights and freedoms to which all women and men are entitled, such as the right to life, liberty and nationality, the right to freedom of thought, conscience and religion, the right to work and to be educated, the right to food and housing, the right to participate in government and the right not to be discriminated against on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property birth or other status.

You can access the UDHR online at:
<http://www.un.org/en/documents/udhr/index.shtml>.

The UDHR, together with the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols, form the so-called International Bill of Human Rights. The ICESCR and ICCPR were both adopted by General Assembly resolution 2200 A (XXI) on 16 December 1966. Over time, the UN has gradually expanded human rights law to encompass specific standards for women, children, disabled persons, minorities, migrant workers and other vulnerable groups, who now possess rights that protect them from discriminatory practices.

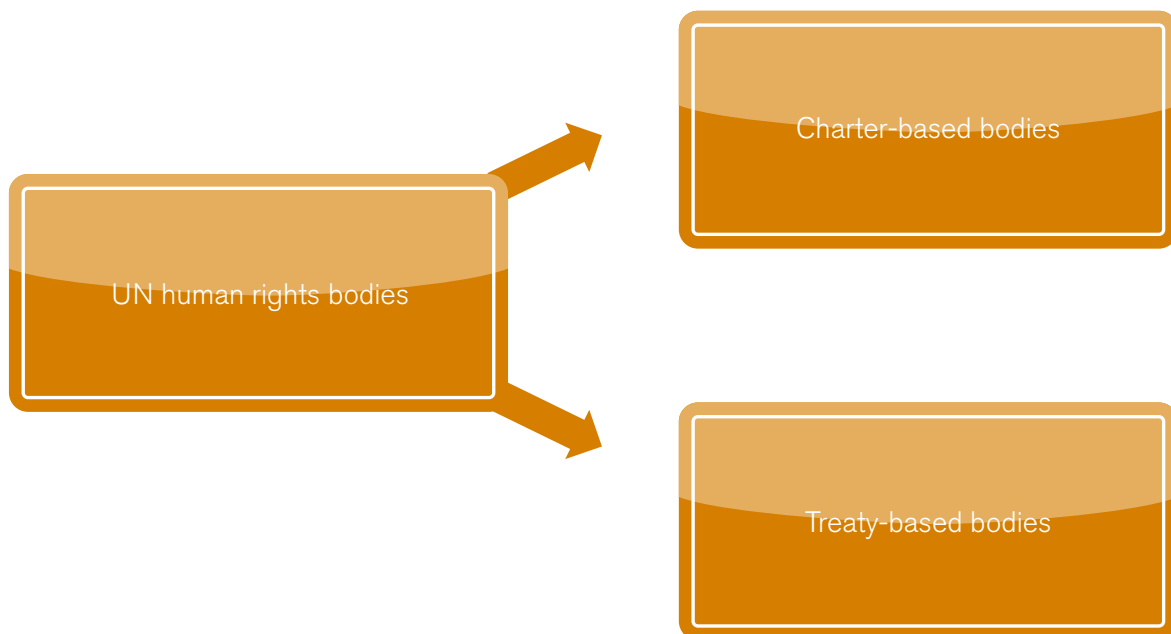


A series of international human rights treaties and other instruments adopted since 1945 have made human rights legally enforceable and developed the body of international human rights law. Other instruments have been adopted at the regional level, reflecting the particular human rights concerns of different regions and providing specific mechanisms of protection. Most States have also adopted constitutions and other laws which formally protect basic human rights. Instruments, such as declarations, guidelines and principles adopted at the international level, contribute to the understanding, implementation and development of human rights law.

Respect for human rights requires the establishment of the rule of law at both the national and international level. Through the ratification of international human rights treaties, States undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. Where domestic legal proceedings fail to address human rights abuses, mechanisms and procedures for individual complaints are available at the regional and international levels.

2. The UN Human Rights Bodies

The United Nations system comprises the UN Charter-based bodies and the treaty-based bodies.



UN Charter-based bodies:

- UN Human Rights Council
- Special procedures of the Human Rights Council

The Human Rights Council was established in 2006 by the UN General Assembly. It replaced the UN Commission on Human Rights, which was established in 1946.

The Human Rights Council is an inter-governmental body with 47 Member States. The Council is responsible for strengthening the promotion and protection of human rights around the globe. It is a subsidiary body of the General Assembly and its members are elected by the Member States of the General Assembly.

The mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address specific human rights issues around the world are called “special procedures”. Special procedures consist of either an individual (a special rapporteur or representative, or independent expert) or a working group.

Treaty-based bodies

There are ten human rights treaty bodies that monitor States’ implementation of the core international human rights treaties that they have ratified. The treaty bodies are created in accordance with the provisions of the treaty that they monitor and are supported by the OHCHR (see below). Treaty bodies are not judicial bodies; they monitor treaty implementation and provide encouragement and advice to States. The committees are made up of independent experts.

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A. Introduction to International Human Rights Law

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

The Office of the High Commissioner for Human Rights

The High Commissioner for Human Rights is the principal human rights official of the United Nations. The High Commissioner heads the Office of the High Commissioner for Human Rights (OHCHR). The OHCHR leads global human rights efforts, speaks out against human rights violations worldwide and spearheads the United Nations' human rights efforts. It acts as a focal point of human rights research, education, public information, and advocacy activities in the UN. The OHCHR also offers expertise and support to the Human Rights Council, the special procedures and the treaty bodies. The OHCHR is part of the United Nations Secretariat with its headquarters in Geneva and is separate from the Human Rights Council.

Since governments have the primary responsibility of protecting human rights, the OHCHR provides them with assistance, such as expertise and training in the areas of administration of justice, legislative reform, and electoral processes, so as to help implement international human rights standards.

There are several other important United Nations bodies that are concerned with the promotion and protection of human rights, including the rights of the child:

Other UN human rights bodies:

- United Nations General Assembly
- Third Committee of the General Assembly
- Economic and Social Council
- International Court of Justice

Many United Nations agencies and partners are involved in the promotion and protection of human rights, including the rights of the child. These agencies and partners interact with the main UN human rights bodies:

Part III: International Protection of Child Rights

A. Introduction to International Human Rights Law

UN agencies:

- Commission on the Status of Women (CSW)
- Department of Economic and Social Affairs (DESA)
- Division for the Advancement of Women (DAW)
- Food and Agriculture Organisation of the United Nations (FAO)
- Inter-Agency Internal Displacement Division
- Inter-Agency Standing Committee (IASC)
- International Labour Organisation (ILO)
- Joint United Nations Programme on HIV/AIDS (UNAIDS)
- Office for the Coordination of Humanitarian Affairs (OCHA)
- Office of the Special Adviser on Gender Issues and the Advancement of Women (OSAGI)
- United Nations Children's Fund (UNICEF)
- United Nations Development Programme (UNDP)
- United Nations Educational, Scientific and Cultural Organisation (UNESCO)
- United Nations High Commissioner for Refugees (UNHCR)
- United Nations Human Settlements Programme (UNHABITAT)
- United Nations Mine Action (UNMA)
- United Nations Population Fund (UNFPA)
- United Nations Entity for Gender Equality and the Empowerment of Women (UN Women)
- World Health Organisation (WHO)

3. The core human rights treaties and instruments

There are nine core international human rights treaties providing for the protection of the rights of the child. Each of the nine core international human rights treaties has established a committee of independent experts to monitor the implementation of the treaty provisions by its States Parties. These committees are referred to as "treaty bodies". Some of the treaties are supplemented by optional protocols.

Part III: International Protection of Child Rights

A. Introduction to International Human Rights Law

List of the core international human rights treaties and their monitoring bodies

Treaty Acronym	Convention	Date of Signature	Treaty Body	Monitoring Body Acronym
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination	21 Dec. 1965	Committee on the Elimination of Racial Discrimination	CERD
ICCPR	International Covenant on Civil and Political Rights	16 Dec. 1966	Human Rights Committee	HRC
ICESCR	International Covenant on Economic, Social and Cultural Rights	16 Dec. 1966	Committee on Economic, Social and Cultural Rights	CESCR
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	18 Dec. 1979	Committee on the Elimination of Discrimination against Women	CEDAW
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	10 Dec. 1984	Committee against Torture	CAT
CRC	Convention on the Rights of the Child	20 Nov. 1989	Committee on the Rights of the Child	CRC
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	18 Dec. 1990	Committee on Migrant Workers	CMW
CRPD	Convention on the Rights of Persons with Disabilities	13 Dec. 2006	Committee on the Rights of Persons with Disabilities	CRPD
ICPED	International Convention for the Protection of All Persons from Enforced Disappearance	20 Dec. 2006	Committee on Enforced Disappearances	CED

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A. Introduction to International Human Rights Law

List of optional protocols to the core international human rights treaties

Treaty Acronym	Convention	Date of Signature	Treaty Body	Monitoring Body Acronym
IICCPR-OP1	Optional Protocol to the International Covenant on Civil and Political Rights	16 Dec. 1966	Human Rights Committee	HRC
ICCPR-OP2	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	15 Dec. 1989	Human Rights Committee	HRC
OP-CEDAW	Optional Protocol to the Convention on the Elimination of Discrimination against Women	10 Dec. 1999	Committee on the Elimination of Discrimination against Women	CEDAW
OP-CRC-AC	Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	25 May 2000	Committee on the Rights of the Child	CRC
OP-CRC-SC	Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	25 May 2000	Committee on the Rights of the Child	CRC
OP-CAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	18 Dec. 2002	Subcommittee on the Prevention Torture	SPT
OP-CPRD	Optional Protocol to the Convention on the Rights of Persons with Disabilities	12 Dec. 2006	Committee on the Rights of Persons with Disabilities	CRPD
OP-ICESCR	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights	10 Dec. 2008	Committee on Economic, Social and Cultural Rights	CESCR
OP-CRC	Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure	19 Dec. 2011	Committee on the Rights of the Child	CRC

Part III: International Protection of Child Rights

A. Introduction to International Human Rights Law

The core international human rights treaties ratified by Nigeria

Nigeria has ratified **ALL** of the nine core international human rights instruments but not all of the attached protocols. These legal instruments are binding on Nigeria and Nigeria is obliged to implement them and report to the treaty body on its implementation.

Ratified instruments

Nigeria has ratified the following UN human rights treaties and protocols that apply to children (as at June 2013):

- Convention against Discrimination in Education (1960)
- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965)
- The International Covenant on Civil and Political Rights (ICCPR) (1966)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)
- Convention No. 138 on the Minimum Age for Admission to Employment (1973)
- The Convention on the Elimination of All Forms of Discrimination Against Women CEDAW) (1979)
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW) (1999)
- Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO No. 182) (1999)
- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984)
- Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT) (2002)
- The Convention on the Rights of the Child (CRC) (1989)
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OP-CRC-SC) (2000)
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 25 (2001)
- Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Crime, G.A. Res. 55/25 (2001) – Art 16.4 application to children.
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) (1990)
- The Convention on the Rights of Persons with Disabilities (CRPD) (2006)
- Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD) (2006)
- The International Convention for the Protection of All Persons from Enforced Disappearances (ICED) (2006)
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed conflict (OP-CRC-AC) (2000)

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A. Introduction to International Human Rights Law

Non-ratified instruments

Nigeria has not ratified the following UN human rights treaties and protocols that apply to children (as at June 2013):

- Amendment to Article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination (1992)
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP ICESCR) (2008)
- Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1) (1966)
- Amendment to Article 20, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women (1995)
- Amendments to Articles 17 (7) and 18 (5) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1992)
- Amendment to Article 43 (2) of the Convention on the Rights of the Child (1995)
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (ICCPR-OP2) (1989)

Signed instruments

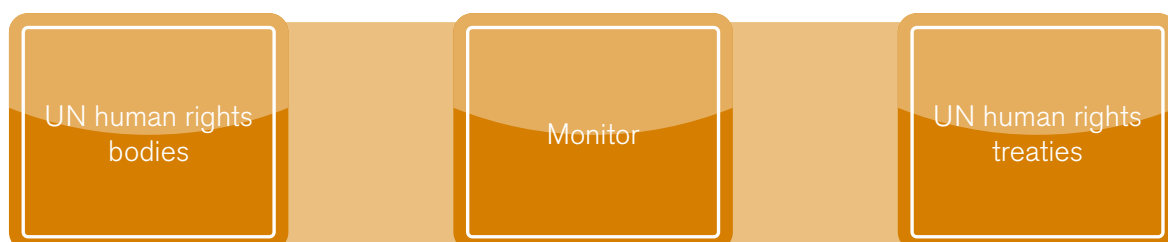
Nigeria has signed but not yet ratified the following UN human rights treaties and protocols that apply to children (as at June 2013):

- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1950) – signed by Nigeria 25 Sept 2003.
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed conflict (OP-CRC-AC) (2000)

4. Enforcement of Human Rights in International Law

The working methods of the treaty bodies

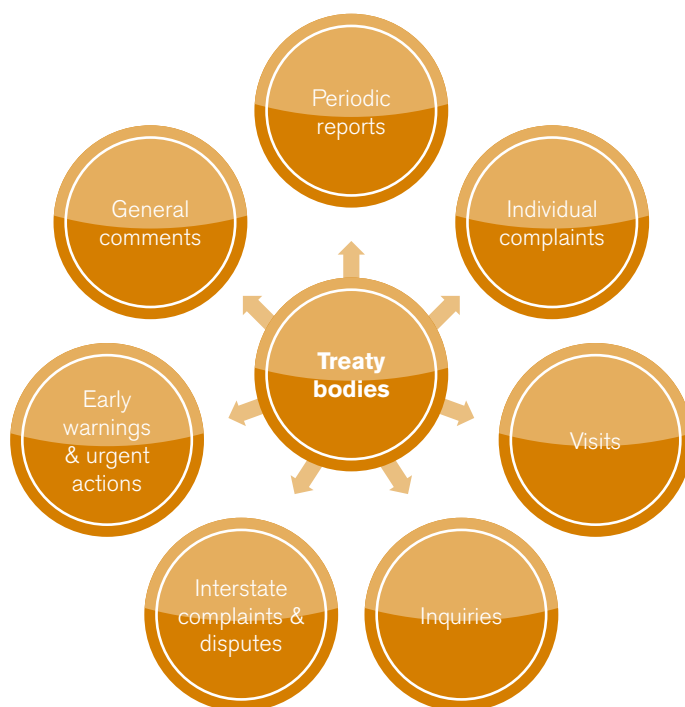
The treaty bodies of the nine core human rights treaties monitor their implementation by reviewing the reports that the States Parties periodically submit. These reports detail what steps the State has taken to implement the treaty provisions.



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The **working methods** of the treaty bodies include the following main **procedures**:



Note that not all of the treaty bodies are competent to undertake activities pursuant to all of these procedures. The Subcommittee on Prevention of Torture, for example, is the only treaty body that carries out periodic visits to States Parties to the Optional Protocol to the Convention against Torture.

Overview of the treaty bodies' procedures

	Periodic reports	Complaints		Inquiry	Interstate compl. Disputes	Urgent action	Visits	General comments
		Ind.	Groups					
CERD	●	●	●	×	●	●	×	●
HRC	●	●	×	×	●		×	●
CESCR	●	⦿	⦿	×	×	×	×	●
CEDAW	●	●	●	●	●	×	×	●
CAT	●	●	×	●	●	×	×	●
SPT	×	×	×	×	×	×	●	
CRC	●	⦿	⦿	×	●	×	×	●
CMW	●	⦿	×	×	×	×	×	●
CRPD	●	●	●	●	×	×	×	●
CED	●	●	×	●	×	●	×	●

- ⦿ – this symbol indicates that the procedure is not yet available because the provisions providing for the legal basis for individual complaints have not yet entered into force or are not yet operational.

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Periodic reports

Once a State has ratified or acceded to a treaty it is required to submit periodic reports on how it has implemented the treaty provisions. The reports must set out the legal, administrative, judicial and other measures that the State has adopted to implement the treaty provisions and should provide any information on the difficulties it has encountered in doing so. The reporting period varies from treaty to treaty.

In addition to the States Parties report, human rights treaty bodies may receive information on the implementation of treaty provisions from UN agencies, funds and programmes and other intergovernmental organisations, national human rights institutions (NHRIs), as well as from civil society, particularly from NGOs (both national and international), professional associations and academic institutions.

States Parties are invited to the committee's session to present their reports, respond to committee members' questions, and to provide the committee with additional information. The committee then examines the report in the light of all the information available. The aim is to engage in a constructive dialogue in order to assist a State in its efforts to implement a treaty as fully and effectively as possible.

Based on their dialogue with a State, and any other information they have received, human rights treaty bodies adopt what are generally known as "concluding observations", which include the positive aspects of the State's implementation and the areas where the State needs to take further action. Treaty bodies have no means of enforcing their recommendations. Nevertheless, most States take the reporting process seriously, and the committees have proved successful in raising concerns relating to the implementation of the treaties in many States.

In order to assist States in implementing their recommendations, the human rights treaty bodies have begun to introduce procedures to ensure effective follow-up to their concluding observations, for example by undertaking visits to the State concerned or requiring a report on the measures the State has taken.

If a State fails to report over a long period and has not responded to the committee's requests to report, the treaty bodies have developed a procedure of considering the situation in a country in the absence of a report. This is sometimes referred to as the "review procedure".

Engagement with the treaty bodies is only possible if a State has ratified a treaty. Nigeria has ratified all nine core human rights treaties, which require a State Party to submit periodic reports, and it is therefore obliged to report to nine treaty bodies.

Table of periodic reporting procedures available in relation to Nigeria

Treaty body	Periodic reports
CERD	●
HRC	●
CESCR	●
CEDAW	●
CAT	●

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Treaty body	Periodic reports
CRC	●
CMW	●
CRPD	●
CED	●

Reporting status of Nigeria

Nigeria has so far sent reports to the following treaty bodies (reports are available at <http://www.ohchr.org/EN/countries/AfricaRegion/Pages/NGIndex.aspx>):

Treaty body	Reports
CAT	Two reports (2002 & 2006)
HRC (ICCPR)	Two reports (1994 & 1999)
CED	Initial report is due in 2012
CEDAW	Six reports (1986, 1990, 1994, 1998, 2002, 2006)
CERD	20 reports from 1970-2008
CESCR	Two reports (1995 & 2000)
CRC	Four reports (1993, 1998, 2008)

A summary of some of the recommendations made to Nigeria by the CRC Committee is provided at the end of each selected human rights topic in Part C of this manual.

Individual complaints (Communications)

Seven human rights treaty bodies may, if certain conditions have been fulfilled (for example, the exhaustion of domestic remedies), consider complaints - also referred to as "communications" - from individuals who claim that their rights have been violated by a State Party.

A treaty body cannot consider complaints made about a State Party unless that State has expressly recognised its competence to do so, either by making a declaration under the relevant treaty article or by accepting the relevant optional protocol.

- The Committee on the Elimination of Racial Discrimination may consider individual communications relating to States Parties who have made the necessary declaration under Article 14 of the Convention on the Elimination of Racial Discrimination.

Nigeria has **not** made the requisite declaration under Article 14 of the CERD. It is therefore not possible to bring an individual human rights claim against Nigeria for breaches of the CERD.

- The Human Rights Committee may consider individual communications relating to States Parties to the First Optional Protocol to the International Covenant on Civil and Political Rights.

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Nigeria has **not ratified** the First Optional Protocol to the ICCPR. This means that it is not possible to bring an individual human rights claim against Nigeria for breaches of the ICCPR.

- When it enters into force, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights will allow for individual complaints to the **Committee on Economic, Social and Cultural Rights**.

Nigeria has **not ratified** the Optional Protocol to the ICESCR. The Optional Protocol has not yet entered into force.

- The **Committee against Torture** may consider individual communications relating to States Parties who have made the necessary declaration under Article 22 of the CAT.

Nigeria has **not** made the requisite declaration under Article 22 of the CAT. It is therefore not possible to bring an individual human rights claim for breaches of the CAT against Nigeria.

- The **Committee on the Elimination of Discrimination against Women** may consider individual communications relating to States Parties to the Optional Protocol to the Convention on the Elimination of Discrimination Against Women.

Nigeria **has ratified** the Optional Protocol to the CEDAW. It is therefore possible to bring individual human rights claims against Nigeria for breaches of the CEDAW.

- The **Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families** allows individual communications to be considered by the CMW; these provisions will become operative when 10 States Parties have made the necessary declaration under Article 77 (so far only 2 States have made declarations under Article 77 of the CRMW).

Nigeria has **not** made the requisite declaration under Article 77 of the CRMW. It is therefore not possible to bring an individual human rights claim against Nigeria for breaches of the CRMW.

- The **Committee on the Rights of Persons with Disabilities** may consider individual communications relating to States Parties to the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

Nigeria **has ratified** the Optional Protocol to the CRPD. It is therefore possible to bring individual human rights claims against Nigeria for breaches of the CRPD.

- The **Committee on Enforced Disappearances** may consider individual communications relating to States Parties who have made the necessary declaration under Article 31 of the International Convention for the Protection of All Persons from Enforced Disappearance.

Nigeria has **not** made the requisite declaration under Article 31 of the ICPED. It is therefore not possible to bring an individual human rights claim against Nigeria for breaches of the ICPED.

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- When it enters into force, the Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure will allow for individual complaints to the **Committee on the Rights of the Child** for violations of the CRC as well as the Optional Protocol on the sale of children, child prostitution and child pornography and the Optional Protocol on the involvement of children in armed conflict. **Nigeria has not yet signed and ratified this protocol.**

The Optional Protocol has **not yet entered into force**. Currently it is not possible to bring an individual human rights claim against Nigeria for breaches of the CRC to the Committee on the Rights of the Child.

In addition to individual communications, some treaties also contain provisions to allow communications from groups of individuals who claim that their rights have been violated by a State Party, namely:

- The Committee on the Elimination of Racial Discrimination (CERD);
- The Committee on the Elimination of Discrimination against Women (CEDAW);
- The Committee on the Rights of Persons with Disabilities (CRPD);
- The Committee on the Rights of the Child (CRC) (once the Third Optional Protocol comes into force); and
- The Committee on Economic, Social and Cultural Rights (CESCR) (once the Optional Protocol enters into force).

The treaty body first examines in closed session the admissibility and merits of the communication. After that it makes its decision. In its decision the treaty body may find a violation by the State of a right protected by the treaty and call for the State to provide the victim with an appropriate remedy.

Before reaching its final decision, the treaty body can adopt interim measures. By requesting the State to take interim measures the treaty body safeguards the alleged victim from irreparable harm, such as not carrying out a death sentence or not proceeding with forced evictions.

The treaty body is not a court and has no means of enforcing its decisions; however, its decisions have authoritative force and States Parties are expected to abide by them.

Currently, there is no complaint mechanism which can be utilised by individual victims of breaches of the Convention on the Rights of the Child (CRC). Accordingly, it is not possible to bring an individual human rights claim on behalf of individual children against Nigeria for breaches of the CRC to the UN Committee on the Rights of the Child.

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Table of individual complaint procedures available in relation to Nigeria

Treaty body	Complaints		Nigeria
	Individuals	Groups	
CERD	●	●	×
HRC	●	×	×
CESCR	(●)	(●)	×
CEDAW	●	●	●
CAT	●	×	×
CRC	(●)	(●)	×
CMW	(●)	×	×
CRPD	●	●	●
CED	●	×	×

- (●) this symbol indicates that the procedure is not yet available because the provisions providing for the legal basis for individual complaints have not yet entered into force or are not yet operational.

Advantages and disadvantages of submitting a complaint to a treaty body

Advantages	<ul style="list-style-type: none"> ▪ An important advantage of submitting a complaint to a treaty body is that, once a State Party has made the relevant declaration under the treaty, it should comply with its obligations under that treaty, including the obligation to provide an effective remedy for breaches of the treaty. The relevant human rights treaty body authoritatively determines whether there has been a violation, and the State concerned has an obligation to give effect to the treaty body's finding(s). ▪ Human rights treaty bodies can issue interim measures in urgent cases until they make a final decision on the matter. ▪ Decisions of human rights treaty bodies can go beyond the circumstances of the individual case and provide guidelines to prevent a similar violation occurring in the future. ▪ Human rights treaty bodies can consider complaints that are being, or have been, addressed by a special procedure.
Disadvantages	<ul style="list-style-type: none"> ▪ The complainant's case must fall within the scope of application of one of the treaties that allow for individual complaints. ▪ The State in question must be a party to the treaty and must have ratified the relevant optional protocol or accepted the competence of the specific human rights treaty body to accept complaints. ▪ When submitting an allegation to a human rights treaty body a number of requirements must be met, including the consent or authorisation of the victim. If any of these requirements are not met or are missing, the complaint may not be considered. ▪ Complaints must be lodged within six months of the final decision by a national authority in a given case.

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Disadvantages	<ul style="list-style-type: none">▪ The complainant must have exhausted all available and effective domestic remedies before sending a complaint to a treaty body—a remedy is considered effective if it offers a reasonable prospect of redress for the complainant.▪ It takes two to three years, on average, for a final decision to be taken on a complaint.▪ Human rights treaty bodies may not consider a case that is already being considered by another international or regional adjudicative complaint procedure.
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Visits: The Subcommittee on Prevention of Torture

The Optional Protocol to the CAT is unique in that it is the only Optional Protocol that creates a separate monitoring body, called the Subcommittee on Prevention of Torture (SPT). The SPT operates differently from other treaty bodies: instead of receiving reports it conducts periodic visits to States Parties, inspecting places where people are deprived of their liberty to examine the risk of torture or cruel, inhuman or degrading treatment or punishment.

All parties to the Optional Protocol permit the SPT to visit their territory. As Nigeria has ratified the Optional Protocol the SPT is authorised to visit Nigeria for the inspection of detention facilities.

After these visits, the SPT prepares a report which can be published with the consent of the State Party concerned. The Optional Protocol to the CAT is also unique because it requires that all States Parties assign a national preventive mechanism (NPM) which is responsible for on-going domestic implementation of the Optional Protocol in between the visits of the SPT. The SPT, in turn, assists and advises on the establishment and running of the NPMs.

Treaty body	Visits	Nigeria
SPT	●	●

Confidential inquiries

The following treaty bodies can initiate a confidential inquiry procedure against a State Party to the relevant treaty if they have received reliable information indicating serious, grave or systematic violations of the treaty by a State Party:

- The Committee against Torture
- The Committee on the Elimination of Discrimination against Women
- The Committee on the Rights of Persons with Disabilities
- The Committee on Enforced Disappearances
- The Committee on Economic, Social and Cultural Rights (once the Optional Protocol to the ICESCR comes into force)

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The inquiry procedure is an opportunity for sustained and in-depth engagement by a treaty body with the State on an issue of concern. The inquiry procedure is confidential and the cooperation of the State Party must be sought throughout the proceedings. Inquiries may include a visit to a State. The inquiry procedure is a lengthy process which may take several years. After examining the findings of an inquiry, the committee communicates them to the State Party concerned, together with any comments and recommendations.

Inquiries may not be undertaken with respect to States Parties that have opted out of this procedure. **Nigeria has not opted out** of this procedure for any of the treaties that it has ratified. This means that inquiries by the **CAT, CEDAW, CRPD, and CED** are possible. However, Nigeria has not ratified the Optional Protocol to the ICESCR.

Table of confidential inquiries procedures available in relation to Nigeria

Treaty body	Inquiry	Nigeria
CERD	×	×
HRC	×	×
CESCR	When the Optional Protocol enters into force	×
CEDAW	●	●
CAT	●	●
CRC	×	×
CMW	×	×
CRPD	●	●
CED	●	●

Inter-State complaints and disputes

The CERD, the HRC, the CEDAW, the CAT, the CMW and the CED have procedures for addressing inter-State complaints or disputes. These procedures have never been used.

Table of inter-state complaints procedures available in relation to Nigeria

Treaty body	Inter-state disputes	Nigeria
CERD	●	●
HRC	●	●
CESCR	×	×
CEDAW	●	●
CAT	●	●
CRC	×	×
CMW	●	●
CRPD	×	×
CED	●	●

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Early warning and urgent action procedures

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) has developed early warning and urgent action procedures:

- **Early warning** procedures are designed to prevent existing problems in States Parties from escalating into new conflicts, or to prevent a resumption of conflict.
- **Urgent action** procedures are designed to respond to problems requiring immediate attention to prevent or limit the scale of serious violations of the ICERD.

In practice, these procedures are used simultaneously. They may be invoked by the Committee itself or by interested parties, including civil society actors such as indigenous groups.

There is no need for States Parties to opt in to the procedure, as it is established under the standard reporting article of the Convention. Since Nigeria has ratified the ICERD, the procedure may be applied to Nigeria.

The International Convention for the Protection of All Persons from Enforced Disappearance (ICPED) establishes a procedure for submitting requests for urgent actions in Article 30.

Nigeria has ratified the ICPED so this urgent action procedure is available in relation to Nigeria.

Table of early warning/urgent action procedures available in relation to Nigeria

Treaty body	Early warning/urgent action	Nigeria
CERD	●	●
HRC	×	×
CESCR	×	×
CEDAW	×	×
CAT	×	×
CRC	×	×
CMW	×	×
CRPD	×	×
CED	●	●

General comments

Each of the human rights treaty bodies publishes its interpretation of the provisions of the human rights treaty it monitors in the form of general comments (although the CERD and the CEDAW Committee use the term “general recommendations”).

General comments provide guidance on the implementation of a treaty.

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List of general comments procedures available in relation to Nigeria

Treaty body	Early warning/urgent action	Nigeria
CERD	●	●
HRC	●	●
CESCR	●	●
CEDAW	●	●
CAT	●	●
CRC	●	●
CMW	●	●
CRPD	●	●
CED	●	●

Other procedures: general discussion/thematic debates

A number of human rights treaty bodies hold days of general discussion on a particular theme or issue of concern. These discussions are usually open to external participants, such as UN partners and civil society actors, particularly NGOs, academic institutions, professional associations and individual experts. Their outcome may assist the human rights treaty body in the drafting of a new general comment. It can also help States and other stakeholders to understand the treaty's requirements.

5. CPNs' access to human rights bodies

Working with human rights treaty bodies has proved to be a very effective way for civil society to contribute to the implementation of human rights and the development of human rights guidelines. Civil society can play a crucial role in monitoring, promoting and following-up activities relevant to the work of treaty bodies. The treaty bodies have benefited from the active participation of civil society actors.

The CPNs are civil society actors that may be involved in the work of the human rights treaty bodies.

The following are some of the ways that civil society can engage with the human rights treaty bodies system:

Ways to access and work with the treaty bodies:

- Promoting the adoption of new international instruments and the ratification of existing treaties;
- Monitoring the reporting obligations of States Parties;
- Submitting information and material to human rights treaty bodies, including written reports;
- Coordinating with other CPNs to contribute reports and information as a group;

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- Attending and contributing to human rights treaty body sessions as observers or through oral submissions;
- Following up on human rights treaty bodies' concluding observations;
- Submitting an individual complaint to human rights treaty bodies (CERD, HRC, CEDAW, CAT and CMW);
- Providing information for confidential inquiries (CEDAW and CAT);
- Providing information for early warning and urgent action procedures (CERD);
- Attending and contributing to the annual meeting of chairpersons and the inter-committee meeting of the human rights treaty bodies.

Promoting the adoption of new international instruments and the ratification of or accession to existing treaties

Civil society can play an important role in the development and adoption of new international instruments. By advocating for the development of a new treaty and promoting its adoption by States, civil society actors can help to bolster international norms for the protection of human rights.

Monitoring the reporting obligations of States Parties

For various reasons, States Parties are not always able to meet their reporting obligations. Civil society may work to encourage governments to meet reporting deadlines, and can raise public awareness about a State's obligation to submit a report. Civil society actors can also provide States with information on treaty implementation gathered in the course of their activities, as well as working with States to implement human rights treaties. If a State Party has not submitted a report for a long period of time and has not responded to a committee's requests for a report, the treaty bodies may consider the situation in that State in the absence of a report from the State Party. This procedure is known as the review procedure (see page 125). Civil society actors, along with UN partner organisations, can contribute information to the review procedure. On the basis of this information the committee will issue its concluding observations and recommendations.

Submitting written information

Throughout the reporting cycle, committees welcome additional information on all areas covered by their respective treaties in order to effectively monitor implementation in States. The most useful way for civil society actors to submit information to human rights treaty bodies is to produce a written report.

The procedures for submitting information vary between the different human rights treaty bodies. Generally, civil society actors should submit information and material after the submission of the State Party report but before it has been considered by the treaty body.

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Specific requirements of the treaty bodies

Treaty body	Specific requirements	
CESCR	Written information from national and international NGOs and other civil society actors (in particular individual experts, academic institutions, professional associations and parliamentarians) is welcome at the pre-sessional working groups for the preparation of lists of issues.	The report must be submitted 2 months before its pre-sessional working group.
CEDAW		
CRC		
HRC	Civil society actors can submit written information to the country report task forces of the committees.	
CAT		

Written information submitted to human rights treaty bodies is generally regarded as public information. However, committees will keep information confidential if specifically asked to do so. Written reports submitted by civil society actors do not become official UN documents, nor are they edited or translated. It is important for civil society actors to ensure that their submissions are in one of the working languages of the relevant committee(s).

What needs to be checked before submitting written information?

- Whether the State has **ratified** the relevant instrument, and, if so, the extent of any reservations the State has made to its provisions. Generally, reservations do not prevent civil society actors from addressing specific issues and bringing them to the attention of the committee;
- **When the next State report is due** and when the next session of the relevant committee is scheduled. These dates are subject to change at short notice so it is important to be in regular contact with the relevant committee's secretariat;
- The main issues which are, or have been, under consideration. It is important for civil society actors to familiarise themselves **with the contents of previous States Parties' reports, as well as the previous concluding observations and lists of issues**; and
- The **reporting guidelines** of each human rights treaty body (so that civil society actors can help monitor the extent to which States parties' reports conform with them).

Guidelines on submitting written reports

Before civil society actors begin drafting their reports, they are advised to familiarise themselves with the reporting guidelines of the relevant human rights treaty body. Written reports should resemble the structure of official State reports. Their aim should be to systematically analyse the extent to which State law, policy and practice comply with the principles and standards of the treaty.

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Guidelines:

- The written report should be clear and precise, accurate and objective;
- It should highlight what the authors see as problems in implementation, and should make concrete recommendations to improve the human rights situation;
- It should be submitted as early as possible before the scheduled examination of the State's report, as this allows human rights treaty bodies to take the written report into consideration when preparing lists of issues, preparing for sessions and drafting concluding observations;
- The information that civil society actors provide must be country-specific and relevant to the mandate of the human rights treaty body to which it is addressed. If possible, it should make direct reference to the Article of the treaty that is allegedly violated;
- Allegations of human rights violations should always be supported by relevant evidence and documentation;
- All information should be correctly referenced. When referencing a United Nations document, paragraph numbers should be referred to, as page numbers vary from one language to another. Citations of State reports must refer to the official United Nations version;
- An electronic version and multiple hard copies should be provided to the relevant secretariat, as the secretariat does not have the capacity to reproduce materials from civil society bodies;
- Documents that contain language deemed to be abusive will not be accepted.

Specific information on the submission of written information to each human rights treaty body can be found in the next chapter.

Attending and contributing to human rights treaty body sessions

Attending Sessions

State Party reports are considered at public meetings, which civil society actors may attend as observers. Attending human rights treaty body sessions enables civil society actors to:

- Brief the committee or its individual members;
- Observe the dialogue between the committee and the State; and
- Learn first-hand about the issues raised and the recommendations made by the committee.

The rules and practices governing the participation of civil society in committee sessions vary between committees.

Accreditation to attend a human rights treaty body session should be requested from the relevant secretariat in advance.

Contributing to sessions

Civil society actors, including individual experts, academics and representatives of professional groups, may play an active role in committee sessions. While they do not participate in the dialogue between the State Party and the committee, they may make presentations to committee members on the issues contained in their written submissions.

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Committee sessions

The HRH, CESCR, CAT, CEDAW and CMW allocate time for oral submissions during their reporting sessions. This provides civil society actors with an opportunity to present the key issues in their written reports to the committees. It should be noted that, with the exception of the CESCR and CEDAW, whose meetings are open, oral briefings by civil society actors take place in **closed meetings**.

Pre-sessional working groups

The CESCR, CEDAW and CRC allocate a specific time for civil society actors to contribute to pre-sessional working groups. While other committees may not provide a formal channel for such contribution, it may be possible to arrange informal meetings with the committee members by contacting the relevant committee's secretariat.

Civil society contributions to pre-sessional working groups may be incorporated into the lists of issues to be sent to States Parties. Pre-sessional working groups also provide an opportunity for civil society actors to submit written information or reports. Most committees do not allow government delegations to be present at the pre-sessional meetings.

Guidelines for Oral Submissions

Oral submissions to human rights treaty body sessions and pre-sessional working groups should adhere to the following guidelines:

Guidelines:

- Oral submissions must be **relevant** to the specific treaty;
- Oral submissions must adhere to the **time limits** laid down by the committee;
- Oral submissions should be provided to the interpreters in **written form**;
- It is usually more effective to present oral submissions in **small well-coordinated delegations** rather than large groups;
- Language that is deemed abusive or offensive will not be accepted and anyone using such language may be excluded from sessions;
- Civil society actors should communicate their intention to participate in the session to the secretariat of the relevant committee well in advance.

Informal briefings

Committee sessions normally provide opportunities for civil society actors to meet informally with committee members. Informal briefings, generally arranged by NGOs, may be organized alongside the official meetings, most often during the lunch break. It should be noted that interpretation facilities are not available for "lunchtime" briefings.

These informal meetings should focus on the issues and States that the committee is considering. The meetings usually take place the day before, or on the same day as the committee's official consideration of a State report. Well-organized and coordinated briefings are more likely to be well attended by committee members and will be more effective than numerous briefings on many different issues. Civil society actors are thus encouraged to coordinate their activities.

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In some instances, committee secretariats may facilitate briefings by providing rooms and equipment, and by informing committee members about the briefings.

Following up on human rights treaty bodies' concluding observations

Once the committee session has taken place and the concluding observations have been adopted, civil society organisations can undertake follow-up activities at the national level to raise awareness of the recommendations and to encourage the State Party to implement the concluding observations. It is therefore important that civil society actors familiarise themselves with the committee's concluding observations adopted.

Follow-up work might include:

- **Working with the government to help it meet its obligations.** Civil society organisations can be a catalyst for promoting national legislative reforms and establishing national policies. Civil society actors can use the concluding observations made by the committees as the basis for their dialogue with governments and their own programmes of action;
- **Monitoring the human rights situation** in particular countries and observing the steps taken locally to implement the concluding observations made by the committees;
- **Raising awareness** of committee meetings, committee recommendations and concluding observations. Civil society actors can demonstrate to the public that the international law framework can be used to strengthen the enjoyment of human rights. This may be done by organizing thematic discussions, round tables, seminars and workshops, by translating and publishing concluding observations or by collaborating with NHRIs and the national media;
- **Contributing to the work of the human rights treaty bodies** by informing committees about governments' progress in implementing concluding observations and recommendations, and providing them with focused and targeted information.

How to submit an individual complaint to the human rights treaty bodies

Any individual who alleges that his or her rights under a treaty have been violated by a State Party to that treaty may make a complaint to the relevant committee, provided that the State has recognized the competence of the committee to receive individual complaints. Complaints may also be brought by third parties, including civil society actors, on behalf of an individual, if that individual has given written consent to this end ("power of attorney", authority to act) or is incapable of giving such consent. Individual complaints can be submitted when domestic remedies have been exhausted and all other eligibility criteria are fulfilled.

There are only two treaty bodies that can receive individual complaints of allegations of human rights violations by Nigeria: the **CEDAW and the CRPD**. See below for more information on the possibility of making individual complaints against Nigeria.

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Providing information for confidential inquiries

Confidential inquiries are important mechanisms which allow civil society actors to bring human rights violations and situations of concern to the attention of the committees. By providing information to the committees, civil society actors may influence the decision to undertake a confidential inquiry.

Most confidential inquiries have been instigated by information submitted by NGOs. For example, the seven confidential inquiries undertaken by the CAT (on Brazil, Egypt, Mexico, Peru, Serbia and Montenegro, Sri Lanka and Turkey) were all initiated on the basis of information received from NGOs. The CEDAW has completed one inquiry (Mexico).

Civil society actors may also contribute information once a confidential inquiry is under way.

Providing information for early warning and urgent action procedures

Information submitted by civil society actors can help trigger the early warning and urgent action procedures operated by the CERD and CED. In the past, these procedures have been initiated as a result of information received from NGOs and indigenous groups.

Attending and contributing to the annual meeting of chairpersons and the inter-committee meeting

Civil society actors can participate in the annual meetings as observers. The inter-committee meeting has an agenda item which allows NGOs to interact directly with committee members on issues related to the functioning, procedures and working methods of the treaty bodies.

How to contact human rights treaty bodies

All the committees can be contacted through the Office of the United Nations High Commissioner for Human Rights in Geneva at:

[Name of the committee]
c/o Office of the United Nations High Commissioner for Human Rights
Palais des Nations
8–14 Avenue de la Paix
CH–1211 Geneva 10 - Switzerland
Fax: +41 (0)22 917 90 29

B. The Convention on the Rights of the Child

Introduction

The CRC was adopted by the UN General Assembly in 1989. To date, it has been ratified by 193 states (the highest number of ratifications out of all the human rights treaties). It is considered the most comprehensive single treaty in the human rights field. Nigeria ratified the CRC on 19 April 1991.

In May 2000, the General Assembly adopted two Optional Protocols to the CRC; the first on the involvement of children in armed conflict and the second on the sale of children, child prostitution and child pornography. The Optional Protocols entered into force in 2002. Nigeria ratified the latter Optional Protocol but only signed the former. There is no individual complaint mechanism under the CRC or its Optional Protocols.

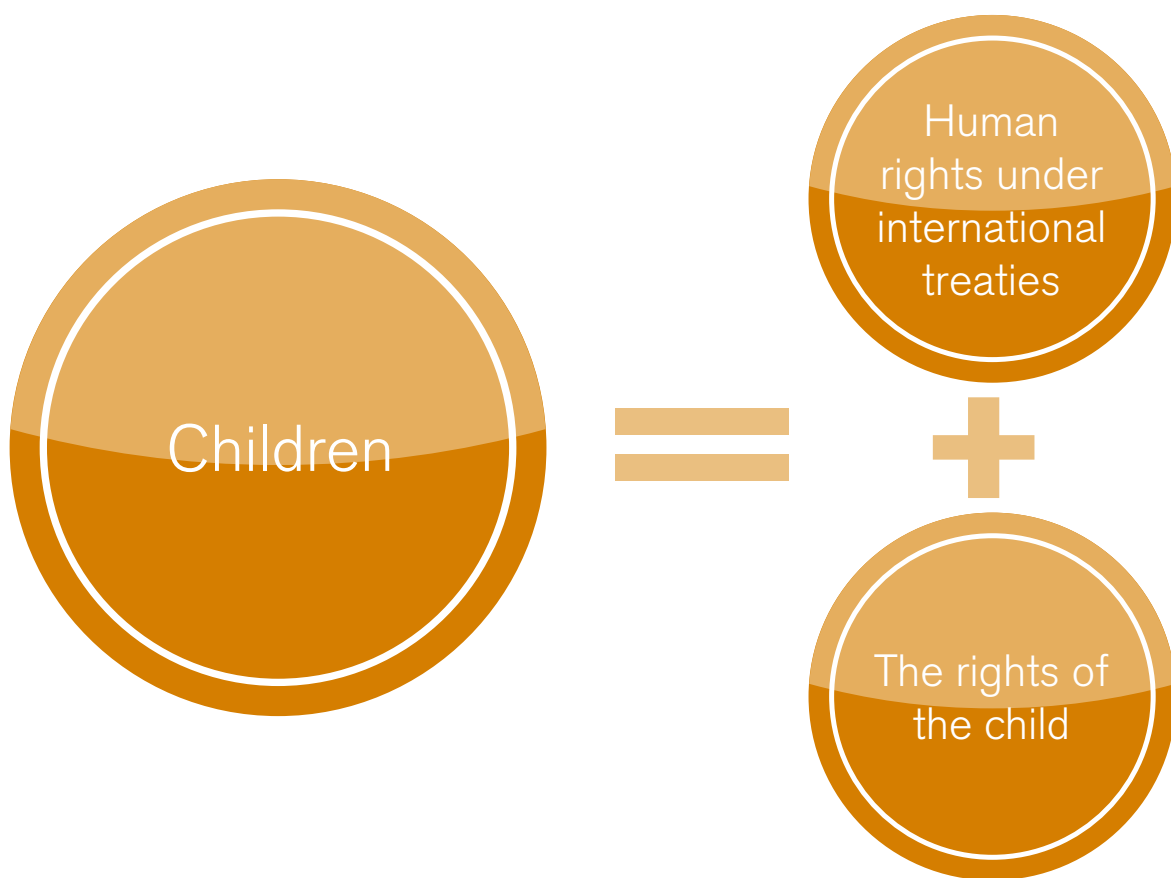
On 19 December 2011, the UN General Assembly adopted the Third Optional Protocol to the CRC establishing a communications procedure for children's rights violations. An official signing ceremony was held in February 2012 where States were able to sign and ratify the new Protocol. The new Protocol needs to be ratified by ten States before it can enter into force. Once the Protocol enters into force it will allow children who are victims of abuses and violations of their rights to make a complaint to the CRC, if they have not been able to get legal remedies for these violations in their countries of the following instruments to which that State is a party:

- The CRC;
- The Optional Protocol on the sale of children, child prostitution and child pornography;
- The Optional Protocol on the involvement of children in armed conflict.

Children do not only enjoy the **specific rights** under the CRC; they also enjoy **all human rights** guaranteed in other international human rights instruments.

Part III: International Protection of Child Rights

B. The Convention on the Rights of the Child



Both Article 24 of the ICCPR and Article 10 of the ICESCR provide that children are entitled to any special measures of protection. The CRC sets out these measures in detail. The CRC covers all of the traditionally defined areas of human rights, organised under the theme of the four “P”s:

- **Participation** of children in decisions affecting their destiny;
- **Protection** of children against discrimination and all forms of neglect and exploitation;
- **Prevention** of harm to children;
- **Provision** of assistance for children's basic needs.

The CRC Committee has identified four general principles that should guide the way States implement children's rights (CRC General Comment No.5 (CRC/GC/2003/5)):

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B. The Convention on the Rights of the Child

Non-discrimination

- The obligation of States to respect and ensure the rights set forth in the CRC to each child within their jurisdiction without discrimination of any kind
- Article 2 of the CRC

The best interests of the child

- The best interests of the child should be a primary consideration in all actions concerning the child
- Article 3 of the CRC

The right to life, survival and development

- The child's inherent right to life and States Parties' obligation to ensure to the maximum extent possible the survival and development of the child
- Article 6 of the CRC

The views of the child about his/her own situation

- The child's right to express his or her views freely in "all matters affecting the child", those views being given due weight "in accordance with the age and maturity of the child"
- Article 12 of the CRC

The definition of a child

The CRC provides the following definition of the child:

"A child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier" (Article 1)

Where a State imposes a lower age limit to define a child, this provision places the burden on that State to justify it.

2. Key provisions

- Article 2** States Parties must respect and ensure each child's rights set forth in the CRC without discrimination.
State Parties must take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.
- Article 4** States Parties must undertake all appropriate legislative, administrative, and other measures for the implementation of the CRC rights.
- Article 5** States Parties must respect the responsibilities, rights and duties of parents or guardians to provide appropriate direction and guidance in the exercise by the child of the rights recognised in the Convention.
- Article 6** Every child has the inherent right to life, and States shall ensure to the maximum child survival and development.
- Article 7** Every child has the right to a name and nationality from birth.
- Article 8** States Parties must respect the right of the child to preserve his or her identity, including nationality, name and family relations.
- Article 9** Children shall not be separated from their parents, except by competent authorities for their well-being.
- Article 11** States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
- Article 13** The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds.
- Article 14** States Parties shall respect the right of the child to freedom of thought, conscience and religion.
- Article 16** No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.
- Article 18** Parents shall have the primary responsibility for a child's upbringing but States shall provide them with appropriate assistance and develop child-care institutions.
- Article 19** States Parties shall protect children from physical or mental harm and neglect, including sexual abuse or exploitation.
- Article 20** States shall provide parentless children with suitable alternative care.
- Article 21** The adoption process shall be carefully regulated and international agreements should be sought to provide safeguards and assure legal validity if and when adoptive parents intend to move a child from his or her country of birth.
- Article 22** States Parties must take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee receives appropriate protection and humanitarian assistance.
- Article 23** Disabled children shall have the right to special treatment, education and care.

Part III: International Protection of Child Rights

B. The Convention on the Rights of the Child

- Article 24** Children are entitled to the highest attainable standard of health. States shall ensure that health care is provided to all children. States Parties should take measures:
- To reduce infant and child mortality rates;
 - To ensure the provision of necessary medical assistance and health care to all children with an emphasis on the development of primary health care;
 - To ensure the provision of water;
 - To ensure adequate nutrition and safe drinking water;
 - To combat disease and malnutrition;
 - To abolish traditional practices prejudicial to the health of the child;
 - To ensure appropriate health care for expectant and nursing mothers;
 - To develop preventive health care and family life education and provision of service;
 - To integrate basic health service programmes in national development plans;
 - To ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents;
 - To ensure the meaningful participation of non-governmental organisations, local communities and the beneficiary population in the planning and management of basic service programmes for children;
 - To support through technical and financial means, the mobilisation of local community resources in the development of primary health care for children;
- Article 25** States Parties recognise the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child.
- Article 26** States Parties must recognise for every child the right to benefit from social security, including social insurance.
- Article 28** Primary education shall be free and compulsory. Discipline in schools shall respect the child's dignity. Education should prepare the child for life in a spirit of understanding, peace and tolerance.
- Article 30** Children of minority and indigenous populations shall freely enjoy their own cultures, religions and languages.
- Article 31** Children shall have time to rest and play and equal opportunities for cultural and artistic activities.
- Article 32** States shall protect children from economic exploitation and from work that may interfere with their education or be harmful to their health or well-being.
- Article 33** States shall protect children from the illegal use of drugs and involvement in drug production or trafficking.
- Article 34** States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.
- Article 35** All efforts shall be made to eliminate the abduction and trafficking of children.
- Article 36** States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Part III: International Protection of Child Rights

B. The Convention on the Rights of the Child

Article 37 Capital punishment or life imprisonment shall not be imposed for crimes committed before the age of 18.

Article 38 No child under 15 should take any part in hostilities and children exposed to armed conflict shall receive special protection.

Article 39 Children who have suffered mistreatment, neglect or exploitation shall receive appropriate treatment or training for recovery and rehabilitation.

Article 40 Children involved in infringements of the penal law shall be treated in a way that promotes their sense of dignity and worth and aims at reintegrating them into society.

Article 42 States shall make the rights set out in the instrument widely known to both adults and children.

3. The Committee on the Rights of the Child (CRC Committee)

The CRC Committee monitors the Convention on the Rights of the Child and its Optional Protocols. The CRC Committee is composed of 18 independent experts elected for four-year renewable terms. The Committee convenes three times a year.

Relevant CRC Committee procedures:

- Periodic reports

The most recent recommendations by the CRC Committee with regard to the periodic reports submitted by Nigeria are discussed in Part I. The reports by Nigeria and CRC Committee's recommendations are available at <http://www2.ohchr.org/english/bodies/crc/crcs54.htm>

In June 2011, the Human Rights Council adopted the final draft Optional Protocol establishing a communications procedure for children's rights violations. The Protocol, which was adopted at the sixty-sixth session of the General Assembly of the United Nations by resolution 66/138 of 19 December 2011, opened for signature in Geneva, Switzerland, on 28 February 2012 and remains open for signature thereafter at United Nations Headquarters in New York.

Part III: International Protection of Child Rights

B. The Convention on the Rights of the Child

Access to the CRC's procedures by the CPNs

Activity	Access by CPNs
Submitting written information	<ul style="list-style-type: none"> ▪ NGOs and other civil society actors, such as children's organisations, faith-based organisations, professional associations and social service organisations, may submit written information to the secretariat. This may be done at any time, but preferably at least two months before the relevant pre-sessional working group. At least 20 hard copies should be submitted to the secretariat at the address below, along with an electronic copy. Civil society actors may request their written submissions to be kept confidential. ▪ NGOs submitting information to the Committee may also wish to contact the NGO Group for the Convention on the Rights of the Child, a coalition of international NGOs that works to facilitate the implementation of the CRC. The NGO Group has a liaison unit that supports the participation of NGOs, particularly national coalitions, in the Committee's reporting process. Civil society actors other than NGOs are encouraged to contribute information in coordination with their national CRC coalition, if one exists in their country. <p>The NGO Group may be contacted at: NGO Group for the Convention on the Rights of the Child Secretariat 1, rue de Varembe CH-1202 Geneva - Switzerland Phone: +41 (0)22 740 4730 Fax : +41 (0)22 740 1145 E-mail : secretariat@childrightsnet.org Website: http://www.childrightsnet.org</p>
Attending and contributing to Committee's sessions	<ul style="list-style-type: none"> ▪ Civil society actors may attend the Committee's reporting sessions solely as observers. To do so, they will need to write to the secretariat at the address below to request accreditation. ▪ Civil society actors are also invited to the pre-sessional working group for the three-hour meeting at which partners may provide additional information. Individual experts and members of youth organisations are important contributors to the Committee's pre-sessional working group. ▪ Requests to participate should be sent to the secretariat at least two months before the beginning of the relevant pre-sessional working group. ▪ Based on the written information submitted, the Committee will issue a written invitation to select civil society actors, usually NGOs (whose information is particularly relevant to the consideration of the State Party's report), to participate in the pre-sessional working group. ▪ Introductory remarks by participants are limited to 15 minutes for civil society actors from the country concerned and 5 minutes for others, with time allowed for constructive dialogue. ▪ Each year the Committee holds a day of general discussion, in which civil society actors, including children and experts, are welcome to take part.

The NGO Group for the Convention on the Rights of the Child is a network of 80 international and national non-governmental organisations that work together to facilitate the implementation of the CRC. It also supports the work of other national and international NGOs. Further information is available at <http://www.childrightsnet.org/NGOGroup/>.

Part III: International Protection of Child Rights

B. The Convention on the Rights of the Child

Contact Details of the CRC's Secretariat

Committee on the Rights of the Child (CRC)

Human Rights Treaties Division (HRTD)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais Wilson - 52, rue des Pâquis

CH-1201 Geneva (Switzerland)

Mailing address

UNOG-OHCHR

CH-1211 Geneva 10 (Switzerland)

Tel.: +41 22 917 93 58

Fax: +41 22 917 90 08

E-mail: crc@ohchr.org

C. Other International Treaties

1. International Convention on the Elimination of all forms of Racial Discrimination (ICERD)

The ICERD was adopted by the UN General Assembly on 21 December 1965, and entered into force on 4 January 1969. Nigeria acceded to the Convention on 16 October 1967. The main objective of the Convention is to eliminate all forms of racial discrimination.

The definition of racial discrimination

Article 1 of the ICERD defines racial discrimination as:

Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

The Convention protects against discrimination not only on grounds of “race” but also on the related grounds of colour, descent and national or ethnic origin.

Key provisions

The Convention sets out in detail the obligations on States Parties to combat racial discrimination:

Part III: International Protection of Child Rights

C. Other International Treaties

- Article 2** States Parties must condemn racial discrimination and undertake to eliminate racial discrimination and promote understanding among races. States Parties are also required to take special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, to guarantee them the full and equal enjoyment of human rights and fundamental freedoms.
- Article 3** States Parties should condemn racial segregation and apartheid.
- Article 6** States Parties must assure effective protection and remedies through the national tribunals and other State institutions, against any acts of racial discrimination, as well as the right to seek just and adequate reparation for any damage suffered as a result of discrimination.
- Article 7** States Parties are required to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices that lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups.

Committee on the Elimination of Racial Discrimination (CERD)

CERD is composed of 18 independent experts elected for a four-year renewable term. The Committee meets at the United Nations in Geneva twice per year.

Relevant CERD procedures

- Periodic reports
- Early warning procedure
- Inter-state complaints
- Individual complaints (available to States Parties who have made the requisite declaration under Article 14 of the ICERD)

Access to the CERD's procedures by the CPNs

Activity	Access by CPNs
Submitting written information	<ul style="list-style-type: none">▪ NGOs and other civil society actors, such as professional associations, academic institutions, indigenous groups and specialised institutions dealing with issues relevant to the remit of the Committee, may submit written information or reports to the secretariat. This may be done at any time, but preferably two months before the Committee's session.▪ An electronic version of the written information as well as 37 hard copies should be submitted to the secretariat at the address below. National civil society actors with limited resources that have difficulties complying with these requirements may seek assistance from the Anti-Racism Information Service (ARIS), an international NGO in Geneva.▪ The Committee accepts written submissions from civil society in relation to the review, without a report, of the implementation of the Convention by States Parties whose reports are at least five years overdue.

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C. Other International Treaties

Activity	Access by CPNs
Providing information for early warning and urgent action procedures	<ul style="list-style-type: none">The Committee accepts written submissions from civil society in relation to its early warning and urgent action procedures. Civil society actors, in particular NGOs, may send information to the Committee requesting it to deal with a situation that they deem urgent.
Attending and contributing to Committee's sessions	<ul style="list-style-type: none">Civil society actors may attend the Committee's meetings as observers. To do so, they will need to write to the secretariat at the address below to request accreditation. The Committee does not convene meetings with NGOs or other civil society actors during its formal meeting hours, but civil society actors may organize informal lunchtime briefings on the first day of consideration of each report and invite the Committee's members. Civil society actors should ask the secretariat to book a room for these briefings. They may also seek assistance from ARIS, which organizes the briefings.The Committee also holds regular thematic discussions on issues related to racial discrimination and the Convention, and invites civil society actors to attend and express their views on the given subject.
Individual complaints	<ul style="list-style-type: none">Individual complaints are available only to States Parties who have made the necessary declaration under Article 14 of the ICERD. Nigeria has not made the requisite declaration under Article 14 of the ICERD so the procedure is not available to the CPNs.

Contact details of the CERD's secretariat

Committee on the Elimination of Racial Discrimination (CERD)

Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva (Switzerland)

Mailing address

UNOG-OHCHR
CH-1211 Geneva 10 (Switzerland)
Tel.: +41 22 917 94 40
Fax: +41 22 917 90 08
E-mail: cerd@ohchr.org

For individual complaints

Petitions Team Office of the High Commissioner for Human Rights United Nations Office at Geneva 1211 Geneva 10 (Switzerland)
Fax: + 41 22 917 9022 (particularly for urgent matters)
E-mail: petitions@ohchr.org

2. International Covenant on Civil and Political Rights (ICCPR)

The ICCPR was adopted by the UN General Assembly on 16 December 1966, together with an **Optional Protocol allowing individuals to submit complaints**. Both the ICCPR and the Optional Protocol entered into force on 23 March 1976. A Second Optional Protocol associated with the ICCPR was subsequently adopted which provided for the abolition of the death penalty. It was adopted on 15 December 1989, and entered into force on 11 July 1991. On 29 July 1993, Nigeria acceded to the ICCPR but it has not yet ratified the Optional Protocols.

Key provisions

The ICCPR guarantees a broad range of universal human rights. The ICCPR sets out certain “civil and political” rights, including:

- Article 1** The right to self-determination.
- Article 2** The right to enjoy human rights without discrimination.
- Article 6** The right to life.
- Article 7** The prohibition of torture, cruel, inhuman or degrading treatment or punishment.
- Article 8** The prohibition of slavery or servitude.
- Article 9** The right to liberty and security of the person.

Due process rights of the persons arrested or detained include the right to be informed of the reasons for his arrest, the right to be informed of the charges against him, the right to a trial within a reasonable time or to release. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

As regards children in conflict with law, Article 9 provides:

Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication (Article 9(2)(b))

Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status (Article 9(3)).

- Article 12** The right of freedom of movement.
- Article 14** All persons shall be equal before the courts.
Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
- Article 17** The right to privacy and reputation.
- Article 18** The right to freedom of thought, conscience and religion.
- Article 23** The right to marry and found a family.

Part III: International Protection of Child Rights

C. Other International Treaties

Article 24 Children's rights:

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

Every child shall be registered immediately after birth and shall have a name.

Every child has the right to acquire a nationality.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

The right of minorities to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The Human Rights Committee (HRC)

The HRC is composed of 18 independent experts elected for four-year renewable terms. The Committee meets three times a year.

Relevant HRC procedures:

- Periodic reports
- Inter-state complaints
- Individual complaints (available to States Parties to the First Optional Protocol to the ICCPR)

Access to the HRC's procedures by the CPNs

Activity	Access by CPNs
Submitting written information	<ul style="list-style-type: none">▪ NGOs and other civil society actors, such as academic or research institutes and professional associations, may submit written information or reports to the Committee's secretariat. This may be done at any time, but preferably two weeks before the session at which the given country report is to be examined and six weeks before the meeting of the country report task force which determines the list of issues to be addressed at the Committee's next session. All information must be submitted in electronic form and in hard copy (at least 25 copies) to the Committee's secretariat at the address below.

Part III: International Protection of Child Rights

C. Other International Treaties

Activity	Access by CPNs
Attending and contributing to Committee's sessions	<ul style="list-style-type: none">▪ NGOs and other civil society actors may attend the Committee's meetings as observers. To do so, they first need to write to the secretariat at the address below to request accreditation. On the first day of the session at which the States Parties report will be considered, the Committee sets aside time for civil society actors, in particular NGOs, to brief it in closed meetings. Additional breakfast and lunchtime briefings are regularly convened to allow NGOs and other civil society actors to provide up-to-date, country-specific information.▪ The country report task force meets in private during the Committee's sessions to prepare the list of issues regarding State reports which will be examined at the Committee's next session. To this end, civil society actors can arrange to hold informal briefings with Committee members.
Individual complaints	<ul style="list-style-type: none">▪ Individual complaints are available only to States Parties to the First Optional Protocol to the Covenant. Nigeria has not ratified this Protocol so the procedure is not available to the CPNs.

Contact Details of the HRC's Secretariat

Human Rights Committee (CCPR)

Human Rights Treaties Division (HRTD)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais Wilson - 52, rue des Pâquis

CH-1201 Geneva (Switzerland)

Mailing address

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CH-1211 Geneva 10 (Switzerland)

Tel.: +41 22 917 92 61

Fax: +41 22 917 90 08

E-mail: ccpr@ohchr.org

For individual complaints

Petitions Team Office of the High Commissioner for Human Rights United Nations Office at Geneva 1211 Geneva 10 (Switzerland)

Fax: + 41 22 917 9022 (particularly for urgent matters)

E-mail: petitions@ohchr.org

3. International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR was adopted by the UN General Assembly on 16 December 1966, and entered into force on 3 January 1976. An Optional Protocol associated with the ICESCR was adopted on 10 December 2008 but has not yet entered into force (currently there are only 3 States Parties). On 29 July 1993, Nigeria acceded to the ICESCR but it has not ratified the Optional Protocol.

The ICESCR guarantees economic, social and cultural rights. The difference between the ICCPR and the ICESCR is the principle of progressive realisation that provides as follows:

Progressive realisation of the ICESCR:

Each State Party to the ICESCR undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the ICESCR by all appropriate means, including particularly the adoption of legislative measures.” (Article 2)

The principle of progressive realisation acknowledges the constraints States Parties may face due to the limits of available resources. However, it also imposes on States an immediate obligation to take deliberate, concrete and targeted steps toward the full realisation of the rights set out in the ICESCR.

Key provisions

- Article 3** States Parties must ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the Covenant.
- Article 6** States Parties must recognise the right to work.
- Article 7** States Parties must recognise the right of everyone to the enjoyment of just and favourable conditions of work.
- Article 9** States Parties must recognise the right of everyone to social security, including social insurance.

Part III: International Protection of Child Rights

C. Other International Treaties

- Article 10** Protection of the family
1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.
- Article 11** States Parties must recognise the right of everyone to an adequate standard of living, including adequate food, clothing and housing.
- Article 12** States Parties must recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
- Article 13** States Parties must recognise the right of everyone to education.

The Committee on Economic, Social and Cultural Rights (CESCR)

The CESCR is composed of 18 independent experts elected for four-year renewable terms. The Committee convenes twice a year.

Relevant CESCR procedures:

- Periodic reports
- Individual complaints (available to States Parties to the Optional Protocol to the CESCR when the Optional Protocol enters into force)

Part III: International Protection of Child Rights

C. Other International Treaties

Access to the CESCR's procedures by the CPNs

Activity	Access by CPNs
Submitting written information	<ul style="list-style-type: none">▪ NGOs and other civil society actors, such as research foundations, professional associations and indigenous groups, may submit written information or reports to the secretariat for both the reporting sessions and the pre-sessions. Information may be submitted at any time, but preferably at least one week in advance in both electronic form and hard copy to the address below. For reporting sessions at least 25 hard copies should be submitted. For the pre-sessional working group at least 10 hard copies should be submitted.▪ It should be noted that the secretariat will make any written information formally submitted by civil society actors in relation to the consideration of a specific State Party report available to a representative of that State as soon as possible, unless marked "confidential".▪ NGOs in consultative status with the United Nations Economic and Social Council (ECOSOC) (or that are in partnership with an NGO that has such status) may submit written statements to the secretariat for publication in the working languages of the Committee at its reporting sessions. NGO statements must be specific to the Articles of the ICESCR, focusing on the most pressing issues, and must arrive at the secretariat no later than three months before the session for which they are intended.
Attending and contributing to Committee's sessions	<ul style="list-style-type: none">▪ Civil society actors may attend the Committee's meetings as observers. To do so, they will need to write to the secretariat at the address below to request accreditation. NGOs, NHRIs and individual experts may make oral statements during the first morning of the pre-sessional working group meeting, as well as during the NGO hearings. The time limit for statements is 15 minutes.▪ At each session, the Committee devotes one day to a general thematic discussion of a particular right or a particular aspect of the Covenant. Specialized NGOs and other civil society participants, including academics, researchers and members of professional groups, may submit background documents or attend the day of general discussion.
Individual complaints	<ul style="list-style-type: none">▪ Individual complaints will be available to States Parties to the First Optional Protocol to the Covenant once it enters into force. Nigeria has not ratified this Protocol. The procedure is not available to the CPNs.

Contact details of the CESCR's secretariat

Committee on Economic, Social and Cultural Rights (CESCR)

Human Rights Treaties Division (HRTD)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

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E-mail: cescr@ohchr.org

4. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

In 1979, the UN General Assembly adopted CEDAW, which focuses entirely on discrimination against women.

The treaty, now ratified by 187 countries, sets out the legal obligations to eliminate discrimination against women and to ensure that they enjoy their civil, political, economic, social and cultural rights without any discrimination. Nigeria ratified CEDAW on 13 June 1985.

On 6 October 1999, the General Assembly adopted an Optional Protocol to CEDAW. The Optional Protocol entered into force on 22 December 2000. By ratifying the Optional Protocol, a State recognises the competence of the Committee on the Elimination of Discrimination against Women to receive and consider complaints from, or on behalf of, individuals or groups of individuals who claim to be victims of violations of the rights protected by the Convention. Nigeria ratified the Optional Protocol on 22 November 2004.

The definition of discrimination against women

The CEDAW provides the following definition of discrimination against women:

Article 1

“Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil and any other field.”

Key provisions

- Article 2** States Parties must condemn discrimination against women in all its forms and must take legislative and other measures to eliminate discrimination against women and to ensure the practical realisation of equality of men and women.
- Article 3** States Parties must take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women.
- Article 5** States Parties are obliged **to ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children.**
- Article 6** States Parties must take appropriate measures to stop trafficking in women and the exploitation of prostitution of women.
- Article 7** States Parties must take appropriate measures to eliminate discrimination against women in the political and public life of the country.

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- Article 10** States Parties must take all appropriate measures to eliminate discrimination against women in the field of education.
- Article 11** States Parties must take all appropriate measures to eliminate discrimination against women in the field of employment.
- Article 12** States Parties must take all appropriate measures to eliminate discrimination against women in the field of health care.
- Article 13** States Parties must take all appropriate measures to eliminate discrimination against women in other areas including the right to family benefits, financial credit, the right to participate in recreational activities, sports and all aspects of cultural life.
- Article 16** States Parties must take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.
The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

The Committee has also stated that violence against women is prohibited by CEDAW (General Recommendation No.19, UN Doc A/47/38 (1992)).

The Committee on the Elimination of Discrimination against Women (CEDAW)

CEDAW is composed of 23 independent experts elected for four-year renewable terms. The Committee meets two to three times a year.

Relevant CEDAW procedures:

- Periodic reports
- Individual complaints (this procedure is only available to States Parties to the Optional Protocol to the CEDAW)
- Confidential inquiries

Access to the CEDAW's procedures by the CPNs

Activity	Access by CPNs
Submitting written information	<ul style="list-style-type: none">▪ NGOs and other civil society actors, such as women's groups, faith-based organisations, independent experts and parliamentarians, may submit written information or reports to the secretariat. This may be done at any time, but preferably two weeks before the pre-session meeting, or two months before the Committee's session. An electronic copy and at least 35 hard copies should be submitted to the secretariat at the address below.▪ NGOs and other civil society actors may also choose to send copies of their submissions to the International Women's Rights Action Watch Asia Pacific (IWRAP-AP), a specialized NGO which helps to transmit information to and from the Committee.

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Activity	Access by CPNs
Attending and contributing to Committee's sessions	<ul style="list-style-type: none">▪ Civil society actors may attend the Committee's meetings as observers. To do so, they will need to write to the secretariat at the address below to request accreditation. Civil society actors, in particular NGOs, may make oral presentations to the pre-sessional working group. The pre-sessional working group meets at the end of the session before the one at which a given Government's report will be reviewed.▪ NGOs may also make oral presentations to the Committee on the first day of each week of its session.▪ Informal meetings with the Committee's members may sometimes be arranged by contacting the secretariat at the address below.
Individual complaints	<ul style="list-style-type: none">▪ Individual complaints are available with regard to the States Parties to the Optional Protocol to the CEDAW. Nigeria has ratified this Protocol so the procedure is available to the CPNs. More information on how to submit individual complaints is available below.
Confidential inquiries	<ul style="list-style-type: none">▪ Civil society actors, in particular NGOs, may submit written information on serious, grave or systematic violations of the Convention to the secretariat. The information must be reliable and indicate that the State Party is systematically violating the rights contained in the Convention.

How to send individual complaints to the CEDAW

Individual complaints (also referred to as “communications”) may be submitted by an individual or groups of individuals, under the jurisdiction of a State Party (i.e. Nigeria), claiming to be victims of a violation of any of the rights in the Convention by that State Party.

Claims may be brought on behalf of individuals or groups of individuals with their written consent. In certain cases, you may bring a case without such consent. For example, where parents bring cases on behalf of young children or guardians on behalf of persons unable to give formal consent.

Examples of violations that can be brought to the CEDAW's attention:

- Violations of the rights to enter marriage and choose a spouse
- Child marriage
- Sexual harassment
- Trafficking in women
- Discrimination against women
- Gender-based violence

The communication should provide basic personal information:

- Name;
- Nationality;
- Date of birth;
- State Party;
- Proof of consent if the communication is made on someone else's behalf or clear explanation of why consent cannot be obtained.

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To be considered by the Committee, a communication:

- Must be in writing;
- Must be submitted to the Secretariat of the Division for the Advancement of Women in writing, by letter, fax or email;
- Must be supported by signed copies;
- May not be anonymous. The victim or victims must agree to disclose her/their identity to the State against whom the violation is alleged. The communication, if admissible, will be brought confidentially to the attention of the State Party concerned.
- Must refer to a State which is a Party to both CEDAW and the Optional Protocol.

A communication will not normally be considered by the Committee:

- Unless all available domestic remedies have been exhausted;
- Where the same matter is being or has already been examined by the Committee or another international procedure;
- If it concerns an alleged violation occurring before the entry into force of the Optional Protocol for the State in question.

Model questionnaire

CEDAW has developed a model questionnaire that may be used by those making a complaint:

The following questionnaire provides a guideline for those who wish to submit a communication for consideration by the CEDAW Committee under the Optional Protocol to CEDAW (available at <http://www.un.org/womenwatch/daw/cedaw/opmodelform.html>).

1. Information concerning the author(s) of the communication

- Family name
- First name
- Date and place of birth
- Nationality/citizenship
- Passport/identity card number (if available)
- Sex
- Marital status/children
- Profession
- Ethnic background, religious affiliation, social group (if relevant)
- Present address
- Mailing address for confidential correspondence (if other than present address)
- Fax/telephone/e-mail
- Indicate whether you are submitting the communication as:
 - Alleged victim(s). If there is a group of individuals alleged to be victims, provide basic information about each individual.
 - On behalf of the alleged victim(s). Provide evidence showing the consent of the victim(s), or reasons that justify submitting the communication without such consent.

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2. Information concerning the alleged victim(s) (if other than the author)

- Family name
- First name
- Date and place of birth
- Nationality/citizenship
- Passport/identity card number (if available)
- Sex
- Marital status/children
- Profession
- Ethnic background, religious affiliation, social group (if relevant)
- Present address
- Mailing address for confidential correspondence (if other than present address)
- Fax/telephone/e-mail

3. Information on the State Party concerned

- Name of the State Party (country)

4. Nature of the alleged violation(s)

Provide detailed information to substantiate your claim, including:

- Description of alleged violation(s) and alleged perpetrator(s)
- Date(s)
- Place(s)
- Provisions of the Convention on the Elimination of All Forms of Discrimination against Women that were allegedly violated. If the communication refers to more than one provision, describe each issue separately.

5. Steps taken to exhaust domestic remedies

Describe the action taken to exhaust domestic remedies; for example, attempts to obtain legal, administrative, legislative, policy or programme remedies, including:

- Type(s) of remedy sought
- Date(s)
- Place(s)
- Who initiated the action
- Which authority or body was addressed
- Name of court hearing the case (if any)
- If domestic remedies have not been exhausted, explain why. Please note :
Enclose copies of all relevant documentation.

6. Other international procedures

Has the same matter already been examined or is it being examined under another procedure of international investigation or settlement? If yes, explain:

- Type of procedure(s)
- Date(s)
- Place(s)
- Results (if any)

Please note: Enclose copies of all relevant documentation.

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7. Date and signature

Date/place: _____

Signature of author(s) and/or victim(s): _____

8. List of documents attached (do not send originals, only copies)

The guidelines below should be followed as closely as possible. Communications should include as much information as possible in response to the items listed above and any relevant information that becomes available after the form has been submitted.

Procedural issues

◆ **Legal Representation**

It is not necessary to have a lawyer to prepare your case, although legal advice usually improves the quality of the submissions. Legal aid is not provided under the procedures. However, NGOs and other legal professionals are allowed to represent the victims (with their approval).

◆ **Time Limits**

There is no stipulated time limit from the date of the alleged violation for filing a complaint, but very long delays may undermine the credibility of the claim. It is usually appropriate, therefore, to submit your complaint as soon as possible after you have exhausted your domestic remedies. Delay in submitting your case may also make it difficult for the State Party to respond properly. In exceptional cases, submission after a protracted period may result in your case being considered inadmissible.

◆ **Working Language**

The Committee's working languages are currently the six official UN languages, English, French, Spanish, Chinese, Arabic and Russian.

◆ **Withdrawal**

Complainants may withdraw their communications, if they so wish.

◆ **Procedure**

If the case is registered, the Committee is likely to consider the admissibility and merits of the case simultaneously. The State Party against whom the complaint is directed will then have six months to present its submissions on the admissibility and merits of the communication. Once it has done so, you will be assigned a fixed period within which to comment, following which the case will be ready for a decision by the Committee.

Occasionally, the Committee will adopt a different procedure to maximise the time to consider communications and to spare both States Parties and complainants needless effort. You will be informed of any departure from the usual practice.

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◆ **Interim measures**

Under Article 5 of the Optional Protocol (as spelled out by rule 63 of the Committee's rules of procedure), the Committee may issue a request to the State Party for such interim measures as may be necessary to avoid the possibility of irreparable damage.

◆ **Admissibility**

The grounds of inadmissibility are set out in Article 4 of the Optional Protocol and follow the general pattern set out above. The complaint will be inadmissible if it has already been decided upon by another international body. The Committee can also reject complaints that are manifestly ill-founded or plainly unjustified.

◆ **Request for documentation from the UN and other bodies**

The Committee may seek any documentation from the United Nations or other bodies that may assist it in the disposal of the complaint. Each party will be afforded an opportunity to comment on such documentation or information within a fixed period.

◆ **Follow up procedure**

The Optional Protocol sets out a special procedure for cases in which the Committee finds that there has been a violation of the Convention. When the Committee makes a decision (formally called "Views") on the merits of a case, it may also make recommendations. Pursuant to the follow-up procedure set out in Article 7 of the Optional Protocol, the State Party is required, within six months of receiving the Committee's decision and recommendations, to submit a written response detailing any action taken. The Committee may invite the State Party to submit further information on the general situation of the implementation of CEDAW.

Secretariat contact details

Committee on the Elimination of Discrimination against Women (CEDAW)

Human Rights Treaties Division (HRTD)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais Wilson - 52, rue des Pâquis

CH-1201 Geneva (Switzerland)

Mailing address

UNOG-OHCHR

CH-1211 Geneva 10 (Switzerland)

Tel.: +41 22 917 94 43

Fax: +41 22 917 90 08

E-mail: cedaw@ohchr.org

For individual complaints

Petitions Team Office of the High Commissioner for Human Rights United Nations Office at Geneva 1211 Geneva 10 (Switzerland)

Fax: + 41 22 917 9022 (particularly for urgent matters)

5. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The CAT was adopted by the UN General Assembly on 10 December 1984 and entered into force on 26 June 1987. Currently, 149 States are party to the Convention. Nigeria ratified the CAT on 28 June 2001. The overall objectives of the Convention are to prevent acts of torture and similar acts, and to ensure that effective remedies are available to victims when such acts occur.

On 18 December 2002, the UN General Assembly adopted the Optional Protocol to the CAT, which entered into force on 22 June 2008. The Optional Protocol creates the Subcommittee on Prevention of Torture. Currently, there are 61 Parties to the Optional Protocol. Nigeria acceded to the Optional Protocol on 27 July 2009.

The definition of torture

Article 1 of the CAT defines torture as:

“Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

The obligation under the Convention to prevent torture is **absolute**:

- ◆ No exceptional circumstances whatsoever, including public emergency, can be invoked to justify torture;
- ◆ An order from a superior officer or public authority cannot be invoked as a justification for torture.

Key provisions

- Article 2** States Parties must take effective legislative, administrative, judicial and other measures to prevent torture
- Article 4** States Parties must criminalise all acts of participation in torture in domestic law
- Article 10** States Parties must train law enforcement, civil, military and medical personnel and other public officials on the prohibition against torture
- Article 12** States Parties must conduct prompt and impartial investigations where there are reasonable grounds to believe that torture has taken place
- Article 13** States Parties must ensure that complainants and witnesses are protected against ill treatment or intimidation.

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Article 14 States Parties must ensure that victims have an enforceable right to compensation

Article 15 States Parties must ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings

Article 16 State Parties must undertake to prevent and investigate acts of cruel, inhumane or degrading treatment or punishment not amounting to torture as defined in Article 1, committed within the jurisdiction and instigated by, committed by or acquiesced in, by a public official

Procedures by the Committee Against Torture (CAT)

The CAT is composed of ten independent experts elected for four-year renewable terms. The Committee meets twice per year.

Relevant CAT procedures:

- Periodic reports
- Individual complaints (only available with regard to the State Parties who have made the necessary declaration under Article 22 of the CAT)
- Confidential inquiries
- Inter-state complaints

Access to the CAT's procedures by the CPNs

Activity	Access by CPNs
Submitting written information	<ul style="list-style-type: none">▪ NGOs and other civil society actors, such as victims' groups, faith-based organisations, representatives of trades unions and professional associations, may submit written information or reports to the secretariat. This may be done at any time, but preferably six weeks before the Committee's session. Contributions to lists of issues should be submitted three months before the list is due to be finalised. All information must be submitted in electronic form and at least 15 hard copies should be sent to the secretariat at the address below.▪ The secretariat will make written information submitted by civil society actors in relation to the consideration of a specific State Party report available to a representative of that State as soon as possible, unless marked "confidential".▪ Civil society actors may attend the Committee's meetings as observers. To do so, they will need to write to the secretariat at the address below to request accreditation.
Attending and contributing to Committee's sessions	<ul style="list-style-type: none">▪ Civil society actors, in particular NGOs, may brief the Committee orally during its sessions. The attendance of individual victims at briefings is normally facilitated by NGOs. Briefings focus on one country at a time and usually take place on the day before the State Parties submissions to the Committee.
Individual complaints	<ul style="list-style-type: none">▪ Individual complaints are available with regard to the States Parties who have made the necessary declaration under Article 22 of the CAT. Nigeria has a declaration under Article 22 of the CAT so this procedure is not available to the CPNs.

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Activity	Access by CPNs
Confidential inquiries	<ul style="list-style-type: none">Civil society actors may submit information on serious, grave or systematic violations of the Convention to the secretariat. The information must be reliable and contain well-founded indications that torture is systematically practised in the territory of the State Party.

Contact details of CAT's Secretariat

Committee against Torture (CAT)

Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva (Switzerland)

Mailing address

UNOG-OHCHR CH-1211 Geneva 10 (Switzerland)
Tel.: +41 22 917 97 06
Fax: +41 22 917 90 08
E-mail: cat@ohchr.org

For individual complaints

Petitions Team Office of the High Commissioner for Human Rights United Nations Office at Geneva 1211 Geneva 10 (Switzerland)
Fax: + 41 22 917 9022 (particularly for urgent matters)
E-mail: petitions@ohchr.org

The Subcommittee on Prevention of Torture (SPT)

The SPT is composed of ten independent experts elected for four-year terms, renewable once. The Subcommittee meets three times a year.

The SPT has an operational function of visiting all places of detention in States Parties, and an advisory function that provides assistance and advice to both States Parties and National Preventive Mechanisms ("NPMs"). In addition, the SPT cooperates, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with international, regional, and national institutions or organisations. The SPT presents a public annual report on its activities to the Committee against Torture.

The main features of the SPT:

- A visiting body;
- An assisting and advisory body for both States Parties and NPMs;
- A body that integrates with existing mechanisms.

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Under the Optional Protocol to the CAT, the SPT has unrestricted access to all places of detention, their installations and facilities and to all relevant information. The SPT visits police stations, prisons (military and civilian), detention centres (for example, pre-trial detention centres, immigration detention centres and juvenile justice establishments), mental health and social care institutions and any other place where people are or may be deprived of their liberty.

The SPT must also be allowed to hold private interviews with persons deprived of their liberty and with any other person who may supply relevant information including, for example, government officials, NPMs, representatives of national human rights institutions, NGOs, custodial staff, lawyers and doctors. People who provide information to the SPT shall not be subject to sanctions or reprisals for having done so.

Relevant SPT procedures:

- Visits

Access to the SPT's procedures by the CPNs

Activity	Access by CPNs
Visits	<p>Nigeria has ratified the Optional Protocol to the CAT so this procedure may be used in relation to Nigeria.</p> <p>NGOs and other civil society actors may submit information on the situation of persons deprived of their liberty in the States Parties as well as on the functioning of the NPMs and on the level of implementation of its recommendations. They should advise on specific places of detention to visit.</p>

How does the SPT do its work?

The SPT undertakes country missions during which it examines conditions of detention, legislative and institutional frameworks, and other areas that may be related to the prevention of torture and ill-treatment. At the end of its country visits, it communicates its recommendations and observations to the State by means of a confidential report, and if necessary, to the NPMs. State Parties are encouraged to request the SPT to publish the visit reports.

The SPT is guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity. The SPT conducts its work in a spirit of co-operation but if the State Party refuses to co-operate or fails to take steps to improve the situation in light of the SPT's recommendations, the SPT may request the Committee against Torture to make a public statement or to publish the SPT report.

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Contact details of SPT's Secretariat

Secretariat of the Subcommittee on Prevention of Torture

UNOG-OHCHR

CH-1211 Geneva 10 Switzerland

Tel: +41 22 917 93 32

Fax: +41 22 917 90 22

E-mail: opcat@ohchr.org

6. Convention on the Rights of Persons with Disabilities (CRPD)

The CRPD and its Optional Protocol entered into force on 3 May 2008. Nigeria ratified the Convention and its Optional Protocol on 24 September 2010.

The goal of the CRPD is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms of all persons with disabilities, and to promote respect for their inherent dignity.

The definition of persons with disabilities

Article 1(2) of the CRPD provides the following definition of persons with disabilities:

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Key provisions

The CRPD reaffirms that persons with disabilities **enjoy the same human rights as everyone else.**

The rights recognised in the Convention include many of the rights found in the ICCPR and the ICESCR, along with the following more specific rights:

- Article 3** The general principles governing the CRPD are:
- Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons
 - Non-discrimination
 - Full and effective participation and inclusion in society
 - Equality of opportunity
 - Accessibility
 - Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities

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Article 7 The CRPD imposes the following obligations on States for the protection of children with disabilities:

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children
2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration
3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity

The Committee on the Rights of Persons with Disabilities (CRPD)

The CRPD consists of 18 independent experts elected for four-year terms, renewable once. The Committee should include experts with disabilities. The Committee convenes twice a year.

Relevant CRPD procedures:

- Periodic reports
- Individual complaints (The Optional Protocol to the Convention gives the Committee competence to examine individual complaints with regard to alleged violations of the Convention by States Parties to the Protocol)
- Confidential inquiries

Access to the CRPD's procedures by the CPNs

The Convention contains a unique provision regarding the role of civil society in monitoring its implementation. Article 33 states that **civil society shall be involved and participate fully in the monitoring process established by States Parties.**

Activity	Access by CPNs
Submitting written information	
Attending and contributing to Committee's sessions	<ul style="list-style-type: none">▪ NGOs may be invited by the Committee to make oral or written statements and provide information or documentation relevant to the Committee's activities.
Individual complaints	<ul style="list-style-type: none">▪ The Optional Protocol to the Convention gives the Committee competence to examine complaints from individuals or groups of individuals with regard to alleged violations of the Convention by States Parties. Nigeria has ratified the Optional Protocol so this procedure is available to the CPNs.
Confidential inquiries	<ul style="list-style-type: none">▪ Civil society actors, in particular NGOs, may submit information on serious, grave or systematic violations of the Convention to the secretariat. The information must be reliable and indicate that the State Party is systematically violating the rights contained in the Convention.

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How to submit a communication to the CRPD

The rules for submitting communications under the CRPD are very similar to those under the CEDAW, namely:

- Communications must concern States that are party to the Convention and the Optional Protocol;
- Communications are to be submitted in writing;
- The working languages of the Secretariat are English, French, Russian and Spanish. All communications must be submitted in one of these languages;
- The Committee shall apply the CRPD's definition of the persons with disabilities recognising the legal capacity of the author or alleged victim before the Committee, regardless of whether this capacity is recognised in the State Party against which the communication is directed;
- The Committee shall examine communications submitted by the alleged victim(s) or by those possessing a power of attorney to act on their behalf (include a copy of the power of attorney);
- Any person submitting communications on behalf of individuals or groups of individuals without evidence of consent must provide a written justification as to why the alleged victim(s) is/are unable to submit the communication in person and why a letter granting consent is not submitted.

The Committee shall consider a communication inadmissible when:

- The communication is anonymous;
- The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
- All available domestic remedies have not been exhausted unless the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;
- It is manifestly ill-founded or not sufficiently substantiated; or
- The facts that are the subject of the communication occurred prior to the entry into force of the Optional Protocol for the State Party concerned unless those facts continued after that date.

Model questionnaire

Model Complaint Form for submission of communications to the Committee on the Rights of Persons with Disabilities under the Optional Protocol to the Convention (available at <http://www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx>):

- Information concerning the author(s) of the communication
- Family name
- First name(s)
- Date and place of birth
- Nationality/citizenship
- Sex
- Other relevant personal identification data (if any of the above details are not available)
- Present address

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- Mailing address for confidential correspondence (if other than present address)
- Telephone or mobile number (if any)
- E-mail address (if any)
- Fax number (if any)

If you are submitting the communication on behalf of the alleged victim(s), please provide evidence showing the consent of the victim(s), or reasons that justify submitting the communication without such consent.

- **Information concerning the alleged victim(s)**

- Family name
- First name(s)
- Date and place of birth
- Nationality/citizenship
- Sex
- If you consider it appropriate, please indicate whether the alleged victim(s) has a disability and, if so, the nature of their disability
- Other relevant personal identification data (if any of the above details are not available)
- Present address
- Mailing address for confidential correspondence (if other than present address)
- Telephone or mobile number (if any)
- E-mail address (if any)
- Fax number (if any)

If the communication concerns a group of individuals claiming to be victims, please provide basic information about each individual, in line with the above list.

- **Information on the State Party concerned**

Name of the State Party (country)

- **Subject matter of the communication**

- **Nature of the alleged violation(s)**

Please provide detailed information to substantiate your claim, including:

- Description of the alleged violation(s), specifying the acts or omissions that prompted the communication.
- Details of the perpetrators of the alleged violation(s).
- Date(s).
- Place(s).

Insofar as possible, please indicate which provisions of the Convention were allegedly violated. If the communication refers to more than one provision, describe each issue separately.

- **Steps taken to exhaust domestic remedies**

Describe the action taken to exhaust domestic remedies in the State Party in which the alleged violation(s) of rights protected under the Convention occurred, such as attempts to obtain legal or administrative redress. Any complaint submitted to the Committee must first have been submitted to the national courts and authorities for consideration.

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In particular, please indicate:

- Type(s) of action taken by the alleged victim(s) to exhaust domestic remedies, such as decisions of domestic courts
- Authority or body addressed
- Name of the court hearing the case (if any)
- Date(s)
- Place(s)
- Who initiated the action or sought a solution
- Key points of the final decision of the authority, body or court addressed

If domestic remedies have not been exhausted, please explain why.

Note: Please enclose copies of all relevant documentation, including copies of legal or administrative decisions or domestic legislation related to the case or summaries of such decisions or legislation in one of the working languages of the Secretariat (English, French, Spanish or Russian)

- **Other international procedures**
Has the same matter already been examined or is it being examined under another procedure of international investigation or settlement? If yes, explain:
 - Type of procedure(s)
 - Body or bodies addressed
 - Date(s)
 - Place(s)
 - Results (if any)

Note: Please enclose copies of all relevant documentation.

- **Specific requests/remedies**
Please detail the specific requests or remedies that are being submitted to the Committee for consideration.
 - **Date, place and signature**
Date of communication:
Place of signature of communication:
Signature of author(s) and/or alleged victim(s):
 - **List of documents attached**
-

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Do not send original documents; only copies. In addition to all the relevant information available at the time of submission, submit any information obtained at a later date, such as documents that demonstrate the exhaustion of domestic remedies or documents containing information relevant to the case (for example, decisions of domestic courts or domestic legislation).

Contact details of the CRPD's Secretariat

Committee on the Rights of Persons with Disabilities (CRPD)

Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva (Switzerland)

Mailing address

UNOG-OHCHR
CH-1211 Geneva 10 (Switzerland)
Tel.: +41 22 917 97 03
Fax: +41 22 917 90 08
E-mail: crpd@ohchr.org

For individual complaints:

Petitions Team Office of the High Commissioner for Human Rights United Nations Office at Geneva 1211 Geneva 10 (Switzerland)
Fax: + 41 22 917 9022 (particularly for urgent matters)
E-mail: petitions@ohchr.org

7. International Convention for the Protection of All Persons from Enforced Disappearance (ICPED)

The ICPED was adopted by the UN General Assembly on 20 December 2006, and entered into force on 23 December 2010. Nigeria acceded to the Convention on 27 July 2009.

The purpose of the Convention is to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance.

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The definition of enforced disappearances

Article 2 of the ICPEP provides the following definition of enforced disappearances:

“The arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”

Key provisions

The ICPEP requires States Parties to criminalise enforced disappearance in their domestic law and to take measures to hold those responsible criminally liable. The provisions of the ICPEP include:

- | | |
|----------------------|--|
| Article 1 | No one shall be subjected to enforced disappearance |
| Article 2 | Each State Party must take appropriate measures to investigate acts of enforced disappearance and to bring those responsible to justice |
| Article 17(1) | No one shall be held in secret detention |
| Article 17(3) | Each State Party shall assure the compilation and maintenance of one or more up-to-date official registers and/or records of persons deprived of liberty |

The Committee on Enforced Disappearances (CED)

The CED consists of 18 independent experts elected for four-year terms, renewable once. The CED convenes twice a year.

Relevant CED procedures:

- Periodic reports
- Urgent actions
- Individual complaints (in accordance with Article 31, a State Party may at the time of ratification of this Convention or at any time afterwards declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals)
- Confidential inquiries

Part III: International Protection of Child Rights

C. Other International Treaties

Access to the CED's procedures by the CPNs

Activity	Access by CPNs
Urgent action	<ul style="list-style-type: none">The Committee may receive urgent requests from individuals that a disappeared person should be sought and found. The person in question must be subject to the jurisdiction of a State Party to the Convention.
Individual complaints	<ul style="list-style-type: none">The Committee may consider individual communications with regard to States Parties that have accepted this procedure in accordance with Article 31 of the ICPEP. Nigeria has not made the requisite declaration accepting this procedure so it is not available in relation to Nigeria.
Confidential inquiries	<ul style="list-style-type: none">Civil society actors, in particular NGOs, can submit information indicating that a State Party is seriously violating the provisions of the Convention, in accordance with Article 33. Additionally, the Committee is empowered to urgently bring to the attention of the General Assembly information indicating that the practice of enforced disappearances is widespread or systematic in a State Party.

How to submit an urgent action request

A request that a disappeared person should be sought and found may be submitted to the Committee as a matter of urgency, by relatives of the disappeared person, their legal representatives, any person authorized by them or any other person with a legitimate interest.

The CED shall request the State Party concerned to provide it with information on the situation of the persons sought. In the light of the information provided, the Committee may transmit recommendations to the State Party, including a request that the State Party should take all the necessary measures to locate and protect the person concerned and to inform the Committee of measures taken. The Committee will inform the person submitting the urgent action request of its recommendations. The Committee will continue its efforts to work with the State Party concerned for as long as the fate of the person sought remains unresolved.

Contact Details of the CED's Secretariat

Committee on Enforced Disappearance (CED)

Human Rights Treaties Division (HRTD)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais Wilson - 52, rue des Pâquis

CH-1201 Geneva (Switzerland)

Mailing Address

UNOG-OHCHR

CH-1211 Geneva 10 (Switzerland)

Tel.: +41 22 917 93 95

Fax: +41 22 917 90 08

E-mail: ced@ohchr.org

D. The Human Rights Council and the Universal Periodic Review

1. The Human Rights Council

The United Nations **Human Rights Council** (UNHRC) is the principal UN intergovernmental body responsible for human rights. Established by General Assembly Resolution 60/251, it replaced and assumed most of the mandates, mechanisms, functions and responsibilities previously entrusted to the Commission of Human Rights. The Office of the High Commissioner for Human Rights (OHCHR) is the secretariat for the UNHRC. The UNHRC is a subsidiary body of the General Assembly.

The UNHRC aims to promote and strengthen the protection of human rights worldwide. It meets in Geneva for ten weeks a year. It is composed of 47 UN Member States. If a Member State of the Council commits gross and systematic violations of human rights, the General Assembly may suspend that State's membership of the Council.

Monitoring mechanisms

In order to achieve its mandate the UNHRC has several mechanisms at its disposal:

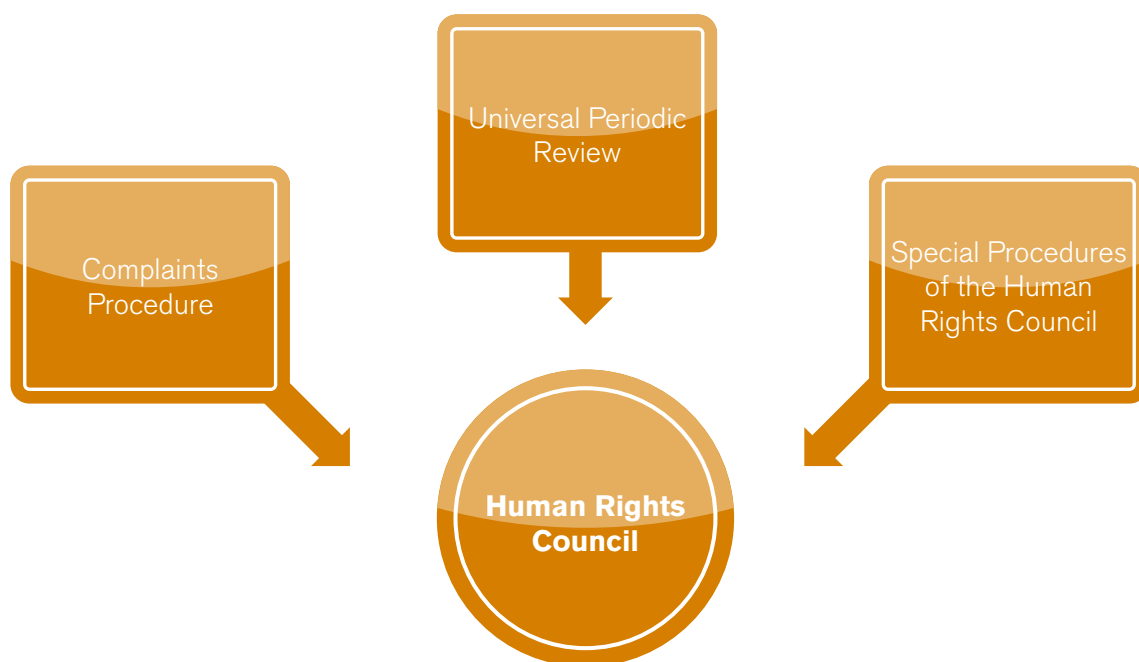
UNHRC procedures:

- The Universal Periodic Review (UPR)
- The Complaints Procedure (which replaced the previous "1530 procedure")
- Special Procedures

The **Human Rights Council Advisory Committee** was established by the UNHRC. The Advisory Committee, consisting of 18 experts, is a subsidiary body of the UNHRC and it functions as think-tank for the Council, focusing mainly on studies and research-based advice. The Advisory Committee may make suggestions to the Council to enhance its procedural efficiency and to develop research proposals.

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D. The Human Rights Council and the Universal Periodic Review



How the CPNs can access and work with the Human Rights Council

NGOs with consultative status with the ECOSOC

NGOs with consultative status with the United Nations Economic and Social Council (ECOSOC) can be accredited to participate in the Human Rights Council's sessions as observers. Only NGOs in consultative status with the ECOSOC can be accredited to participate in the Human Rights Council's sessions as observers.

Once accredited as observers, NGOs in consultative status with ECOSOC are able, among things, to:

- Attend and observe all HRC proceedings with the exception of deliberations under the Complaints Procedure;
- Submit written statements to the HRC;
- Make oral interventions before the HRC;
- Participate in the UPR which involves a review of the human rights records of all UN Member States every four years;
- Participate in debates, interactive dialogues, panel discussions and informal meetings;
- Organize 'parallel events' on issues relevant to the work of the HRC.

NGOs with consultative status must conform to the principles governing the establishment and nature of the consultative relationship. In particular, ECOSOC Resolution 1996/31 provides that an NGO may be suspended or excluded from participating in UN meetings, or have its consultative status withdrawn where it clearly abuses its status by engaging in a pattern of acts contrary to the purposes and principles of the UN Charter.

Part III: International Protection of Child Rights

D. The Human Rights Council and the Universal Periodic Review

The application process

ECOSOC Resolution 1996/31 outlines the eligibility requirements for consultative status, the rights and obligations of NGOs with consultative status, the procedures for the withdrawal or suspension of consultative status, the role and functions of the ECOSOC Committee on NGOs, and the responsibilities of the UN Secretariat in supporting the consultative relationship.

Consultative relationships with ECOSOC may be established with international, regional, sub-regional, and national non-governmental, non-profit, public or voluntary organisations.

The **CPNs can apply for consultative status with the ECOSOC**, which would entitle the CPNs to obtain the status of observer and allow them to participate at the Human Rights Council's sessions.

To attain consultative status with the ECOSOC, an NGO must:

- Carry out work that is relevant to the work of ECOSOC;
- Have a transparent and democratic decision-making process and a democratically adopted constitution;
- Have an established headquarters with an executive officer;
- Have been in existence for at least 2 years;
- Have appropriate mechanisms for accountability;
- Provide financial statements, including contributions and other support, and expenses, direct or indirect to the Committee.

In addition an NGO **should:**

- Have the authority to speak for its members;
- Have a representative structure.

NGOs affiliated with an international organisation already in consultative status with ECOSOC can be granted consultative status if they demonstrate that their work is directly relevant to the aims and purpose of the UN.

The six steps to obtaining consultative status with ECOSOC

1. Creating a profile for your organisation;
2. Submitting the online application which includes a questionnaire and supporting documentation;
3. Initial screening of your application by the NGO Branch to ensure that your application is complete;
4. Review of your application by the ECOSOC Committee on NGOs at its regular session in January or May;
5. Recommendation by the Committee;
6. Decision taken by ECOSOC on your application in July.

More information on each step of the application process is available in the brochure Working with ECOSOC: an NGOs Guide to Consultative Status which is available online at <http://csonet.org/content/documents/Brochure.pdf>

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D. The Human Rights Council and the Universal Periodic Review

Accreditation

An NGO with consultative status with ECOSOC that wishes to attend a session of the Human Rights Council must send a letter of request for accreditation to its Secretariat in Geneva, well in advance of the relevant session.

Letters requesting accreditation should:

- Be submitted on the official letterhead of the organisation;
- Clearly state the title and duration of the session that the organisation wishes to attend;
- Be signed by the president or main representative of the organisation in Geneva; and
- Indicate the name(s) of the person(s) who will represent the organisation at the Human Rights Council's session. Note that the names of persons must appear exactly as they appear in identification documents and family names should be capitalized.

Written statements

Ahead of a given Human Rights Council's session, NGOs with consultative status with ECOSOC may submit to the Human Rights Council, individually or jointly with other NGOs, written statements that are relevant to the Human Rights Council's work. These statements must be on issues that the NGO is an expert on. Once received and processed by the HRC's secretariat, NGOs' written statements become part of the official documentation of Human Rights Council's sessions.

Guidelines for Submitting Written Statements:

- NGOs in general consultative status with ECOSOC may submit written statements of not more than 2000 words;
- NGOs in special consultative status with ECOSOC or on the Roster may submit written statements of not more than 1500 words;
- NGOs are encouraged to consult the General Information Note available on the Human Rights Council's section of the OHCHR website;
- Written statements should be submitted to the Human Rights Council's secretariat at: hrcngo@ohchr.org

Oral statements

NGOs with consultative status with ECOSOC may make oral interventions in general debates and interactive dialogues at Human Rights Council sessions. The procedure for NGO oral interventions can be found on the Human Rights Council's Extranet under the NGO Liaison information page.

Representatives of NGOs wishing to make oral interventions should register in person at the "List of Speakers" desk in the meeting room. Registration forms for individual and joint statements can be downloaded from the Human Rights Council's homepage and should be brought in person when registering.

NGOs are not permitted to distribute documents, pamphlets or any other material in the meeting room. However, copies of NGOs' oral statements may be placed on the designated table at the back of the room. All other NGO documentation may be placed on the designated NGO tables outside the plenary room.

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D. The Human Rights Council and the Universal Periodic Review

Parallel events

Once accredited to attend HRC sessions, NGOs with consultative status with ECOSOC may organize public events that are relevant to the work of the Human Rights Council. These events are known as “parallel events” and take place around the sessions, normally during lunch breaks. Rooms are provided free of charge for the hosting of parallel events and bookings are processed on a ‘first come, first served’ basis. NGOs wishing to co-sponsor a parallel event should complete a “co-sponsorship form”.

Parallel events usually combine panel presentations with open discussion, providing NGOs with a forum to share their experiences and engage with other NGOs, States and stakeholders (including special procedures mandate-holders) on human rights issues and situations that are relevant and important to the Human Rights Council.

NGOs hosting a parallel event may invite persons that are not accredited to the Human Rights Council’s session to attend the parallel event. A complete list of the invitees must be provided to the Human Rights Council’s secretariat and to the Pregny security office 48 hours before the event in order for invitees to be accredited.

Guidelines for organising a parallel event:

- The secretariat does not provide interpreters for NGO parallel events. NGOs may bring their own interpreters if they wish and should inform the secretariat accordingly ahead of time;
- The use of cameras/video recorders at parallel events is not encouraged, except by journalists duly accredited with the United Nations Office at Geneva (UNOG);
- Room bookings for the hosting of parallel events should be faxed to: Fax: + 41 (0) 22 917 90 11;
- For current information on accreditation, written statements, oral statements and parallel events visit the NGO Liaison information page on the Human Rights Council Extranet.

NGOs without Consultative Status

While consultative status with ECOSOC is required for NGOs to be accredited as observers to the Human Rights Council’s sessions, organisations without consultative status can still contribute to the work of the Human Rights Council in a number of ways. Furthermore, the HRC’s meetings are broadcast live on an OHCHR webcast, and a broad range of documentation and information is available on the Council’s homepage and Extranet.

To access the password-protected Extranet page, fill in the online form available from the Human Rights Council page of OHCHR’s website. When you have done this you will receive a username and a password by email.

Contacts for the Human Rights Council

The Human Rights Council Branch:

Human Rights Council Branch Office of the United Nations High Commissioner for Human Rights
Palais des Nations 8–14, Avenue de la Paix, CH–1211 Geneva 10 - Switzerland
Phone: +41 (0)22 917 92 56; Fax: +41 (0)22 917 90 11

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The Civil Society Unit:

OHCHR Civil Society Unit Office of the United Nations High Commissioner for Human Rights
Palais des Nations 8–14, Avenue de la Paix CH–1211 Geneva 10 - Switzerland
Phone: +41 (0)22 917 90 00; E-mail: civilsocietyunit@ohchr.org

For requests or information relating to consultative status with ECOSOC:

United Nations Headquarters, NGO Section United Nations Department of Economic and Social Affairs Section One UN Plaza, Room DC-1-1480 New York, NY 10017, USA
Phone: +1 212 963 8652; Fax: +1 212 963 9248; E-mail: desangosection@un.org

United Nations Office at Geneva (UNOG):

NGO Liaison Office of the Director-General Office 153, Palais des Nations 8–14, avenue de la Paix CH-1211 Geneva 10 - Switzerland
Phone: +41 (0)22 917 21 27; Fax: +41 (0)22 917 05 83; E-mail: ungeneva.ngoliaison@unog.ch

2. Universal Periodic Review

The Universal Periodic Review (UPR) is a unique procedure aimed at scrutinising the human rights practices of every country every four years. The UPR is an opportunity for each State to declare what actions they have taken to improve the human rights situation in their countries and to fulfil their human rights obligations. The analysis, which consists of a compilation of material by the OHCHR, a UNHRC self-assessment questionnaire and additional information provided by stakeholders (including NGOs), is then submitted in a report to the UNHRC.

Nigeria was subject to the UPR in February 2009 and the corresponding report (Human Rights Council, Report by the Working Group for the UPR on Nigeria, A/HRC/11/26, 3 March 2009) was adopted by the UNHRC at its Eleventh Session (Human Rights Council Decision, Eleventh Session, A/HRC/DEC/11/112). Although there is no additional legal recourse available under this mechanism, the outcome of the Nigerian UPR is relevant to any future use of the UNHRC Complaints Procedure. The documents considered in the course of Nigeria's UPR are available at <http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CNGSession4.aspx>.

Participation of the CPNs in the UPR

The UPR process ensures the participation of all relevant stakeholders, including NGOs, national human rights institutions (NHRIs), human rights defenders, academic institutions and research institutes, regional organisations, as well as civil society representatives. These actors can submit information to be added to the “other stakeholders” report, which is considered during the review.

The CPNs may participate in the UPR as a relevant stakeholder. They may submit reports that are considered during the review by the HRC.

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NGOs in consultative status with the ECOSOC can be accredited to participate in the UPR Working Group sessions and can make statements at the regular session of the Human Rights Council when the outcome of the State reviews are considered. OHCHR has released “Technical guidelines for the submission of stakeholders” which are available at <http://www.ohchr.org/Documents/HRBodies/UPR/TechnicalGuideEN.pdf>.

Form

Submissions, which do not respect the guidelines below will not be considered.

◆ **Length and format**

Written submissions should not exceed 2,815 words in the case of individual submissions, to which additional documentation can be annexed for reference. Submissions by coalitions of stakeholders should not exceed 5,630 words.

Information included in footnotes or endnotes is not included in the word count.

Pages and paragraphs should be numbered.

Written submissions should be saved as a Word document only.

◆ **Identification of the stakeholder**

Written submissions should be clearly identified. The cover page of the written submission should clearly identify the submitting stakeholder(s) (for example using a letterhead, name and acronym, logo or webpage).

It is important that stakeholders include their contact details in the body of the email used to send their submissions. A paragraph describing the main activities of the submitting organisation/coalition, as well as date of its establishment is also welcomed.

The cover page is not included in the word count.

◆ **Language**

Written contributions should be submitted in UN official languages only, preferably in English, French or Spanish.

Guidelines to Stakeholders

- Stakeholders are encouraged to consult with one another at the national level for the preparation of the UPR submissions. Joint submissions by a group of stakeholders are encouraged where each stakeholder focuses on similar issues.
- The UPR mechanism does not provide for confidentiality. Submissions will be made available online on OHCHR's website and will include the name of the submitting stakeholder.

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- Consequently, reference to individual cases should be made only if the safety and well being of all the individuals concerned will not be jeopardised by such a reference.
- Deadlines for stakeholders' submissions will be posted on the OHCHR UPR webpage (at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx>), usually eight to ten months before the review.
- Stakeholders should note that written submissions to the OHCHR should be sent at least five months before the relevant session of the Working Group on UPR. Submissions received after the deadline will not be considered. Written submissions should be final; it is not possible to accommodate revisions.
- Guidelines on the style of the written submissions are available at <http://www.ohchr.org/Documents/HRBodies/UPR/TechnicalGuideEN.pdf>

Contact information

Stakeholders' submissions should be sent to uprsubmissions@ohchr.org

While stakeholders are discouraged from faxing or mailing a hard copy of their submission to the OHCHR Secretariat, they may do so in the case of repeated technical difficulties with e-mail to: +41 22 917 90 11.

The OHCHR Secretariat will confirm receipt of your message and submission electronically.

Each electronic submission and relevant e-mail message should refer to one country only. In the title of the e-mail message accompanying the submitted documents you should include: the name of the (main) stakeholder submitting the contribution, the kind of contribution (individual and/or joint), the name of the reviewed country and the month and year of the relevant UPR session, e.g., "Women's coalition – joint UPR submission – Ecuador – June 2012" or "National Human Rights Institution of the United Kingdom of Great Britain and Northern Ireland (EHRC) – UPR Submission - United Kingdom of Great Britain and Northern Ireland – June 2012."

Further information regarding the UPR is available on the UPR Information website at <http://www.upr-info.org/>. Information on the participation and involvement of the NGOs in the UPR is available at <http://www.upr-info.org/-NGOs-.html>.

Complaints procedure

Body	Procedure	Who?	Which violations?	Threshold	Confidential
Human Rights Council (WGC & WGS)	Complaint Procedure	Victim(s), any person or group of persons or NGOs	Any human right or fundamental freedoms	A consistent pattern of gross and reliably attested violations	Yes

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D. The Human Rights Council and the Universal Periodic Review

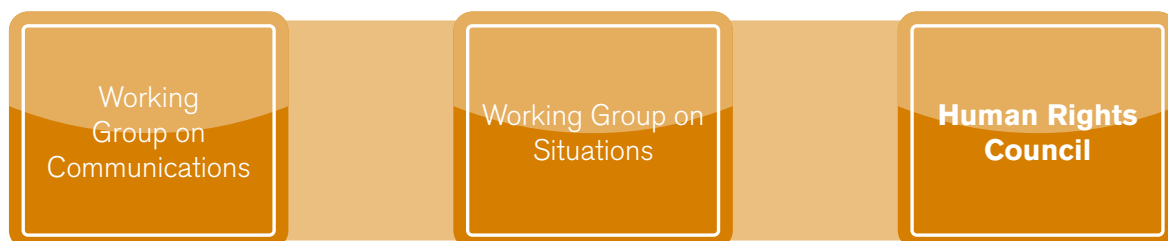
Objective and scope

On 18 June 2007, the Human Rights Council adopted a resolution entitled “UN Human Rights Council: Institution Building” (Resolution 5/1) which established a new Complaints Procedure to address **consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.**

How does the complaints procedure work?

The complaints procedure is based on communications received from individuals, groups or organisations that claim to be victims of human rights violations or that have direct and reliable knowledge of such violations. It is confidential, with a view to enhancing cooperation with the State concerned. The procedure includes two distinct working groups who examine communications and bring consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms to the attention of the Council:

- Working Group on Communications (WGC)
- Working Group on Situations (WGS)



The **WGC** is made up of members of the Human Rights Council Advisory Committee. The WGC consists of five independent and highly qualified experts and is geographically representative of the five regional groups. The WGC meets twice a year to assess the admissibility and merits of a communication, including whether it appears to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms.

All admissible communications and recommendations are then transmitted to the Working Group on Situations (WGS).

The WGS comprises five members appointed by the regional groups from among the Member States of the Council. It meets twice a year to examine the communications transferred to it by the WGC.

The WGS, on the basis of the information and recommendations provided by the WGC, presents the Council with a report on consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms and makes recommendations to the Council on the course of action to take.

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The Council then makes a decision about each situation.

Who can submit a complaint?

Any individual or group claiming to be the victim of human rights violations may submit a complaint under this procedure, as may any other person or group with direct and reliable knowledge of such violations.

CPN members are entitled to submit a complaint provided that they have direct and reliable knowledge of the violations of human rights or fundamental freedoms that they wish to address.

Communications under this procedure are not tied to the acceptance of treaty obligations by the country concerned or the existence of a Special Procedures mandate. The procedure does not have the power to compensate alleged victims or seek a remedy for individual cases.

Admissibility criteria for communications

A communication of a violation of human rights and fundamental freedoms will be admissible if:

- It is not manifestly politically motivated and its object is consistent with the Charter of the United Nations, the Universal Declaration of Human Rights and other applicable instruments in the field of human rights law;
- It gives a factual description of the alleged violations, including the rights which are alleged to be violated;
- Its language is not abusive;
- It is submitted by a person or a group of persons claiming to be the victims of violations of human rights and fundamental freedoms, or by any person or group of persons, including non governmental organisations, acting in good faith and claiming to have direct and reliable knowledge of the violations concerned. Reliably attested communications shall not be inadmissible solely because the knowledge of the individual authors is second-hand, provided that they are accompanied by clear evidence;
- It is not exclusively based on reports disseminated by mass media;
- It does not refer to a matter already being dealt with by a special procedure, a treaty body or other United Nations or similar regional complaints procedure in the field of human rights;
- Domestic remedies have been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged.

National Human Rights Institutions (NHRIs), established under the Principles Relating to the Status of National Institutions (the Paris Principles), may be an effective way of addressing individual human rights violations.

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Advantages and disadvantages of the complaints procedure

Advantages	<ul style="list-style-type: none">▪ The procedure deals with violations of all human rights and fundamental freedoms; a State does not have to be a party to a treaty have a complaint submitted against it.▪ A complaint may be brought against any State.▪ A complaint may be submitted by the victim or anyone acting on the victim's behalf and does not necessarily require the victim's written authorisation.▪ Complainants are informed of the decisions taken at the various key stages of the process.▪ The admissibility criteria are generally less strict than for other complaints mechanisms.▪ The complaints procedure is confidential.▪ It is not necessary that all domestic remedies have been exhausted if it can be proven that the domestic remedy would be "ineffective or unreasonably prolonged".▪ The complaints procedure aims at providing a speedy solution that protects human rights in cooperation with the State involved. So if evidence can be submitted to the Nigerian Government through the UNHRC that the rights of children are not being protected, the Nigerian central government may exert pressure on State governments to take preventive measures and ensure adequate investigations and prosecutions.▪ General Assembly Resolution 60/251 authorises the General Assembly to suspend rights of membership of the UNHRC if a member commits gross and systematic violations of human rights.
Disadvantages	<ul style="list-style-type: none">▪ The process can be lengthy, since the complaint goes through several stages of consideration, and therefore may not be suitable for urgent cases. In the past, Nigeria has not been very responsive to letters of allegations or urgent appeals made by UN bodies.▪ A decision of the UNHRC is not legally enforceable and cannot oblige Nigeria to address its domestic human rights situation.▪ As the process is confidential, the individual complainant has no idea of how the complaint is progressing or what the outcome of the complaint is.▪ The complainant must have exhausted all available and effective domestic remedies before sending information under this procedure.▪ There are no provisions for urgent interim measures to ensure human rights protection.▪ Communications must generally refer to a consistent pattern of human rights violations affecting a large number of people, rather than individual cases.

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Disadvantages	<ul style="list-style-type: none">▪ Cases that appear to reveal a consistent pattern of gross violations of human rights already being dealt with by a special procedure, a treaty body or other United Nations or similar regional human rights complaints procedure are not admissible under this procedure.▪ There is no possibility of obtaining compensation and/or enforcing prosecutions in relation to individual complaints.
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Information that must be included in a complaint

The following information must be included in complaints submitted to the Human Rights Council:

- Identification of the person(s) or organisation(s) submitting the communication (this information will be kept confidential, if requested). Anonymous complaints are not admissible;
- Description of the relevant facts in as much detail as possible, providing names of alleged victims, dates, locations and other evidence;
- Purpose of the complaint and the rights allegedly violated;
- Explanation of how the case may reveal a pattern of gross and reliably attested human rights violations rather than individual violations;
- Details of how domestic remedies have been exhausted, or an explanation of how such remedies would be ineffective or unreasonably prolonged.

Guidelines on the complaints procedure

- All complaints must be **in writing**. It is not sufficient to rely on mass media reports. It is advisable to **limit the complaint to 10-15 pages**. Additional information may be submitted at a later stage.
- Complaints can be written in English, French, Russian or Spanish. Documents in other languages should be translated or summarised in one of these languages.

The stages of the complaints procedure

◆ **Stage 1: Initial screening**

The OHCHR Secretariat, together with the Chairperson of the Working Group on Communications, screens all communications as they arrive, on the basis of the admissibility criteria, and discards those found to be manifestly ill-founded or anonymous. If a communication is admitted to the next stage of the procedure, the author receives a written acknowledgement and the communication is sent to the State concerned for reply.

◆ **Stage 2: Working Group on Communications**

The WGC examines complaints that have passed the initial screening stage and any replies received from States with a view to bringing to the attention of the WGS any particular situation appearing to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms.

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◆ **Stage 3: Working Group on Situations**

The WGS assesses the cases referred to it and produces a report for the Human Rights Council with specific recommendations on the action to be taken with regard to any situation that reveals a consistent pattern of gross violations. Alternatively, it may decide to keep a situation under review or to dismiss a case.

◆ **Stage 4: Human Rights Council**

The Human Rights Council considers situations brought to its attention by the Working Group on Situations as frequently as necessary, but at least once a year. Unless it decides otherwise, it examines the reports of the Working Group on Situations confidentially. Based on its consideration of a situation the Council may take action, usually in the form of a resolution or decision.

The Human Rights Council may adopt the following measures:

- To discontinue consideration of the situation where further consideration or action is not warranted;
- To keep the situation under review and request the State concerned to provide further information;
- To keep the situation under review and appoint an independent and highly qualified expert to monitor the situation and report back to it;
- To discontinue reviewing the matter under the confidential complaints procedure in order to consider the matter in public;
- To recommend that the OHCHR should provide technical cooperation, capacity building assistance or advisory services to the State concerned.

Where to send a communication

Communications intended for handling under the Council Complaint Procedure may be addressed to:

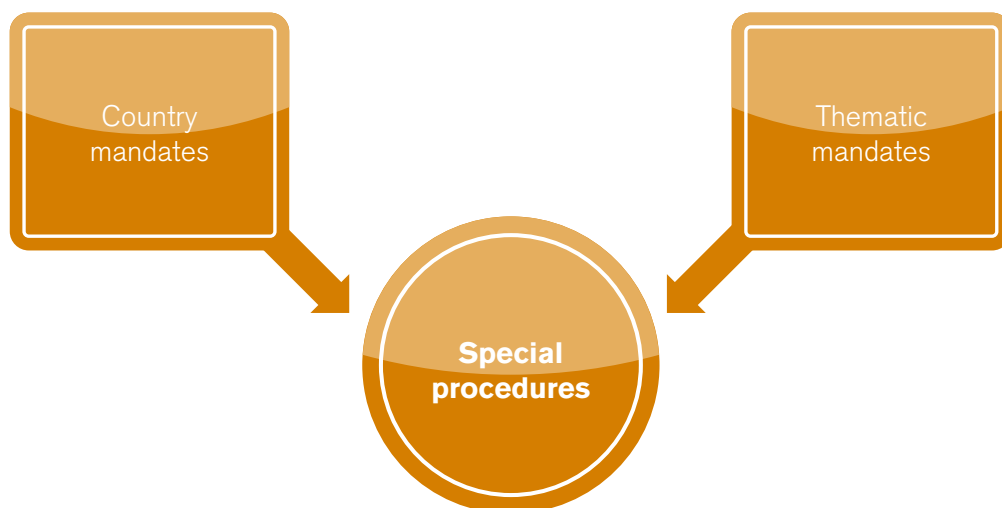
Human Rights Council and Treaties Division Complaint Procedure

OHCHR-UNOG
1211 Geneva 10
Switzerland
Fax: (41 22) 917 90 11

E. Special Procedures

1. Introduction

Special Procedures is the general name given to the mechanisms established to be used by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world.



Special Procedures are either an **individual** - a special rapporteur or special representative, or independent expert - or a **working group**. They are prominent, independent experts working on a voluntary basis, appointed by the Human Rights Council.

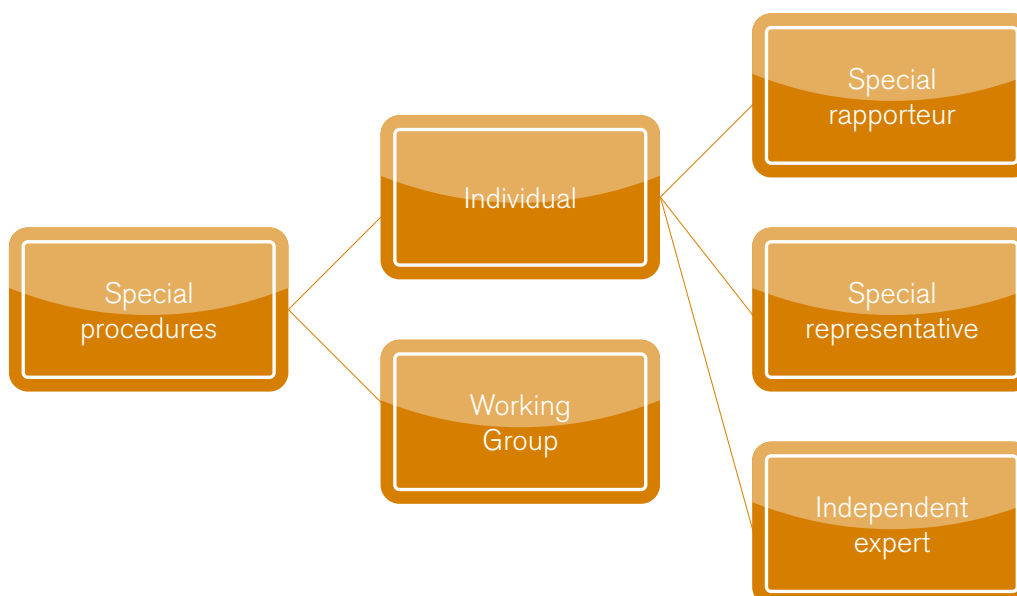
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E. Special procedures

Special Procedures mandates usually call on mandate holders to examine, monitor, advise and publicly report on human rights situations in specific countries or territories, known as **country mandates**, or on major phenomena of human rights violations worldwide, known as **thematic mandates**. There are currently 30 thematic mandates and 13 country mandates (Burundi, Belarus, Cote d'Ivoire, Eritrea, Democratic People's Republic of Korea, Haiti, Islamic Republic of Iran, Mali, Myanmar, Occupied Palestinian Territory, Somalia, Sudan, Syria Arab Republic). All report their findings and recommendations to the UN Human Rights Council.

The activities of Special Procedure mandate holders include:

- Receiving and analysing information on human rights situations;
- Networking and sharing information with partners, both governmental and non governmental, within and outside the United Nations;
- Seeking - often urgently - clarification from governments on alleged violations and, where required, asking governments to implement protection measures to guarantee or restore the enjoyment of human rights;
- Raising awareness of specific human rights situations and phenomena, including threats to and violations of human rights;
- Communicating their concerns through the media and by means of public statements;
- Undertaking country visits to assess human rights situations and making recommendations to governments with a view to improving those situations;
- Reporting and making recommendations to the Human Rights Council and to the General Assembly (and in some cases to the Security Council) on the activities undertaken such as field visits, and on specific thematic trends and phenomena;
- Contributing thematic studies for the development of authoritative principles and standards and possibly providing legal expertise on specific issues.



In 2010, the Special Procedures sent 604 communications and undertook 67 country visits to 48 States. The Special Procedures submitted 156 reports to the Human Rights Council, including 58 country visit reports, and 26 reports to the General Assembly. Additionally, 232 press releases and public statements were issued.

2. How the Special Procedures work

Special Procedures mandate holders have a number of tools available to them to meet the terms of their mandates, including:

Sending communications

Undertaking country visits

Reporting and contributing to Human Rights Council

Preparing thematic studies

Issuing press releases

Sending communications

Body	Procedure	Who?	Which violations?	Threshold	Confidential
Special Procedures mandate-holders	Communication + Urgent appeal	Victim(s), any person acting on behalf of the victim(s), NGOs, civil society	Human right(s) violation that fall(s) within the mandate of any of the mandate holders	Not all Special Procedures mandate-holders can act on individual cases	Yes/No Yes for children

One of the main activities of the Special Procedures mandate holders is taking action on individual cases, based on information that they receive from relevant and credible sources (mainly civil society actors).

Interventions generally involve sending a letter to a government (letter of allegation) requesting information on and responses to allegations and where necessary asking the government to take preventive or investigatory action (urgent appeal). These interventions are known as “communications”.

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Urgent appeals are sent when the alleged violations are time-sensitive such as those involving loss of life, life-threatening situations or imminent or on-going damage of a very grave nature to victims. **Letters of allegation** are sent when the urgent appeal procedure does not apply; to communicate information and request clarification about alleged human rights violations.

Mandate holders may send **joint communications** when a case falls within the scope of more than one mandate. The decision of whether or not to intervene is left to the discretion of Special Procedure mandate holders.

In their information gathering activities, mandate holders must:

- Be guided by the principles of discretion, transparency, impartiality and even-handedness;
- Preserve the confidentiality of sources if divulging them could cause harm to those involved;
- Rely on objective and dependable facts based on high evidential standards; and
- Give the concerned State the opportunity to comment on their assessments and respond to the allegations made against the State. The State's written responses are annexed to the mandate holder's report(s).

How to submit individual cases

The Special Procedures mechanisms allow for allegations of either individual cases or a more general pattern of human rights abuse. All individuals, or those acting on an individual's behalf, can submit individual cases to Special Procedures mandate holders, if the mandate allows for this. Civil society actors can often support individuals seeking protection from human rights abuses and intervene on their behalf.

Communications sent and received are **usually confidential** and remain so until the mandate holder's report to the Human Rights Council is made public. It must be noted that the alleged victims are named in the reports, unless they are children or belong to other specific categories of victims, such as victims of sexual violence.

Given the public nature of the reports, it is important that organisations acting on behalf of victims of human rights violations ensure that the victim is aware that his/her case is being communicated to the Special Procedures mechanisms. However, the victim's authorisation is not always required to submit the case (for example, if the victim is unreachable because he or she is in detention).

Information provided to the Special Procedures should not be politically motivated, abusive or based solely on media reports.

Minimum information to be included in communications

Each Special Procedure has established different requirements for the submission of communications. However, the following **minimum information** must be included:

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- The **identification of the alleged victim(s)** including, where possible and appropriate: name, occupation, passport number and place of residence, date of birth, sex, ethnic or religious group, the name of any community organisation subject to alleged violations. It must be made clear if any of this information should not be transmitted to the government for the safety of the person concerned;
- The **identification of the alleged perpetrators** of the violation and suspected motives;
- **Details of the breach** alleged to have been committed, including details of place and date;
- The identification of the person(s) or organisation(s) submitting the communication (this information will be kept confidential);
- A detailed **description of the circumstances** in which the alleged violation occurred, such as any steps taken to rectify the breach.

Civil society actors may submit follow-up information to mandate holders on whether or not the human rights issue(s)/situation(s) addressed in their original submission has improved. Follow-up information is of great use to mandate holders. Some mandate holders base their requests for country visits on trends identified through the communications procedure.

Where to send communications?

Individual cases/complaints can be submitted to:

OHCHR-UNOG
8-14 Avenue de la Paix
CH-1211 Geneva 10 - Switzerland
E-mail: urgent-action@ohchr.org
Fax: +41 (0)22 917 90 06

When sending a communication, it is necessary to specify which Special Procedures mechanism the information is addressed to in the subject line of the e-mail or fax, or on the envelope.

Advantages and disadvantages of submitting a communication to the Special Procedures mandate holders

Advantages	<ul style="list-style-type: none">▪ Communications under Special Procedures can be used for individual cases as well as for a more general pattern of violations;▪ They can be a useful tool in urgent cases as they allow for urgent or preventive action (urgent appeals);▪ Cases may be brought regardless of the State in which they occur and regardless of whether that State has ratified any of the human rights treaties;▪ It is not necessary to have exhausted all domestic remedies before using the procedure;▪ The communication is not required to be made by the victim, although the source must be reliable;▪ A complaint may be lodged simultaneously before a human rights treaty body and a Special Procedure with the relevant mandate;
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Advantages	<ul style="list-style-type: none">▪ The communications sent and received are confidential until the expert submits the report to the UNHRC. The names of the alleged victims are included in the report, except in the case of children whose names remain confidential;▪ When the facts and question come within the scope of more than one mandate holder, the mandate holders can send a joint communication to the State concerned.
Disadvantages	<ul style="list-style-type: none">▪ There must be a Special Procedure in place that covers the specific human rights issue or country (not all Special Procedures mandate holders can act on individual cases);▪ Special procedures are not legally binding mechanisms. It is within the discretion of each as to whether or not to comply with the recommendations of Special Procedures mandate holder;▪ All communications sent and received are confidential until the report is submitted to the UNHRC. This means that both the public and the complainant are not aware of how the process is progressing. Accordingly, very little pressure is applied to the State in question during the progress of the complaint.

Country visits

Country or field visits (or fact-finding missions) are an important tool for Special Procedures mandate holders. Mandate holders typically send a letter to a government asking to visit the country, and, if the government agrees, an invitation to visit is extended. Some countries have issued “standing invitations”, which means that they are, in principle, prepared to receive a visit from any Special Procedures mandate holder.

Country visits allow mandate holders to assess the general human rights situation and/or the specific institutional, legal, judicial and administrative situation in a given State. During these visits, mandate holders may meet national authorities, representatives of civil society, victims of human rights violations, the United Nations country team, academics, the diplomatic community and the media.

On the basis of their findings, mandate holders make recommendations in public reports. These reports are submitted to the UNHRC. Some mandate holders hold press conferences and issue preliminary findings at the end of a country visit.

How to provide support for country visits

Civil society actors can support mandate holders’ country visits in the following ways:

- Encourage governments to invite mandate holders to visit a country, or to extend a standing invitation to the Special Procedures;

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- Alert mandate holders to the issues in a particular State. Some mandate holders base their requests for country visits on the information that they receive;
- Raise public awareness of country visits;
- Submit relevant information and raise matters of concern with the mandate holder before the visit takes place;
- Ask to meet with the mandate holder by contacting him/her or the relevant OHCHR office.

Civil society actors can play a key role in follow-up to the conclusions and recommendations resulting from a country visit by:

- Disseminating recommendations to their local constituencies;
- Publicising the work of Special Procedures and developing plans of action and activities to continue the work initiated by the country visit;
- Working with governments towards the implementation of Special Procedures;
- Making recommendations;
- Contributing to specific follow-up reports issued by mandate holders;
- Monitoring the steps the government has taken to meet the recommendations, and keeping the mandate holder(s) informed of the State's progress towards implementing recommendations.

Reporting and contributing to the Human Rights Council

Special Procedures mandate holders present annual reports to the Human Rights Council in which they describe the activities undertaken during the previous year. In some circumstances, the Council may ask a mandate holder to report on a specific theme or topic of interest. Reports are public and represent an authoritative tool for campaigning for change.

Thematic studies

Special Procedures mandate-holders can also prepare thematic studies, which are useful tools to guide governments, as well as civil society, on human rights standards and their implementation. Mandate holders also host and attend expert meetings on thematic human rights issues.

Press releases

Special Procedures can — individually or collectively — issue press releases highlighting specific situations or identifying the human rights standards that States should respect.

Open invitations to Special Procedures

A standing invitation is an open invitation extended by a government to all thematic Special Procedures. By extending a standing invitation States are announcing that they will always accept requests to visit from all Special Procedures.

No such invitation has been extended by Nigeria. However, in its letter of 2006 sent to the Human Rights Council, Nigeria made the following commitments (available at <http://www.un.org/ga/60/elect/hrc/nigeria.pdf>):

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- Reaffirms its commitment to the maintenance of an open door policy on human rights issues and to this end, reaffirms its preparedness to welcome human rights inspectors, special rapporteurs and representatives to visit Nigeria in order to carry out their respective mandate without hindrance.
- Reaffirms its commitment to cooperate fully with other special procedures of the Council.

How the CPNs access and work with the special procedures

Civil society actors, individually or collectively, may access and work with the Special Procedures. Unlike the United Nations treaty bodies, Special Procedures can be activated even where a State has not ratified the relevant instrument or treaty; and it is not necessary to have exhausted domestic remedies to access the Special Procedures.

Civil society actors can make use of the Special Procedures by:

- Submitting individual allegations of human rights violations to the relevant Special Procedures mandate holder(s);
- Providing support for country visits and information and analysis on human rights violations to Special Procedures mandate holders;
- Performing a preventive role by providing information to Special Procedures on the introduction of new legislation which may lead to human rights violations;
- Following-up Special Procedures' recommendations locally and nationally;
- Supporting the dissemination of the work and findings of Special Procedures mandate holders;
- Nominating candidates as Special Procedures mandate holders.

Contacting Special Procedures mandate holders

Special Procedures mandate holders may be contacted by:

E-mail: SPDInfo@ohchr.org (for general inquiries and information)
urgent-action@ohchr.org (for individual cases/complaints only)
Fax: +41 (0)22 917 90 06
Post: Quick Response Desk
Office of the United Nations High Commissioner for Human Rights
Palais des Nations
8-14, avenue de la Paix
CH-1211 Geneva 10 - Switzerland

Civil society actors should indicate in the subject line of the e-mail or fax, or on the cover of the envelope, which Special Procedure(s) they wish to contact.

As the contact address is the same for all Special Procedures, a clear indication of the main subject or purpose of the correspondence will allow for a more timely response.

It is essential to also indicate whether the correspondence is aimed at submitting broad information, an individual complaint, or whether it is another type of request (for example, invitation to attend a conference, request for a meeting with the mandate holders and/or their assistants).

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Meeting with Special Procedures mandate holders

Special Procedures mandate holders are available for meetings with civil society actors as part of their consultations in Geneva, New York (for those attending the General Assembly) and during their country visits. These meetings are particularly important to help build an ongoing partnership between mandate holders and civil society. The staff servicing mandate holders at OHCHR can be contacted throughout the year to arrange these meetings.

Categories of civil society actors

Categories of civil society actors that may engage with the Special Procedures include:

- Human rights organisations (NGOs, associations, victims' groups);
- Human rights defenders;
- Issue-based organisations;
- Coalitions and networks (women's rights, children's rights, minority rights, environmental rights);
- Persons with disabilities and their representative organisations;
- Community-based groups (indigenous peoples, minorities);
- Faith-based groups (churches, religious groups);
- Unions (trades unions as well as professional associations such as journalist associations, bar associations, magistrate associations, student unions);
- Social movements (peace movements, student movements, pro-democracy movements);
- Professionals (humanitarian workers, lawyers, doctors and other types of medical workers);
- Relatives of victims; and
- Public institutions that include activities aimed at promoting human rights (schools, universities, research bodies).

The CPNs falls within the definition of a civil society actor entitled to engage with the Special Procedures.

3. Special procedures relevant to the CPNs

This section will identify the Special Procedures that the CPNs can use to complain about violations of the rights of the child:

	Special procedure	Which violations?
1.	Working Group on Arbitrary Detention	Arbitrary detention
2.	Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment	Torture, other cruel, inhumane or degrading treatment
3.	Special Rapporteur on violence against women	Violence against women
4.	Special Rapporteur on trafficking in persons, especially women and children	Trafficking in persons
5.	Special Rapporteur on contemporary forms of slavery	Contemporary forms of slavery
6.	Special Rapporteur on the sale of children, child prostitution and child pornography	Sale of children, child prostitution, child pornography
7.	Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism	Human rights violations while countering terrorism

This section will provide practical information for CPN members on the following areas:

- The child's rights violations that fall within the mandate of the selected Special Procedure mandate holders;
- The mandate and procedures of the selected Special Procedures mandate holders;
- Guidelines (if there are any) followed by the Special Procedures mandate holders;
- Model questionnaires;
- Contact information.

Working group on Arbitrary Detention

Article 37 of the CRC states:

- (a) ...
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily...
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent

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

- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court.

The Working Group on Arbitrary Detention has adopted criteria to determine whether a deprivation of liberty is arbitrary. These criteria, together with the composition and mandate of the Working Group and the procedures it follows, are provided in OHCHR Factsheet No.26, The Working Group on Arbitrary Detention, which is available at:

<http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>

Definition of deprivation of liberty

Factsheet No.26 defines deprivation of liberty as:

There may accordingly be legitimate deprivations of liberty, such as of convicted persons or of those accused of serious offences. There may be other forms of deprivation of liberty attributable to administrative authorities, as in the case of mentally disturbed persons. In addition, the right to personal liberty may suffer limitations during states of emergency.

Other terms used to refer to deprivation of liberty include:

Arrest	Incarceration	Custody
Apprehension	Prison	Remand
Detention	Reclusion	Imprisonment

When does deprivation of liberty become arbitrary?

According to the Working Group, deprivation of liberty is arbitrary if it falls into one of the following three categories:

Category I	When it is impossible to invoke any legal basis justifying the deprivation of liberty (for example, when a person is kept in detention after the completion of his sentence of imprisonment).
Category II	When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, for example, the right to freedom of thought, conscience and religion.
Category III	When the failure to observe the components of the right to a fair trial is of such gravity that the deprivation of liberty becomes arbitrary.

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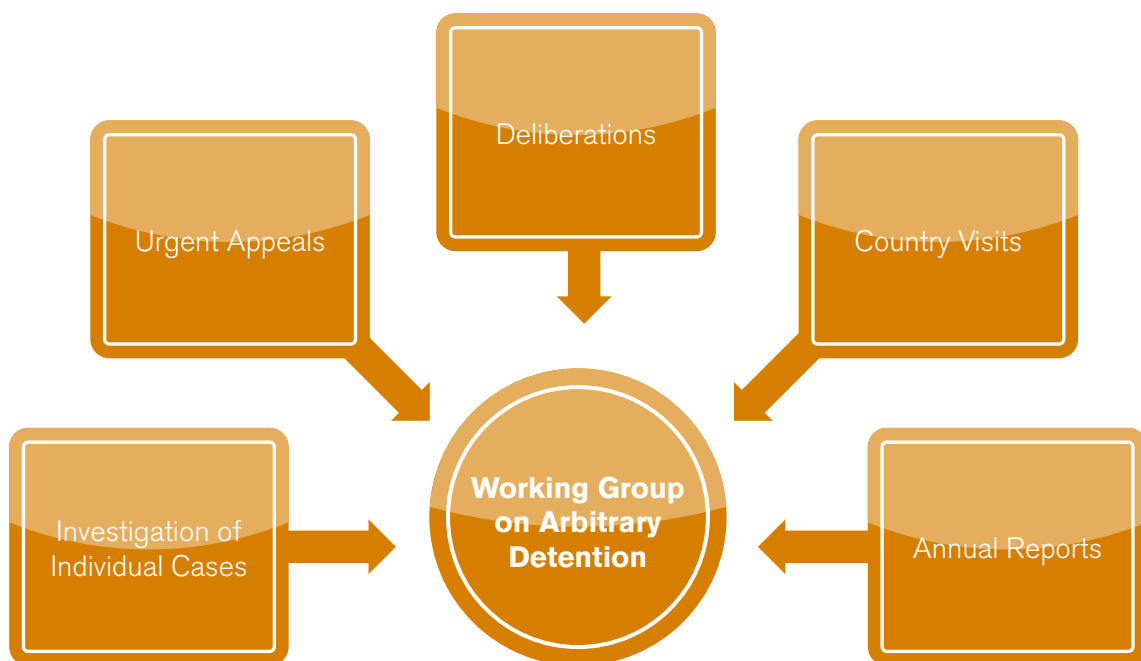
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In order to assess whether a deprivation of liberty is arbitrary, the Working Group considers the general principles set out in the UDHR, criteria drawn from the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and, for the States Parties to the ICCPR, the criteria laid down in Articles 9 and 14 ICCPR.

Procedures followed by the Working Group

The Working Group acts on information relating to alleged cases of arbitrary detention by sending urgent appeals and communications to the governments concerned to clarify and/or bring the issues to their attention. The Working Group also considers individual complaints. It is the only non-treaty-based mechanism whose mandate provides for the consideration of individual complaints.

The following are the main procedures followed by the Working Group:



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Investigation of individual cases (Communications)

The Working Group acts on information submitted by the individuals directly concerned, their families, their representatives or NGOs, governments and inter-governmental organisations.

The communication is forwarded to the government concerned with an invitation to communicate its comments and observations on the allegations made to the Working Group within 90 days. These comments may relate to the facts of the case, the applicable legislation and the progress and outcome of any investigations that have commenced.

The government's reply is then sent to the complainant for any final comments or observations. In the light of the information collected under this procedure, the Working Group adopts one of the following measures, in private session:

- If the person has been released following referral to the Working Group the case may be filed. The Group may provide an opinion, on whether or not the deprivation of liberty was arbitrary even in cases where the person has been released;
- If the Group considers that the case is not one of arbitrary deprivation of liberty, it shall give an opinion to that effect;
- If the Group considers that further information is required, it may keep the case pending until that information is received;
- If the Group considers that it is unable to obtain sufficient information on the case, it may file the case provisionally or definitively;
- If the Group decides that the arbitrary nature of the deprivation of liberty is established, it shall give an opinion to that effect and make recommendations to the government.

The opinion is sent to the government, together with the recommendations. Three weeks after this notification, the opinion is conveyed to the complainant for information. These opinions are published annually.

Urgent appeals

The Working Group has developed an urgent action procedure for cases in which there are sufficiently reliable allegations that a person may be detained arbitrarily and that the alleged violations disclose life-threatening situations or a risk of imminent or on-going damage of a very grave nature to victims if they remain detained.

In such cases, an urgent appeal is sent to the government concerned, requesting that the government take appropriate measures to ensure respect for the detained person's right not to be deprived arbitrarily of his or her liberty, to fair proceedings before an independent and impartial tribunal, as well as the right to life and to physical and mental integrity. In addressing such communications, the Working Group emphasises that urgent appeals do not prejudice the Working Group's final assessment of whether the deprivation of liberty is arbitrary.

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Deliberations

The Working Group may formulate deliberations on matters involving a point of principle in order to develop a consistent set of precedents and assist States in preventing arbitrary deprivations of liberty. The Working Group has already adopted deliberations on house arrest and the deprivation of liberty for the purposes of rehabilitation through labour.

Country visits

Country visits (also called field missions) take place following an invitation from the government concerned. They are an opportunity for the Working Group to enter into a dialogue with governments, the judiciary, the legislature and representatives of civil society about how to best prevent arbitrary deprivations of liberty. The Working Group submits a report of its visit to the Human Rights Council, presenting its findings, conclusions and recommendations.

So far, the Working Group has not undertaken any field missions to Nigeria.

Annual reports

Each year the Working Group reports to the Human Rights Council on its activities. In the report, the Working Group will make observations on the different institutions, legislation, policies and judicial practices which, in its opinion, are the causes behind arbitrary deprivation of liberty. The report includes opinions adopted on individual cases and reports on field visits.

Model questionnaire

The Working Group has prepared a model questionnaire for those submitting information, available online at:

http://www.ohchr.org/Documents/Issues/Detention/WGADQuestionnaire_en.pdf.

I. Identity

1. Family name _____
2. First name: _____
3. Sex: (Male)/(Female)
4. Birth date or age (at the time of detention): _____
5. Nationality/Nationalities: _____
6.
 - (a) Identity document (if any): _____
 - (b) Issued by: _____
 - (c) On (date): _____
 - (d) No.: _____
7. Profession and/or activity (if believed to be relevant to the arrest/detention): _____
8. Address of usual residence: _____

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II. Arrest

1. Date of arrest: _____
2. Place of arrest (as detailed as possible):

3. Forces who carried out the arrest or are believed to have carried it out:

4. Did they show a warrant or other decision by a public authority?
(Yes) _____ (No) _____
5. Authority who issued the warrant or decision:

6. Relevant legislation applied (if known):

III. Detention

1. Date of detention: _____
2. Duration of detention (if not known, probable duration):

3. Forces holding the detainee under custody:

4. Places of detention (indicate any transfer and present place of detention):

5. Authorities that ordered the detention:

6. Reasons for the detention imputed by the authorities:

7. Relevant legislation applied (if known):

IV. Describe the circumstances of the arrest and/or the detention and indicate precise reasons why you consider the arrest or detention to be arbitrary:

V. Indicate internal steps, including domestic remedies, taken especially with the legal and administrative authorities, particularly for the purpose of establishing the detention and, as appropriate, their results or the reasons why such steps or remedies were ineffective or why they were not taken:

VI. Full name and address of the person(s) submitting the information (telephone and fax number, if possible):

Date: _____ Signature: _____

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Guidelines by the Special Rapporteur

- A separate questionnaire must be completed for each case of alleged arbitrary arrest or detention.
- As far as possible, all details requested should be given. However, failure to provide information will not necessarily result in the communication being deemed inadmissible.
- For the purposes of this questionnaire, “arrest” refers to the initial act of apprehending a person. “Detention” means and includes detention before, during and after trial. In some cases, only section II, or section III may be applicable. Nonetheless, whenever possible, both sections should be filled in.
- If a case is submitted to the Working Group by anyone other than the victim or his family, the person or organisation should indicate authorisation by the victim or his family to act on their behalf. If, however, the authorisation is not readily available, the Working Group can proceed without it.
- All details concerning the person(s) submitting the information to the Working Group, and any authorisation provided by the victim or his family, will be kept confidential.
- The Working Group does not require domestic remedies to be exhausted in order for a communication to be admissible.

Contact Information

For an individual case or cases, the communication should be sent, if possible accompanied by the model questionnaire prepared for this purpose, to:

Working Group on Arbitrary Detention

c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8-14 Avenue de la Paix
1211 Geneva 10 - Switzerland
Fax: +41 22 9179006
E-mail: wgad@ohchr.org

Communications requesting the Working Group to launch an **urgent appeal** on humanitarian grounds should be sent to the above address, preferably by **e-mail or fax**.

Further information on the Working Group is available at
<http://www.ohchr.org/EN/Issues/Detention/Pages/WGADIndex.aspx>

Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 37(a) of the CRC states:

“No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.”

For further information on the definition of torture and cruel, inhumane or degrading treatment or punishment see the section on the Convention against Torture and the Committee against Torture above at chapter 5

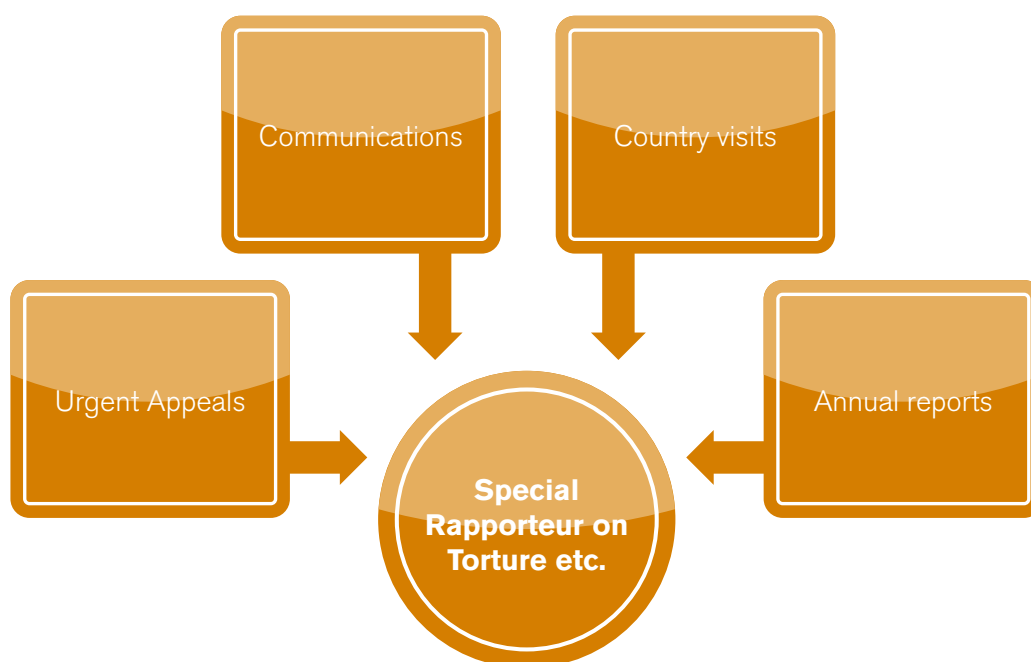
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Procedures followed by the Special Rapporteur

The Special Rapporteur undertakes the following main activities:

- Transmitting **urgent appeals** to States with regard to individuals reported to be at risk of torture;
- Transmitting **communications** (also referred to as “allegation letters”) to States on historic alleged cases of torture;
- Undertaking **fact-finding** country visits;
- Submitting **annual reports** on its activities, mandate and methods of work to the Human Rights Council and the General Assembly.



Urgent appeals

The Special Rapporteur will act upon credible information suggesting that an individual or a group of individuals is at risk of torture at the hands, consent, or acquiescence of public officials. Without drawing any conclusions about the facts of the case, the Special Rapporteur will send a letter to the Minister of Foreign Affairs of the country concerned, urging the government to ensure the physical and mental integrity of the person(s).

The Special Rapporteur also takes action when persons are feared to be at risk of:

- Corporal punishment;
- Means of restraint contrary to international standards;
- Prolonged incommunicado detention;
- Solitary confinement;
- “Torturous” conditions of detention;
- The denial of medical treatment and adequate nutrition;

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- Imminent deportation to a country where there is a risk of torture; and
- The threatened use or excessive use of force by law enforcement officials.

Urgent appeals may also be used in relation to the enactment of legislation that will allegedly undermine the prohibition of torture.

Communications (Allegation letters)

Allegations of torture received by the Special Rapporteur that do not require immediate action are sent to governments in the form of “allegation letters”. The Special Rapporteur asks the government to clarify the substance of the allegations and to forward information on the status of any investigation that is being undertaken.

Allegation letters may be sent where there appear to be systematic patterns of torture, such as the use of particular methods of torture, conditions of detention amounting to ill treatment or the perpetration of torture by a specific group.

Legislation that impacts on the occurrence of torture may also be the subject of an allegation letter. Such legislation may include:

- Criminal sentencing provisions (for example, laws permitting corporal punishment);
- Criminal procedure legislation (for example, laws allowing incommunicado detention or interrogation); and
- Legal provisions granting amnesty or impunity for those perpetrating torture, in violation of the prohibition of torture.

Country visits

If invited to do so by a State, the Special Rapporteur may undertake a country visit in order to obtain a first hand account of the situation.

Before a visit takes place, the government is asked to provide the following guarantees to the Special Rapporteur:

- Freedom of movement throughout the country;
- Freedom of inquiry, especially in terms of access to prisons, detention centres and places of interrogation;
- Free contact with central and local authorities of all branches of government;
- Free contact with representatives of NGOs, other private institutions and the media;
- Confidential and unsupervised meetings with witnesses and other private individuals, including persons deprived of their liberty;
- Full access to all documentary material relevant to the mandate; and
- Assurances that no persons, be they officials or private individuals, who have been in contact with the Special Rapporteur will suffer threats, harassment or punishment or be subjected to judicial proceedings.

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During the visit the Special Rapporteur meets with government authorities, NGOs, representatives of the legal profession, and alleged victims and relatives of victims. The conclusions and recommendations contained in the Special Rapporteur's mission report are intended to help governments identify the factors that may contribute to torture, and provide practical solutions to implement international standards.

Annual reports

The Special Rapporteur reports annually to the Human Rights Council on the activities which he has undertaken since the Council's previous session. The Special Rapporteur may make observations on specific situations, as well as giving conclusions and recommendations, where appropriate.

Model questionnaire

The Special Rapporteur has prepared a model questionnaire for those submitting information, available online at: <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/model.aspx>

Model questionnaire to be completed by persons alleging torture or their representatives:

I. Identity of the person(s) subjected to torture

- a. Family Name
- b. First and other names
- c. Sex: Male/Female
- d. Date of birth or age
- e. Nationality
- f. Occupation
- g. Identity card number (if applicable)
- h. Activities (trade union, political, religious, humanitarian/ solidarity, press, etc.)
- i. Residential and/or work address

II. Circumstances surrounding torture

- a. Date and place of arrest and subsequent torture
- b. Identity of force(s) carrying out the initial detention and/or torture (police, intelligence services, armed forces, paramilitary, prison officials, other)
- c. Was any person, such as a lawyer, relatives or friends, permitted to see the victim during detention? If so, how long after the arrest?
- d. Describe the methods of torture used
- e. What injuries were sustained as a result of the torture?
- f. What was believed to be the purpose of the torture?
- g. Was the victim examined by a doctor at any point during or after his/her ordeal? If so, when? Was the examination performed by a prison or government doctor?
- h. Was appropriate treatment received for injuries sustained as a result of the torture?
- i. Was the medical examination performed in a manner which would enable the doctor to detect evidence of injuries sustained as a result of the torture? Were any medical reports or certificates issued? If so, what did the reports reveal?
- j. If the victim died in custody, was an autopsy or forensic examination performed and which were the results?

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III. Remedial action

Were any domestic remedies pursued by the victim or his/her family or representatives (complaints with the forces responsible, the judiciary, political organs, etc.)? If so, what was the result?

IV. Information concerning the author of the present report:

- a. Family Name
 - b. First Name
 - c. Relationship to victim
 - d. Organisation represented, if any
 - e. Present full address
-

Guidelines by the Special Rapporteur

- Although it is important to provide as much detail as possible, lack of comprehensive information should not necessarily preclude the submission of reports.
- The Special Rapporteur can only deal with clearly identified individual cases containing the following minimum elements of information:
 - Full name of the victim;
 - Date on which the incident(s) of torture occurred (at least the month and year);
 - Place where the person was seized and location at which the torture was carried out (if known);
 - Indication of the perpetrators carrying out the torture;
 - Description of the form of torture used and any injury suffered as a result;
 - Identity of the person or organisation submitting the report (name and address, which will be kept confidential).
- Copies of any relevant corroborating documents, such as medical or police records should be supplied where it is believed that such information may contribute to a fuller account of the incident. Only copies and not originals of such documents should be sent.
- The Special Rapporteur does not require the exhaustion of domestic remedies to act.

Contact Information

Information on the torture of a person should be transmitted to the Special Rapporteur in written form and sent to:

Special Rapporteur on Torture

c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8-14 Avenue de la Paix
1211 Geneva 10 - Switzerland
E-mail: urgent-action@ohchr.org

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E. Special procedures

Report on Nigeria from 2007

In 2007, the Special Rapporteur visited Nigeria to inquire into the issue of torture. In his report the Special Rapporteur reached the following conclusions (A/HRC/7/3/Add.4). The report is available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/149/66/PDF/G0714966.pdf?OpenElement>

“On the basis of an analysis of the legal system, visits to detention facilities, interviews with detainees, the support of forensic medical evidence, and interviews with government officials, lawyers and representatives of NGOs, the Special Rapporteur concluded that torture and ill-treatment is widespread in police custody, and particularly systemic in the Criminal Investigation Departments. In a vivid first-hand account, the circumstances surrounding the deaths of the two persons personally interviewed by the Special Rapporteur - examples of serious torture, disappearance and extrajudicial killing - illustrate and confirm the inability of the current system to effectively investigate allegations, protect victims of serious human rights violations, and bring law enforcement officials in Nigeria to account.

The conditions of detention in police cells visited were appalling. All the prisons visited were characterised by severe overcrowding, consisting of an inmate population which is typically double or triple the actual capacity of the facility. The vast majority of detainees are held in detention awaiting trial or held without charge for lengthy periods, as long as 10 years. However, female prisoners are provided with considerably better facilities.

The Special Rapporteur notes that corporal punishment, such as caning, and including Shari'ah penal code punishments of the northern states (i.e. amputation, flogging and stoning to death), remain lawful in Nigeria. He recalls that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Under international law, they are not lawful sanctions and violate the international human rights treaties to which Nigeria is a party.

Noting that capital punishment is still available under the laws of Nigeria, the Special Rapporteur is encouraged by the policy of President not to carry out executions. However, he expresses concern that persons continue to be sentenced to death, contributing to the growing numbers of persons languishing on death row for many years in conditions that are inhuman.

The Special Rapporteur welcomed the adoption of a number of State laws prohibiting discrimination against women in critical areas, such as female genital mutilation and child marriage. Despite such legislation, however, he remains concerned at the persistence of these practices and the social acceptance of them and the lack of effective mechanisms to enforce the existing prohibitions.

These findings are not new as many credible human rights organisations, as well as United Nations human rights mechanisms, have documented and concluded that torture is widespread in the country and that the conditions in detention are unacceptable. Nigerians themselves have exhaustively identified the nature and scale of these problems. Indeed, in August 2005 and again in a meeting with the Special Rapporteur on 21 May 2007, President clearly acknowledged the severity of the problem of torture in the country.

Accordingly, the Special Rapporteur recommends a number of measures to be adopted by the Government in order to comply with its commitment to prevent and suppress acts of torture and other forms of ill-treatment.”

Part III: International Protection of Child Rights

E. Special procedures

Further information on the Special Rapporteur against Torture and other cruel, inhumane or degrading treatment or punishment is available at: <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx>

Special Rapporteur on Violence against Women, Its Causes and Consequences

Article 19 of the CRC states:

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

For further information on issues surrounding violence against women see the section on the Convention on the Elimination of all forms of Discrimination against Women above at chapter 6.4.

Gender based violence

The Special Rapporteur can only process cases of alleged violence or threats of violence directed against women because of their sex.

Procedures followed by the Special Rapporteur

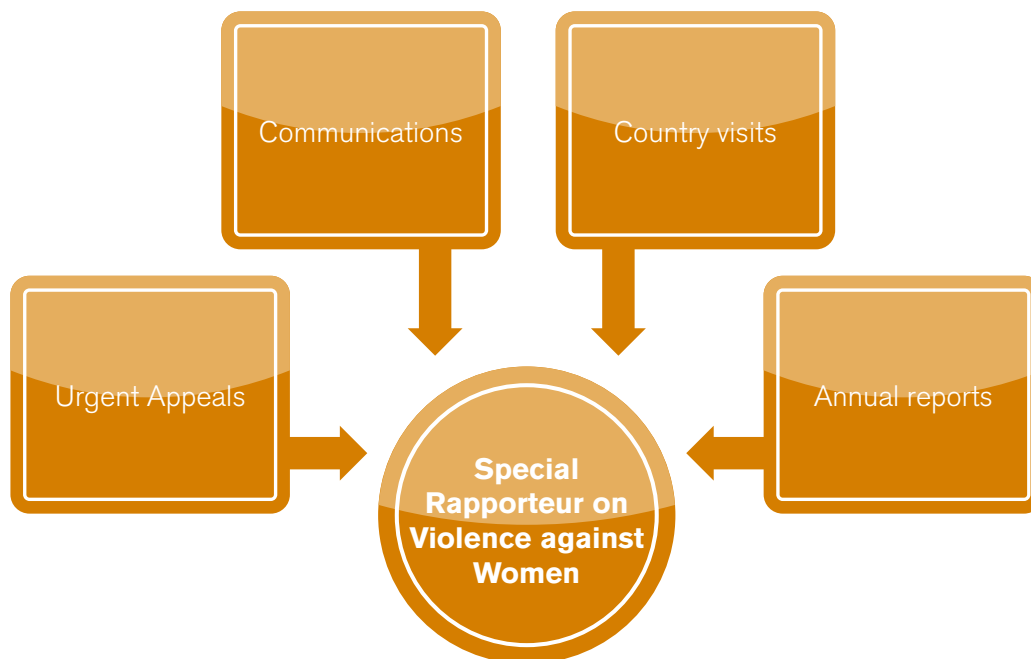
The Special Rapporteur is mandated to seek and receive information on violence against women, its causes and consequences, from governments, treaty bodies, specialised agencies, other special rapporteurs and intergovernmental and non-governmental organisations, including women’s organisations, and to respond effectively to such information.

The Special Rapporteur carries out the following main activities:

- Transmits **urgent appeals** and **communications** (also referred to as “allegation letters”) to States regarding alleged cases of violence against women. Allegations may concern one or more individual or may convey information relating to a prevailing situation condoning and/or perpetrating violence against women;
- Undertakes fact-finding **country visits**;
- Submits **annual reports**.

Part III: International Protection of Child Rights

E. Special procedures



Urgent appeals

Urgent appeals may be sent by the Special Rapporteur to the governments concerned when reliable and credible information is received about cases that involve an imminent threat, or fear of threat, to the right to personal integrity or the life of a woman. When transmitting urgent actions, the Special Rapporteur appeals to the governments concerned to ensure effective protection of those at risk of violence.

Communications (Allegation letters)

For those communications that do not require urgent action but relate to violations that have already occurred and/or to general patterns of violations the Special Rapporteur may send allegation letters requiring governments to clarify and respond to the allegations.

Country visits

The Special Rapporteur is mandated to carry out country visits, either separately or jointly with other special rapporteurs, independent experts and working groups.

Annual reports

A summary of communications and the replies received from States are included in the Special Rapporteur's annual communications report to the Human Rights Council. As a general rule, both urgent appeals and letters of allegation remain confidential until published.

Part III: International Protection of Child Rights

E. Special procedures

Model questionnaire

The Special Rapporteur has prepared a model questionnaire to help those submitting information, available online at:

<http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/IndividualForm.aspx>

The individual complaint form can be used to document cases of violence against women:

1. Petitioner:

(This information, if taken up by the Special Rapporteur, will remain confidential.)

- a. Name of person/organisation:
- b. Relationship to victim(s):
- c. Address:
- d. Fax/tel./e-mail, web-site:
- e. Other:

2. Alleged Incident:

(i) Information about the victim(s):

- a. Name:
- b. Sex:
- c. Date of birth:
- d. Nationality:
- e. Occupation:
- f. Ethnic/religious/social background, if relevant:
- g. Address
- h. Other relevant information (such as passport, identity card number):
- i. Has the victim(s) given you her consent to send this communication on her behalf?
- j. Has the victim(s) been informed that, if the Special Rapporteur decides to take action on her behalf, a letter concerning what happened to her will be sent to the authorities?
- k. Is the victim(s) aware that, if this communication is taken up, a summary of what happened to her will appear in a public report of the Special Rapporteur?
- l. Would the victim(s) prefer that her full name or merely her initials appear in the public report of the Special Rapporteur?

Please note that the full names of victims appear in communications with governments unless it is indicated that exposing the victims' names to the government would place the victims at risk of further harm. In the public report, the names of victims under the age of 18 and victims of sexual violence will not be disclosed, but initials will be used.

(ii) Information regarding the incident:

- a. Detailed description of human rights violation:
- b. Date:
- c. Time:
- d. Location/country:

Part III: International Protection of Child Rights

E. Special procedures

- e. Number of assailants:
- f. Are the assailants(s) known or related to the victim? If so, how?
- g. Name or nickname of assailant(s) (if unknown, description, scars or body marks such as tattoos, clothes/uniform worn, title/status, vehicle used):
- h. Does the victim believe she was specifically targeted because of her sex? If yes, why:
- i. Has the incident been reported to the relevant State authorities? If so, which authorities? When?
- j. Have the authorities taken any action after the incident? If so, which authorities? What action?
- k. If the violation was committed by private individuals or groups (rather than government officials), include any information which might indicate that the Government failed to exercise due diligence to prevent, investigate, punish, and ensure compensation for the violations.
- l. Has the victim seen a doctor after the incident took place? Are there any medical certificates/notes relating to the incident concerned?

(iii) Laws or policies which are or are likely to cause or contribute violence against women

If your submission concerns a law or policy, please summarise it and the effects of its implementation on women's human rights. Provide concrete examples, when available.

Please inform the Special Rapporteur of any further information which becomes available after you have submitted this form, including if your concern has been adequately addressed, or a final outcome has been determined in an investigation or trial, or an action which was planned or threatened has been carried out.

Guidelines by the Special Rapporteur

- It is important to provide as much information as possible.
- It is helpful to receive a summary of the main points of the case.
- If the government has ratified human rights treaties, refer to the specific provisions of the treaties you believe have been violated.
- If your submission is in regard to a law, practice or policy which affects women in general or women in a specific group, explain how other women are affected or describe the group. A consistent pattern in individual cases can be used to demonstrate a general failure to prevent and respond to abuses.
- If you submit information about violations committed by private individuals or groups (rather than government officials), include any information which might indicate that the government failed to exercise due diligence to prevent, investigate, punish, and ensure compensation for the violations. For example information on:
 - Whether or not there is a law which addresses the violation;
 - Any defects in existing laws, such as inadequate remedies;
 - Definitions of rights;
 - The refusal or failure by authorities to register or investigate your case and other similar cases;
 - The failure by the authorities to prosecute your case and other similar cases.

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E. Special procedures

- Patterns of gender discrimination in the prosecution or sentencing of cases;
- Statistics and other data concerning the prevalence of the type of violation described in the submission;
- Please bring to the attention of the Special Rapporteur any information which becomes available after you have submitted information about a case. For example, if your human rights concern has been adequately addressed or a final outcome has been determined in an investigation or trial.

Contact Information

Communications should be sent to:

The Special Rapporteur on Violence against Women
Office of the High Commissioner for Human Rights
OHCHR-UNOG
1211 Geneva 10 - Switzerland
Fax: 00 41 22 917 9006
E-mail: urgent-action@ohchr.org

Further information on the Special Rapporteur on Violence Against Women, Its Causes and Consequences is available at:

<http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>

Special Rapporteur on Trafficking in Persons, especially Women and Children

Article 35 of the CRC states:

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

The Special Rapporteur responds to reliable information on possible human rights violations with a view to protecting the human rights of actual or potential victims of trafficking.

In carrying out its mandate, the Special Rapporteur refers to the following guidelines:

- **Recommended Principles and Guidelines on Human Rights and Human Trafficking** developed by the Office of the High Commissioner for Human Rights (available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/401/68/PDF/N0240168.pdf?OpenElement>);
- **Protocol to Prevent, Suppress and Punish Trafficking of Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organised Crime** (available at http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf).

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E. Special procedures

Definition of trafficking

The Special Rapporteur uses the definition of trafficking contained in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.

According to Article 3(a) of the Protocol ‘trafficking in persons’ means:

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat of use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Article 3(c) of the Protocol States:

The recruitment, transportation, transfer harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article.

Article 3(d) defines a child as any person under eighteen years of age.

Procedures followed by the Special Rapporteur

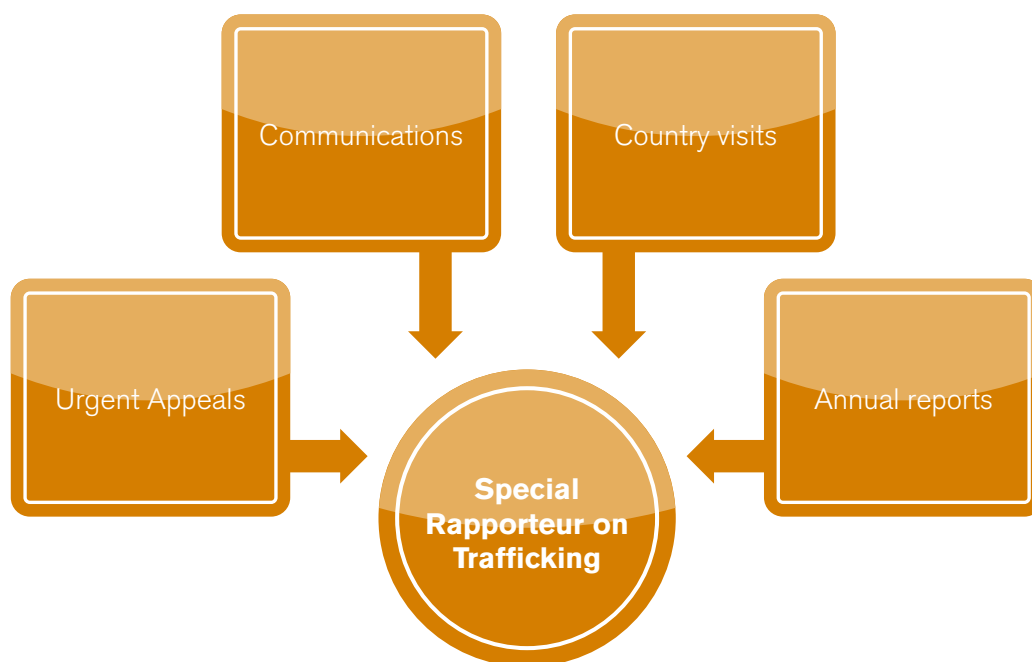
The Special Rapporteur takes action to deal with violations committed against trafficked persons and to address situations where there has been a failure to protect trafficked persons’ human rights, including ensuring adequate redress for the violations suffered and the provision of adequate medical, psychological, social and other necessary assistance. The Special Rapporteur takes action in cases where laws and/or policies might negatively impact of the human rights of trafficked persons..

The Special Rapporteur carries out the following main activities:

- Transmits **urgent appeals** and **communications** where violations have been allegedly committed against trafficked persons and in situations where there has been a failure to protect their human rights;
- Undertakes **country visits** in order to study the situation and formulate recommendations to prevent and combat trafficking and protect the human rights of its victims;
- Submits **annual reports** on its activities.

Part III: International Protection of Child Rights

E. Special procedures



Urgent appeals

The Special Rapporteur will send urgent appeals whenever s/he receives information indicating that, in the context of trafficking, an individual or group are suffering from or facing an imminent human rights violation. Through urgent appeals, the Special Rapporteur urgently warns the government in question about a specific situation and requests it to inform her about measures taken to guarantee that the human rights of the persons concerned are fully respected.

Communications (Allegation letters)

It is the Special Rapporteur's duty to communicate information regarding allegations of historic violations of human rights in the context of trafficking to the government concerned for clarification. Civil society actors and individuals are encouraged to submit any reliable information they possess relating to situations of trafficking and human rights violations to the Special Rapporteur.

Country visits

The Special Rapporteur undertakes country visits in order to observe the situation on the ground and formulate recommendations to prevent and/or combat trafficking and protect the human rights of its victims.

Annual reports

The Special Rapporteur submits annual reports on its activities to the Human Rights Council. These reports include recommendations on the measures required to uphold and protect the human rights of victims of trafficking.

Part III: International Protection of Child Rights

E. Special procedures

Model questionnaire

The Special Rapporteur has prepared a model questionnaire to help those submitting information, available online at:

<http://www.ohchr.org/EN/Issues/Trafficking/Pages/Questionnaire.aspx>

1. General Information

- a. Does the incident/violation involve an individual or a group?
- b. If it involves a group please state the number of people involved and the characteristics of the group: number of women, number of men; number of minors:
- c. Country(ies) in which the incident took place:
- d. Nationality(ies) of the victim(s):

2. Identity of the person(s) concerned

Note: if more than one person is concerned, please attach relevant information on each person separately.

- a. Family name:
- b. First name:
- c. Sex:
- d. Birth date or age:
- e. Nationality(ies):

3. Information regarding the alleged violation

- a. Date:
- b. Place (location, country/countries):
- c. Time:
- d. The nature of the incident (please describe the circumstances with reference to the information listed under General Information)
- e. Number of perpetrator(s):
- f. Are the perpetrator (s) known to the victim?
- g. Nationality of perpetrator (s)
- h. Agents believed to be responsible for the alleged violation:
- i. State agents (specify):
- j. Non-State agents (specify):
- k. If it is unclear whether they were state or non-state agents, please explain why.
- l. If the perpetrators are believed to be State-agents, please specify (military, police, agents of security services, unit to which they belong, rank and functions, etc.), and indicate why they are believed to be responsible; be as precise as possible.
- m. If there are witnesses to the incident, indicate their names, age, relationship and contact address. If they wish to remain anonymous, indicate if they are relatives, by-passers, etc.; if there is evidence, please specify.

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E. Special procedures

4. Steps taken by the victim his/her family or anyone else on his/her behalf?

- a. Indicate if complaints have been filed, when, by whom, and before which State authorities or competent bodies (i.e. police, prosecutor, court):
- b. Other steps taken:
- c. Steps taken by the authorities:
- d. Indicate whether or not, to your knowledge, there have been investigations by the State authorities; if so, what kind of investigations? Progress and status of these investigations; which other measures have been taken?
- e. In case of complaints by the victim or its family, how have those authorities of other competent bodies dealt with them? What has been the outcome of those proceedings?

5. Identity of the person or institution submitting this form

- a. Family name
- b. First name
- c. Status (individual, group, non-governmental organisation, inter-governmental agency):
- d. Contact number or address (please indicate country and area code):
- e. Fax:
- f. Telephone:
- g. Email:
- h. Please state whether you want your identity to be kept confidential.

Date you are submitting this form and signature of author:

Guidelines by the Special Rapporteur

- The objective of this questionnaire is to have access to precise information on alleged violations in the context of trafficking. The Special Rapporteur may raise her concerns about the incidents reported and request governments to make observations and comments on the matter.
- If any information contained in the questionnaire should be kept confidential please mark "CONFIDENTIAL" beside the relevant entry.
- The form should clearly indicate whether the victims or persons involved have agreed to their cases being submitted by the Special Rapporteur to the government for the purpose outlined above.
- Do not hesitate to attach additional sheets, if the space provided is not sufficient.
- If you have any questions concerning the completion of this form, please do not hesitate to contact the Special Rapporteur.

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E. Special procedures

Contact Information

Send the questionnaire to:

Special Rapporteur on Trafficking in Persons
c/o Office Of the High Commissioner for Human Rights
United Nations at Geneva
8-14 Avenue de la Paix
1211 Geneva 10 - Switzerland
Fax: (+41 22) 917 90 06
E-mail: urgent-action@ohchr.org (please include in the subject box: Special Rapporteur on trafficking in persons)

Further information on the Special Rapporteur on Trafficking in Persons, Especially in Women and Children is available at:

<http://www.ohchr.org/EN/Issues/Trafficking/Pages/TraffickingIndex.aspx>

Special Rapporteur on Contemporary Forms of Slavery

Article 4 of the UDHR states:

“No one shall be held in slavery or servitude: slavery and the slave trade shall be prohibited in all their forms.”

The task of the Special Rapporteur is to focus principally on aspects of contemporary forms of slavery, which are not covered by existing mandates of the Human Rights Council, and to promote the effective application of relevant international norms and standards on slavery.

Definition of Contemporary forms of Slavery

The mandate on contemporary forms of slavery includes but is not limited to issues such as:

- All forms of forced labour which includes forced labour in sweatshops, in the construction industry and in agriculture;
- Hereditary and caste based forms of slavery;
- Bonded labour or debt bondage;
- **Children** working in slavery or slavery like conditions such in mines or forced child begging;
- All forms of domestic servitude that affects adults and children;
- Sexual slavery;
- **Forced or child marriage;**
- Sale of wives.

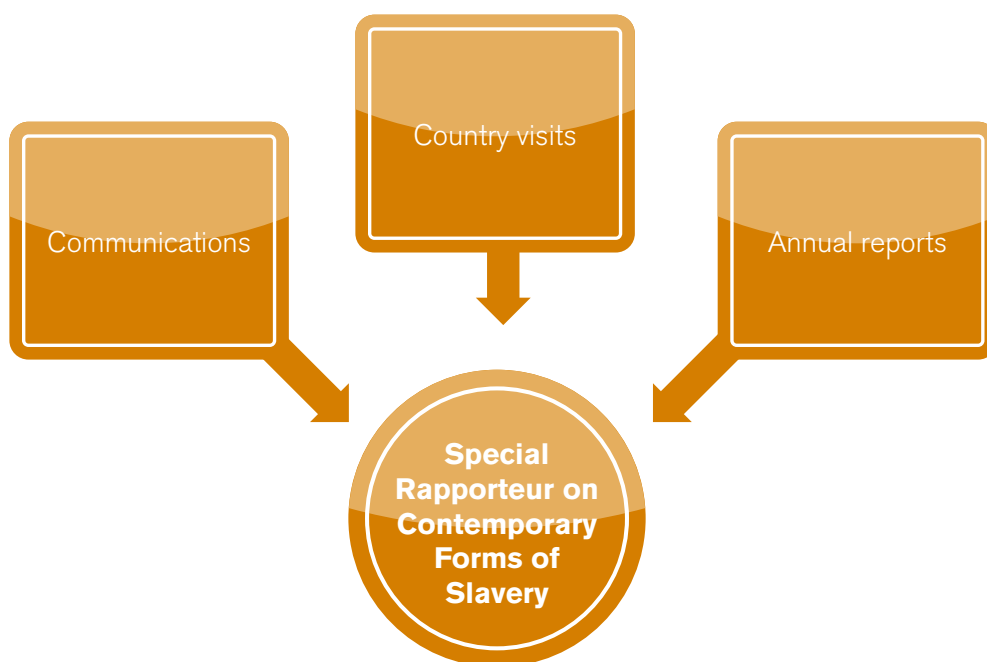
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E. Special procedures

Procedures followed by the Special Rapporteur

The Special Rapporteur carries out the following main activities:

- Acts upon reliable information submitted on human rights violations, whether they have occurred or are deemed imminent (**communications**);
- Carries out **country visits** to obtain first hand information on the situation;
- Submits **annual reports** on its activities.



Communications

The Special Rapporteur seeks to receive information on relevant violations of human rights from individuals, groups, civil society organisations, NGOs, specialised agencies, governments, UN bodies, and intergovernmental organisations.

If the Special Rapporteur decides to act on information received, s/he sends a letter containing the information to the government concerned to request their comments and observations on the matter. The identity of the source of the information will remain confidential until it is published in the annual report (see below).

Country visits

The Special Rapporteur carries out country visits in order to obtain first hand information on the situation from officials, members of the civil society, and UN agencies. A report of these visits, highlighting findings, conclusions and recommendations, is submitted to the Human Rights Council.

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E. Special procedures

Annual reports

Each year the Special Rapporteur is requested by the Human Rights Council to present an annual report describing the activities undertaken. The annual reports discuss general issues concerning working methods, theoretical analysis, trends and developments and may contain general recommendations. Reports may also contain summaries of all communications transmitted to governments and the replies received. In the public report, the names of victims under the age of 18 and victims of sexual violence will not be disclosed.

Model questionnaire

The Special Rapporteur has prepared a model questionnaire to help those submitting information, available online at: <http://www.ohchr.org/EN/Issues/Slavery/SRSlavery/Pages/SubmittingInformation.aspx>.

1. Identity of the person or institution submitting this form *(This information will remain confidential.)*

- Name of person/organisation
- Family Name:
- First Name:
- Name and type of organisation (if any)
- Relationship to victim(s)
- Address:
- Contact details (please indicate country and area code)
- Fax:
- Telephone:
- E-mail:
- Website:

2. Alleged incident

I. General information

- Does the incident involve an individual or a group?
- If it involves a group please state the number of people involved and the characteristics of the group:

II. Information about the victim(s)

- Name:
- Sex:
- Date of Birth or Age (at the time of the incident):
- Nationality:
- Occupation:
- Ethnic / religious / social background, if relevant:
- Address:
- Other relevant information:
- Has the victim(s) given you his/her consent to send this communication on his or her behalf? Please make sure you obtain the victim's consent, whenever possible
- Has the victim(s) been informed that, if the Special Rapporteur decides to take

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E. Special procedures

action on his or her behalf, a letter concerning what happened to him or her will be sent to the authorities?

- Is the victim(s) aware that, if this communication is taken up, a summary of what happened to him/her will appear in a public report of the Special Rapporteur?
- Would the victim(s) prefer that her full name or merely her initials appear in the public report of the Special Rapporteur?

III. Information regarding the incident:

- Detailed description of human rights violation:
- Date:
- Time:
- Location (town and country or countries):
- Number of perpetrators:
- Are the perpetrator(s) known or related to the victim? If so, how?
- Name or nickname of perpetrator(s) and information about their identity (description, scars or body marks such as tattoos, clothes/uniform worn, title/status, vehicle used):
- Does the victim believe she was specifically targeted because of her race, age, or gender? If yes, why?
- If there are witnesses to the incident, indicate their names, age, relationship and contact address. If they wish to remain anonymous, indicate if they are relatives, by-passers, etc.; if there is evidence, please specify.
- Has the victim(s) seen a doctor after the incident took place? Are there any medical certificates/notes relating to the incident concerned?

IV. Information regarding the alleged perpetrators

- Was the violation committed by private individuals or groups (rather than government officials)? If so, include any information which might indicate that the Government failed to exercise due diligence to prevent, investigate, punish, and ensure compensation for the violations.
- If it is unclear whether they were state or non-state agents, please explain why.
- If the perpetrators are believed to be State-agents, please specify (military, police, agents of security services, unit to which they belong, rank and functions, etc.), and indicate why they are believed to be responsible; be as precise as possible.
- If identification as State agents is not possible, do you believe that Government authorities or persons linked to them, are responsible for the incident, why?

V. Steps taken by the victim, his/her family or anyone else on his/her behalf

- Has the incident been reported to the relevant State authorities? Indicate if complaints have been filed, when, by whom, and before which State authorities or competent bodies (i.e., police, prosecutor, court)
- Have the State authorities taken any action after the incident?
- If so, which State authorities?
- What action did they take?
- When did they take this action (date and time)?

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E. Special procedures

VI. Laws or policies which are or are likely to cause or contribute to this particular human rights violation

If your submission concerns a law or policy, please summarise it and the effects of its implementation on human rights. Provide concrete examples, when available.

In this regard, in order to carry out her work regarding root causes of violations, the Special Rapporteur is interested in receiving information and/or texts of draft laws relating to or affecting human rights, as they relate to the mandate in question.

The Special Rapporteur on contemporary forms of slavery would be interested in receiving information on national or regional laws or policies relating to prevention, prosecution or rehabilitation of victims of violations relevant to her mandate. The Special Rapporteur would also be interested in receiving information about laws or policies which are discriminatory or are discriminatory in their application (e.g. on the grounds of ethnicity, nationality, descent and sex); or laws or policies which relate to the rights of the child, for example in relation to child labour.

Please inform the Special Rapporteur of any further information which becomes available after you have submitted this form, including if your concern has been adequately addressed, or a final outcome has been determined in an investigation or trial, or an action which was planned or threatened has been carried out.

Date:

Signature of author:

Guidelines by the Special Rapporteur

- The communications sent by the Special Rapporteur rely, to an important extent, on the information provided. It is therefore very important that this information is as accurate, updated and specific as possible.
- The purpose of this form is to receive information on violations of human rights falling under the area of competence of the Special Rapporteur from individuals, groups, civil society organisations, NGOs, specialised agencies, governments, United Nations bodies, and intergovernmental organisations.
- The Special Rapporteur may raise concerns about the allegations received and request governments to clarify, make observations and comments on the matter.

Contact Information

Send the completed form to:

The Special Rapporteur on Contemporary Forms of Slavery
Special Procedures Division
Office of the High Commissioner of Human Rights
OHCHR-UNOG
1211 GENEVA 10 – Switzerland
Fax: +41 22 917 90 06, or
E-mail: urgent-action@ohchr.org or srslavery@ohchr.org
(please include in the subject box: Special Rapporteur on contemporary forms of slavery)

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E. Special procedures

Further information on the Special Rapporteur on Contemporary Forms of Slavery is available at: <http://www.ohchr.org/EN/Issues/Slavery/SRSlavery/Pages/SRSlaveryIndex.aspx>

Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography

Article 1 of the Protocol to the CRC on the sale of children, child prostitution and child pornography states:

“States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.”

The Special Rapporteur was appointed to investigate the exploitation of children around the world.

The Special Rapporteur is mandated to:

- Analyse the root causes of the sale of children, child prostitution and child pornography;
- Identify new patterns of sale of children, child prostitution and child pornography;
- Identify, exchange and promote best practices on measures to combat the sale of children, child prostitution and child pornography;
- Continue efforts to promote comprehensive strategies and measures on the prevention of sale of children, child prostitution and child pornography;
- Make recommendations on the promotion and protection of the human rights of children as actual or potential victims of sale, prostitution and pornography, as well as on the rehabilitation of child victims of sexual exploitation.

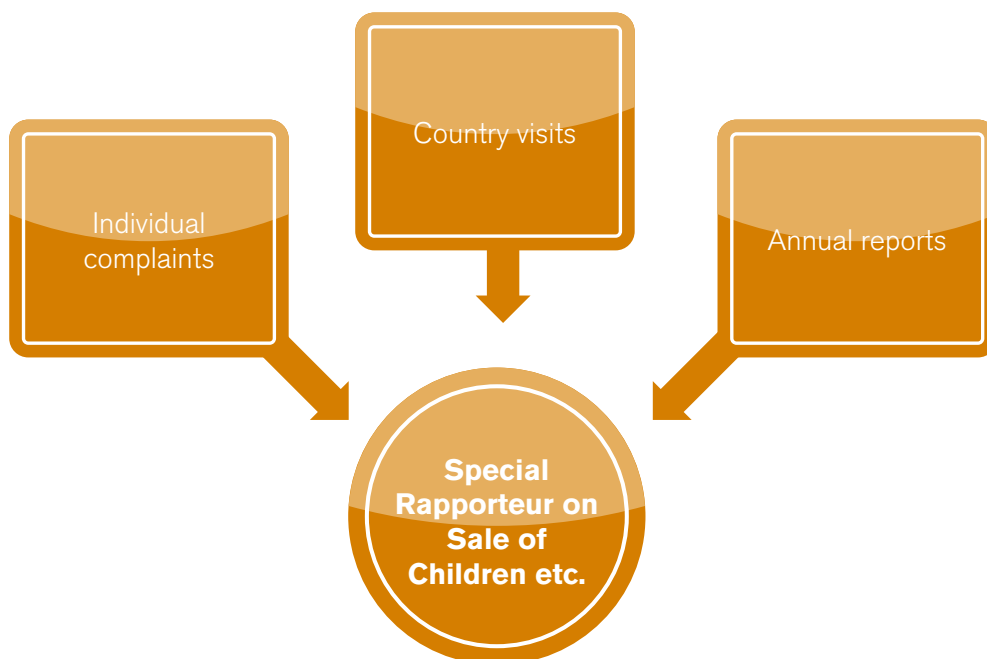
Procedures followed by the Special Rapporteur

The Special Rapporteur carries out the following main activities:

- Acts upon reliable information submitted alleging violations of the rights of the child **(individual complaints)**;
- Carries out **country visits** to obtain first hand information on the situation;
- Submits **annual reports** on its activities.

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E. Special procedures



Individual Complaints

The Special Rapporteur seeks to receive credible and reliable information on relevant human rights violations from individuals, groups, civil society organisations, NGOs, specialised agencies, governments, UN bodies, and intergovernmental organisations. The Special Rapporteur encourages these actors, as well as individuals, to submit any reliable information they possess relating to violations of children's rights. Subsequently, the Special Rapporteur may decide to raise these issues with governments to request their comments and observations.

The identity of the source of the information will remain **confidential**, until it is published in the annual report (see below).

Country visits

During the country visits the Special Rapporteur gathers first-hand information on the main issues related to the sale of children, child prostitution and child pornography, as well as on the child protection system in general.

Annual reports

Each year the Special Rapporteur presents an annual report on the activities undertaken in the discharge of the mandate and working methods. Summaries of the letters sent and the replies of the governments are included in the yearly report; at this stage the information is made public although the names of victims under the age of 18 and victims of sexual violence will not be disclosed, but initials will be used.

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E. Special procedures

Model questionnaire

The Special Rapporteur has prepared a model questionnaire to help those submitting information, available online at: <http://www.ohchr.org/EN/Issues/Children/Pages/IndividualComplaints.aspx>

Form for submitting information to the Special Rapporteur on the sale of children, child prostitution and child pornography:

1. General information

Does the incident involve an individual or a group?

If it involves a group please state the number of people involved and the characteristics of the group: Number of boys/adolescents: Number of girls/adolescents:

Country(ies) in which the incident took place:

Nationality(ies) of the victim(s):

2. Identity of the persons concerned

Note: if more than one person is concerned, please attach relevant information on each person separately.

Family name:

First name:

Sex:

Birth date or age:

Nationality(ies):

Ethnic background (if relevant):

3. Information regarding the alleged violation

Date:

Place (location country/countries):

Time:

The nature of the incident (please describe the circumstances with reference to the categories listed under General Information)

Number of perpetrator(s):

Are the perpetrator (s) known to the victim?

Nationality of perpetrator(s):

Agents believed to be responsible for the alleged violation:

State agents (specify):

Non State agents (specify):

If it is unclear whether they were state or non-state agents, please explain why.

If the perpetrators are believed to be State agents, please specify (military, police, agents of security services, unit to which they belong, rank and functions, etc.), and indicate why they are believed to be responsible; be as precise as possible.

If an identification as State agents is not possible, do you believe that Government authorities or persons linked to them, are responsible for the incident, why?

If there are witnesses to the incident, indicate their names, age, relationship and contact address. If they wish to remain anonymous, indicate if they are relatives, by-passers, etc.; if there is evidence, please specify.

Part III: International Protection of Child Rights

E. Special procedures

4. Steps taken by the victim, his/her family or any one else on his/her behalf?

Indicate if complaints have been filed, when, by whom, and before which State authorities or competent bodies (i.e., police, prosecutor, court)

Other steps taken:

Steps taken by the authorities:

Indicate whether or not, to your knowledge, there have been investigations by the State authorities; if so, what kind of investigations? Progress and status of these investigations; which other measures have been taken?

In case of complaints by the victim or its family, how have those authorities of other competent bodies dealt with them? What has been the outcome of those proceedings?

5. Identity of the person or institution submitting this form

Family name:

First name:

Status: individual, group, nongovernmental organisation, intergovernmental agency, Government.

Please specify:

Contact number or address (please indicate country and area code):

Fax:

Tel:

Email:

Please state whether you want your identity to be kept confidential:

Date you are submitting this form:

Signature of author:

Guidelines by the Special Rapporteur

- The objective of this questionnaire is to have access to precise information on alleged violations of the rights of the child. The Special Rapporteur may raise his concerns about the incidents reported and request governments to make observations and comments on the matter.
- If any information contained in the questionnaire should be kept confidential please mark "CONFIDENTIAL" beside the relevant entry.
- Do not hesitate to attach additional sheets, if the space provided is not sufficient.
- If you have any questions concerning the completion of this form, please do not hesitate to contact the Special Rapporteur.

Contact Information

Send the completed form to:

The Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography
Special Procedures Branch
Office of the High Commissioner for Human Rights,
OHCHR – UNOG
1211 Geneva 10 – Switzerland
Fax: +41 22 917 90 06,
E-mail: urgent-action@ohchr.org

Part III: International Protection of Child Rights

E. Special procedures

Further information on the Special Rapporteur on the Sale of Children Child Prostitution and Child Pornography on is available at:

<http://www.ohchr.org/EN/Issues/Children/Pages/ChildrenIndex.aspx>

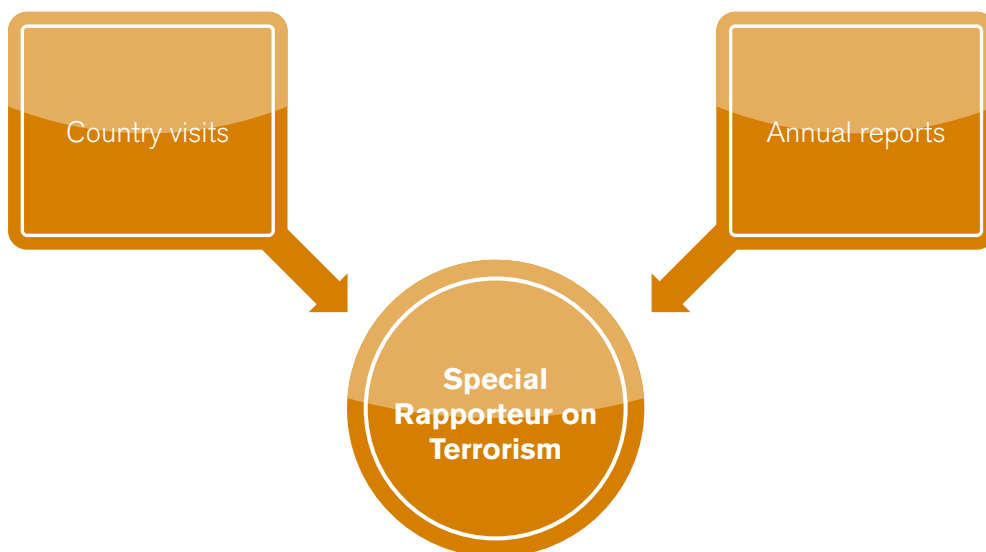
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

The Special Rapporteur's mandate is:

- To make concrete recommendations on the promotion and protection of human rights and fundamental freedoms while countering terrorism, including the provision of advisory services or technical assistance on such matters;
- To gather, request, receive and exchange information and communications from all relevant sources, including governments, the individuals concerned, their families, representatives and organisations, including through country visits, with the consent of the State concerned, on alleged violations of human rights and fundamental freedoms while countering terrorism;
- To integrate a gender perspective;
- To identify, exchange and promote best practice on measures to counter terrorism that respect human rights and fundamental freedoms;
- To work in close coordination with other relevant bodies and mechanisms of the United Nations in order to strengthen the promotion and protection of human rights and fundamental freedoms;
- To discuss potential areas of cooperation with governments and relevant actors;
- To report regularly to the Human Rights Council and the General Assembly.

Procedures followed by the Special Rapporteur

There is no special complaints procedure whereby individuals may complain to the Special Rapporteur. The Special Rapporteur, however, is mandated to carry out country visits and is required to produce annual reports.



Part III: International Protection of Child Rights

E. Special procedures

Further information on the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism is available at: <http://www.ohchr.org/EN/Issues/Terrorism/Pages/SRTerrorismIndex.aspx>

F. Funds and Grants

1. What are funds and grants

There are a number of funds and grants, managed by the OHCHR and other United Nations offices, which directly benefit civil society actors, including NGOs, grass-roots organisations, professional associations and individuals. These can provide financial support for civil society activities in certain human rights areas. Consultative status with the United Nations Economic and Social Council (ECOSOC) is not a requirement for NGOs and other civil society actors to access any of the funds or grants.

2. Which funds and grants are available?

- **The United Nations Voluntary Fund for Victims of Torture.**
This fund offers grants to civil society actors providing medical, psychological, social, economic, legal, humanitarian or other forms of assistance to victims of torture and members of their families. Eligible civil society actors include NGOs, specialised rehabilitation centres, associations of victims, foundations and hospitals, and, less frequently, individual human rights defenders such as lawyers acting on behalf of victims.
- **The Voluntary Fund for Indigenous Populations**
This fund provides travel grants to facilitate the participation of representatives of indigenous communities and organisations in UN meetings relating to indigenous issues.

Part III: International Protection of Child Rights

F. Funds and Grants

- **The United Nations Voluntary Trust Fund on Contemporary Forms of Slavery**
This fund provides small project grants, in particular to civil society organisations such as NGOs, community and youth groups, trades unions or professional associations assisting victims of contemporary forms of slavery.
- **The “Assisting Communities Together” (ACT) Project**
This fund provides small grants to support local human rights training and education initiatives.
- **The United Nations Democracy Fund**
This fund provides grants for projects that build and strengthen democratic institutions, promote human rights and ensure the participation of all groups in democratic processes.
- **The United Nations Voluntary Fund on Disability**
This fund provides small grants to support activities aimed at building the capacity of civil society organisations to take part in the implementation of the CRPD.

Contact Information

OHCHR-administered funds

United Nations Voluntary Fund for Victims of Torture

United Nations Voluntary Fund for Victims of Torture
Office of the United Nations High Commissioner for Human Rights
Palais des Nations
8–14 Avenue de la Paix
CH–1211 Geneva 10 - Switzerland
Phone: +41 (0)22 917 93 15
Fax: +41 (0)22 917 90 17
E-mail: unvft@ohchr.org

Voluntary Fund for Indigenous Populations

Voluntary Fund for Indigenous Populations
Office of the United Nations High Commissioner for Human Rights
Palais des Nations
8–14 Avenue de la Paix
CH–1211 Geneva 10 - Switzerland
Phone: +41 (0)22 928 91 64 or +41 (0)22 928 91 42
Fax: +41 (0)22 928 90 66
E-mail: IndigenousFunds@ohchr.org

United Nations Voluntary Fund on Contemporary Forms of Slavery

United Nations Voluntary Fund on Contemporary Forms of Slavery
Office of the United Nations High Commissioner for Human Rights
Palais des Nations
8–14 Avenue de la Paix
CH–1211 Geneva 10 - Switzerland
Phone: +41 (0)22 928 93 81 or +41 (0)22 928 91 64
Fax: +41 (0)22 928 90 66
E-mail: SlaveryFund@ohchr.org

Part III: International Protection of Child Rights

F. Funds and Grants

United Nations Voluntary Fund on Contemporary Forms of Slavery

United Nations Voluntary Fund on Contemporary Forms of Slavery
Office of the United Nations High Commissioner for Human Rights
Palais des Nations
8–14 Avenue de la Paix
CH–1211 Geneva 10 - Switzerland
Phone: +41 (0)22 928 93 81 or +41 (0)22 928 91 64
Fax: +41 (0)22 928 90 66
E-mail: SlaveryFund@ohchr.org

'Assisting Communities Together' (ACT) Project

ACT Project Office of the United Nations High Commissioner for Human Rights Palais des Nations
8–14 Avenue de la Paix
CH–1211 Geneva 10 - Switzerland
Fax: +41 (0)22 928 90 61
E-mail: ACTProject@ohchr.org

Funds administered by other United Nations offices in which OHCHR has a designated role

United Nations Democracy Fund

United Nations Democracy Fund (UNDEF)
United Nations
One UN Plaza, Room DC1-1330
New York, NY 10017
United States of America
Phone: +1 917 367 42 10 or +1 917 367 80 62
Fax: +1 212 963 14 86
E-mail: democracyfund@un.org

United Nations Voluntary Fund on Disability

Secretariat for the Convention on the Rights of Persons with Disabilities Department for Economic and Social Affairs
United Nations
Two UN Plaza, DC2-1372
New York, NY 10017
United States of America
Fax: +1 212 963 01 11
E-mail: enable@un.org

For further information on how the funds and grants work and how to submit an application, see Working with the United Nations Human Rights Programme, A Handbook for Civil Society, OHCHR, pp. 178-192 available at:
<http://www.ohchr.org/EN/AboutUs/CivilSociety/Pages/Handbook.aspx>.

Part III: International Protection of Child Rights

F. Funds and Grants

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 - Official website of the OHCHR: <http://www.ohchr.org/>
 - Special Procedures website <http://www2.ohchr.org/english/bodies/chr/special/index.htm>
 - Human Rights Council website: <http://www2.ohchr.org/english/bodies/hrcouncil/>
 - Extranet: The Special Procedures section of the Human Rights Council's Extranet; The Special Procedures Extranet (Note: To access the password-protected Human Rights Council Extranet page, fill in the available on-line form. When you have done this you will receive a username and password by e-mail.)
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G. Human Rights in the Administration of Child Justice

Learning objectives

- To familiarise participants with the main international legal rules and standards concerning the rights of the child in the administration of justice and their objectives;
- To specify the procedural safeguards that should be accorded to the child in administration of justice;
- To encourage participants to develop ways of ensuring that they routinely apply these rights and safeguards when dealing with children.

Questions

- What problems have you encountered in your work with children in the administration of justice?
- How did you solve these problems?
- To what extent is the child allowed to participate in decisions concerning him or her in the legal system in Nigeria?
- Are you familiar with any international rules and standards concerning the rights of the child in the administration of justice?
- Have any of these rules and standards been implemented in Nigerian domestic law?
- If not, what would you do to improve the situation?

1. Introduction

This chapter deals with the principal legal standards concerning the rights of the child in the administration of justice. There is a range of instruments dealing with human rights in the administration of justice. Some of these apply to all human beings, while others focus specifically on the rights of the child in the administration of justice.

International instruments on Human Rights in the Administration of Justice

- Standard Minimum Rules for the Treatment of Prisoners
- Basic Principles for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Safeguards guaranteeing protection of the rights of those facing the death penalty
- Code of Conduct for Law Enforcement Officials
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)
- Guidelines for Action on Children in the Criminal Justice System
- United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- Basic Principles on the Independence of the Judiciary
- Basic Principles on the Role of Lawyers
- Guidelines on the Role of Prosecutors
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions
- Declaration on the Protection of All Persons from Enforced Disappearance
- Basic Principles and Guidelines on the Right to a Remedy and Reparation
- International Convention for the Protection of All Persons from Enforced Disappearance

Although general human rights treaties such as the ICCPR and the regional conventions apply to children, the main instrument that this chapter will look at is the CRC. Apart from guaranteeing the rights of the child in general, the CRC has developed important safeguards for children involved in the criminal justice process, either as victims, witnesses or suspected offenders.

Part III: International Protection of Child Rights

G. Human Rights in the Administration of Child Justice

This chapter will also analyse a number of international instruments setting out standards for the administration of child justice, including the United Nations Standards Minimum for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the Guidelines for Action on Children in the Criminal Justice System, Annex to the Economic and Social Council resolutions 1997/30, on Administration of Juvenile Justice.

Although these instruments do not create legally binding obligations, some of the rules contained within them are binding on States, including Nigeria, because they are also contained in the Convention on the Rights of the Child. The CRC Committee frequently refers to these rules when it considers the reports of the States Parties.

2. Protection of Children in Conflict with the Law

Basic principles of administration of child justice

Most of the general principles that apply to children have been discussed in the previous chapter. This section highlights the most important principles, which are particularly significant in the administration of child justice.

The age of criminal responsibility

The CRC does not set an age of criminal responsibility but provides in Article 40(3)(a) that all the States Parties shall seek “the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.”

Rule 4(1) of the UN Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules) provides:

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

The commentary to this provision provides that:

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

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

Part III: International Protection of Child Rights

G. Human Rights in the Administration of Child Justice

The principle of non-discrimination

Article 2 of the CRC imposes an obligation on States Parties to respect and ensure the rights of the child without discrimination of any kind, irrespective of the child's, or his or her parents or legal guardian's, race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

The principle of non-discrimination is contained in many human rights instruments, including Articles 2(1) and 26 of the ICCPR, Article 3 of the African Charter on the Rights and Welfare of the Child, Article 2 of African Charter on Human and Peoples' Rights and Rule 2(1) of the Beijing Rules.

The best interests of the child

The concept of the best interests of the child is the guiding principle of children's rights. The best interests of the child must be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. The principle is expressly provided in Article 4(1) of the African Charter on the Rights and Welfare of the Child.

The child's right to live, survival and development

A number of human rights instruments guarantee to every child an inherent right to life. Such provisions are found in Article 6 of the CRC, Article 5 of the African Charter on the Rights and Welfare of the Child, Article 6 of the ICCPR and Article 4 of the African Charter on Human and Peoples' Rights. In order to comply with this obligation States may have to prohibit the death penalty and must prevent extrajudicial, arbitrary, or summary executions and enforced disappearances of children.

The child's right to be heard

Under Article 12 of the CRC, the child, who is capable of forming his or her own views, has the right to express those views freely in all matters that affect her. The views of the child should be given due weight in accordance with her age and maturity.

Rule 14(2) of the Beijing Rules provides that:

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

The aims of child justice

The aim of child justice is the child's rehabilitation and social reintegration.

Part III: International Protection of Child Rights

G. Human Rights in the Administration of Child Justice

Article 40(1) of the CRC provides:

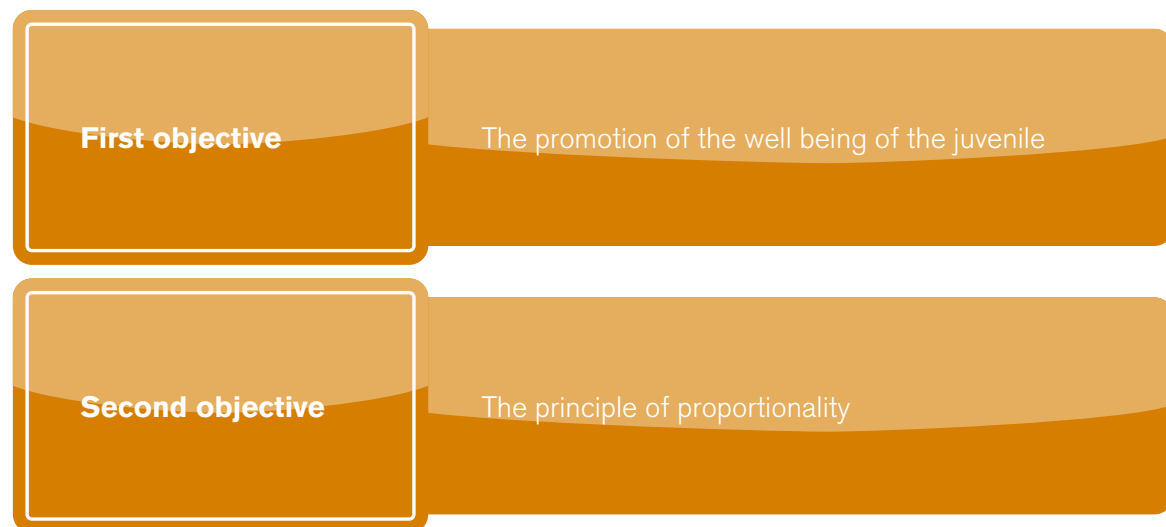
“States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.”

The focus on the rehabilitation of juvenile offenders is reflected in Article 17(3) of the African Charter on the Rights and Welfare of the Child, which states that, “the essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation”. Additionally, the African Charter on Human and Peoples’ Rights stipulates that, “punishment consisting of deprivation of liberty shall have as an essential aim the reform and social re-adaptation of the prisoners.”

Rule 5.1 of the Beijing Rules provides:

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

This rule refers to two of the most important objectives of juvenile justice:



The first objective applies not only to children being dealt with by the family courts, but also those being dealt with by the criminal courts, thus aiming to avoid purely punitive sanctions. The second objective requires that the response to young offenders is not based only on the gravity of the offence but also on the personal circumstances of the child, such as social status, family situation and the harm caused by the offence.

Part III: International Protection of Child Rights

G. Human Rights in the Administration of Child Justice

Duty to create a child justice system

States are obliged to set up a specific legal system for child justice, including special courts to deal with child offenders.

Article 40(3) of the CRC provides that:

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

In particular, States must develop methods of dealing with juvenile offenders without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected (Article 40(3)(a) and (b)).

The accused child and the administration of justice

When in conflict with the law, children enjoy procedural safeguards against being arrested, detained, criminally investigated and tried as adults. The analysis that follows highlights some of the most important rights of due process in the administration of child justice.

The right to freedom from torture and from cruel, inhuman or degrading treatment or punishment

The risk of ill treatment or abuse is at its highest when a child accused of committing a crime is being investigated by the police or is in pre-trial detention.

Article 37(a) of the CRC provides that:

“No child shall be subjected to torture or other cruel, inhumane or degrading treatment or punishment.”

Article 17(2) of the African Charter on the Rights and Welfare of the Child requires States Parties to ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment.

The protection of the child against physical and mental abuse is also recognised in Article 7 of the ICCPR, the CAT and Article 5 of the African Charter on Human and Peoples' Rights. This prohibition includes corporal punishment.

The CRC Committee has suggested that each child taken to a police station should be registered, that detention of a child should be regularly reviewed by a magistrate and that a medical examination and age verification should be mandatory.

Part III: International Protection of Child Rights

G. Human Rights in the Administration of Child Justice

Procedural safeguards

The principle of nullum crimen sine lege

[There exists] no crime [and] no punishment without a pre-existing penal law

Article 40(2)(a) of the CRC provides that:

“No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omission that were not prohibited by national or international law at the time they were committed.”

Article 4(2) of the ICCPR makes this principle non-derogable.

The right to be presumed innocent

Article 40(2)(b)(i) of the CRC enshrines the right of a child to be presumed innocent until proven guilty according to law.

Article 17(2)(c)(ii) of the African Charter on the Rights and Welfare of the Child guarantees the right of the child to be presumed innocent until duly recognized guilty.

The right to be promptly informed of the charges and the rights to legal assistance

Article 40(2)(b)(ii) of the CRC states that:

“A child has a right to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence.”

Article 17(2)(c)(ii-iii) of the African Charter on the Rights and Welfare of the Child provides that:

“Every child accused of infringing penal law shall be informed promptly in a language that he understands and in detail of the charge against him and shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence.”

The right to be tried without delay

Article 40(2)(b)(iii) of the CRC provides that:

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

Article 17(2)(c)(iv) of the African Charter on the Rights and Welfare of the Child states that the accused child shall have the matter determined as speedily as possible by an independent tribunal.

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G. Human Rights in the Administration of Child Justice

The right not to incriminate oneself and the right to examine witnesses

Article 40(2)(b)(iv) of the CRC provides for the right of the child not to be compelled to give testimony or to confess guilt and the right to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality.

The right to review

Article 40(2)(b)(v) of the CRC prescribes that a child who has violated the criminal law has the right to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law.

The right to an appeal by a higher tribunal is also guaranteed by Article 17(2)(c)(iv) of the African Charter on the Rights and Welfare of the Child and Article 14(5) of the ICCPR.

The right to free assistance of an interpreter

Article 40(2)(b)(vi) of the CRC provides that the child has the right to have the free assistance of an interpreter if he or she cannot understand or speak the language used.

The same rule is contained in Article 17(2)(c)(ii) of the African Charter on the Rights and Welfare of the Child and Article 14(3)(f) of the ICCPR.

The right to respect for privacy

Article 40(2)(b)(vii) of the CRC provides the accused child with the right to have his or her privacy fully respected at all stages of proceedings.

Rule 8 of the Beijing Rules provides:

“The juvenile’s right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling. In principle, no information that may lead to the identification of a juvenile offender shall be published.”

Rule 21 of the Beijing Rules regulates the handling of child offenders’ records: “Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons. Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.”

Deprivation of liberty

International human rights standards try to reduce the deprivation of liberty for children to a minimum because children may suffer serious adverse psychological effects if removed from their families for purposes of detention.

The rules are applicable to all forms of deprivation of liberty in whatever type of institution the deprivation of liberty occurs.

Part III: International Protection of Child Rights

G. Human Rights in the Administration of Child Justice

Measure of last resort

Article 37(b) of the CRC provides that:

“no child shall be deprived of his or her liberty unlawfully or arbitrarily and that 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.”

This obligation is also provided in Rules 1 and 2 of the UN Rules. Further, the length of the sanction should be determined by a judicial authority, without precluding the possibility of the juvenile’s early release. Rule 30 of the UN Rules provides that open detention facilities should be established with no or minimal security measures. The population in such detention facilities should be as small as possible in order to enable individualised treatment.

The rights of children deprived of their liberty

Along with the rights enjoyed by all detained persons, children have additional rights. The treatment of children in detention must be adjusted to their specific needs and governed by their best interests.

Special procedure	Which violations?
The right to humane treatment	Article 37(c) of the CRC Article 10(1) of the ICCPR Article 17(1) of the African Charter on the Rights and Welfare of the Child
The right of the child to be separated from adults	Article 37(c) of the CRC Article 10(2)(b) of the ICCPR Article 17(2)(b) of the African Charter on the Rights and Welfare of the Child
The right of the child to remain in contact with his or her family	Article 37(c) of the CRC Rules 59 to 62 of the UN Rules
The child's right to prompt access to legal assistance and to legal challenge of detention	Article 37(d) of the CRC Rule 18(a) of the UN Rules
The right to adequate conditions of detention: for example, safety, health, education, vocational training and work, rehabilitation, recreation, religion.	Rules 1, 2, 3, 12, 31, 49-55, 31-37, 38-46, 47-48 of the UN Rules Article 24(1) CRC

Disciplinary measures

According to Rule 66 of the UN Rules, recourse to disciplinary measures against children deprived of their liberty is legitimate in the interests of safety and an ordered community life. However, disciplinary measures should uphold the inherent dignity of the child and the fundamental objective of institutional care.

Part III: International Protection of Child Rights

G. Human Rights in the Administration of Child Justice

Rule 67 of the UN Rules strictly prohibits the following:

- Measures constituting cruel, inhuman or degrading treatment;
- Corporal punishment;
- Placement in a dark cell, closed or solitary confinement; and
- Any other punishment that may compromise the physical or mental health of the child concerned.

Measures that should also be prohibited include:

- The reduction of diet;
- The restriction or denial of contact with family members;
- Labour;
- More than one sanction for the same disciplinary infraction; and
- Collective sanctions.

Penal sanctions

International human rights law imposes limits on the kind of penal sanctions that can be imposed on a child found guilty of a criminal offence. Article 37(a) of the CRC stipulates that neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons below eighteen years of age. Article 6(5) of the ICCPR prohibits capital punishment for crimes committed by persons below eighteen years of age. Similarly, corporal punishment, such as whipping and flogging, is prohibited under the CRC and ICCPR.

3. Protection of Children as Victims and Witnesses in Judicial Proceedings

Children appearing as victims or witnesses in judicial proceedings face particular challenges because they are at a sensitive age when contact with the justice system might be traumatic. Children as victims and witnesses thus need special protection.

Child victims and witnesses are children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders.

In 2005 the ECOSOC adopted a resolution to address child victims and witnesses entitled, the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (resolution 2005/20). The ECOSOC Guidelines represent good practice. They stipulate that States should ensure that child victims and witnesses are provided with access to justice and fair treatment, restitution, compensation and social assistance. Justice for child victims and witnesses of crime must be assured while safeguarding the rights of accused persons.

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Other standards in the area of protection of victims include:

- UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985 (resolution 40/34)
- Economic and Social Council resolution 1989/57 on the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (resolution 1989/57)
- Plan of Action for the Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (resolution 1998/21)
- Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations on International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147)
- United Nations Convention against Transnational Organised Crime (General Assembly resolution 55/25)
- Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children, supplementing the UN Convention against Transnationally Organised Crime (General Assembly resolution 55/25)
- Convention against Corruption (General Assembly resolution 58/4)
- The Convention on the Rights of the Child (General Assembly resolution 44/25, 1989)
- Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice (Annex to the General Assembly resolution 52/86)
- Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (Annex to ECOSOC resolution 2002/12 of 24 July 2002)

The purpose of the ECOSOC Guidelines

The ECOSOC Guidelines provide a practical framework to achieve the following objectives:

- To assist in the **review** of national and domestic laws, procedures and practices so that they fully respect the rights of child victims and witnesses of crime and contribute to the implementation of the Convention on the Rights of the Child;
- To **assist** governments, international organisations, public agencies, non-governmental and community-based organisations and other interested parties in designing and implementing legislation, policy, programmes and practices that address key issues related to child victims and witnesses of crime;
- To **guide** professionals and, where appropriate, volunteers working with child victims and witnesses of crime in their day-to-day practice;
- To assist and **support** those caring for children in dealing sensitively with child victims

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Principles

As stated in international instruments, in particular in the Convention on the Rights of the Child, professionals and those responsible for the well being of children must respect the following principles:

- **Dignity**
- **Non-discrimination**
- **Best interests of the child**
- **Protection**
- **Harmonious development**
- **Right to participation**

The right to be treated with dignity and compassion

- Child victims and witnesses should be treated in a caring and sensitive manner at every stage of the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and respecting their physical, mental and moral integrity.
- Every child should be treated as an individual with his or her individual needs, wishes and feelings.
- Interference in the child's private life should be limited to the minimum necessary while at the same time maintaining high standards of evidence collection.
- Interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner.
- All interactions should be conducted in a child-sensitive manner in a suitable environment that accommodates the special needs of the child, according to his or her abilities, age, intellectual maturity and evolving capacity. They should take place in a language that the child understands.

The right to be protected from discrimination

- Child victims and witnesses should have access to a justice process that protects them from discrimination based on the child's, parent's or legal guardian's race, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status.
- The justice process and support services available to child victims and witnesses and their families should be sensitive to the child's age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic and social background, caste, socio economic condition and immigration or refugee status, as well as to the special needs of the child, including health, abilities and capacities. Professionals should be trained and educated about such differences.
- In certain cases, special services and protection will need to be instituted to take account of gender and the different nature of specific offences against children, such as sexual assault involving children.
- Age should not be a barrier to a child's right to participate fully in the justice process. Every child should be treated as a capable witness, subject to examination, and his or her testimony should not be presumed invalid or untrustworthy by reason of the child's age alone.

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The right to be informed

Child victims and witnesses, their parents or guardians and legal representatives should be promptly and adequately informed of:

- The availability of health, psychological, social and other relevant services as well as the means of accessing such services along with legal or other advice or representation, compensation and emergency financial support, where applicable;
- The procedures for the adult and juvenile criminal justice process, including the role of child victims and witnesses, the importance, timing and manner of testimony, and ways in which questioning will be conducted during the investigation and trial;
- The existing support mechanisms for the child when making a complaint and participating in the investigation and court proceedings;
- The specific places and times of hearings and other relevant events;
- The availability of protective measures;
- The existing mechanisms for review of decisions affecting child victims and witnesses;
- The relevant rights for child victims and witnesses pursuant to the Convention on the Rights of the Child and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;
- The progress and disposition of the case.

The right to be heard and to express views and concerns

Professionals should:

- Ensure that child victims and witnesses are consulted on relevant matters;
- Ensure that child victims and witnesses are enabled to express their views and concerns regarding their involvement in the justice process, their concerns regarding safety in relation to the accused, the manner in which they prefer to give testimony and their feelings about the conclusions of the process;
- Have due regard to the child's views and concerns and, if they are unable to accommodate them, explain the reasons to the child.

The right to effective assistance

Child victims and witnesses and, where appropriate, family members should have access to assistance provided by professionals who have received relevant training. This may include assistance and support services such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child's reintegration. Professionals should make every effort to coordinate support so that the child is not subjected to excessive interventions.

Professionals should develop and implement measures to make it easier for children to testify and improve communication and understanding at the pre-trial and trial stages. Such measures may include employing:

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- Child victim and witness specialists;
- Support persons, including specialists and appropriate family members to accompany the child during testimony;
- Where appropriate, guardians to protect the child's legal interests.

The right to privacy

Child victims and witnesses should have their privacy protected as a matter of primary importance. Information relating to a child's involvement in the justice process should be protected. Confidentiality should be maintained and information that might identify the child should not be disclosed.

Measures should be taken to protect children from undue exposure to the public by, for example, excluding the public and the media from the courtroom during the child's testimony.

The right to be protected from hardship during the justice process

Professionals should:

- Provide support for child victims and witnesses, including accompanying the child throughout his or her involvement in the justice process, when it is in his or her best interests;
- Provide certainty about the process, including providing child victims and witnesses with clear expectations as to what to expect, with as much certainty as possible. Every effort should be made to ensure continuity in the relationships between children and professionals throughout the process;
- Ensure that trials take place as soon as practical, unless delays are in the child's best interest. The investigation of crimes involving child victims and witnesses should also be expedited;
- Use child-sensitive procedures, including interview rooms designed for children, modified court environments, recesses during a child's testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, an appropriate notification system to ensure that the child attends court only when necessary and other appropriate measures to facilitate the child's testimony.
- Limit the amount of contact the child has with the justice process. This includes limiting the number of interviews, and implementing special procedures for collection of evidence from child victims and witnesses in order to reduce the number of statements and hearings;
- Ensure that child victims and witnesses are protected, if compatible with the rights of the defence, from being cross-examined by the alleged perpetrator. Ideally child victims and witnesses should be interviewed and examined in court out of sight of the alleged perpetrator, and separate waiting rooms and private interview areas should be provided;
- Ensure that child victims and witnesses are questioned in a child-sensitive manner and allow judges to supervise, as well as making use of testimonial aids.

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The right to safety

Where the safety of a child victim or witness may be at risk, appropriate measures should be taken to report those safety risks to appropriate authorities and protect the child before, during and after the justice process.

Professionals should be trained in recognising and preventing intimidation, threats and harm to child victims and witnesses, and safeguards should be put in place. Such safeguards could include:

- Avoiding direct contact between child victims and witnesses and the alleged perpetrators;
- Using court-ordered restraining orders;
- Ordering pre-trial detention of the accused and setting special “no contact” bail conditions;
- Placing the accused under house arrest;
- Wherever possible and appropriate, giving child victims and witnesses protection by the police or other relevant agencies and preventing their whereabouts from being disclosed.

The right to reparation

Child victims should, wherever possible, receive reparation in order to achieve full redress, reintegration and recovery. Procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive.

Reparation may include restitution from the offender, aid from victim compensation programmes and damages. Where possible, costs of social and educational reintegration, medical treatment, mental health care and legal services should be addressed. Procedures should be instituted to ensure enforcement of reparation orders and the payment of reparation before fines.

The right to special preventive measures

Special strategies are required for child victims and witnesses who are particularly vulnerable to recurring victimisation or offending. These strategies and interventions should take into account the nature of the victimisation, including victimisation related to abuse in the home, sexual exploitation, abuse in institutional settings and trafficking.

Implementation of the ECOSOC Guidelines by Nigeria

The Guidelines should be followed by anyone who is involved in child justice administration. To improve the situation in Nigeria, adequate training, education and information should be made available to professionals working with child victims and witnesses.

Professionals should make every effort to adopt an interdisciplinary and cooperative approach to helping children by familiarising themselves with the range of available services, such as victim support, advocacy, economic assistance, counselling, education, health, legal and social services. This approach may include working with the police, prosecutor, medical, social services and psychological personnel.

Professionals should consider using the ECOSOC Guidelines as a basis for developing laws, policies, standards and protocols aimed at assisting child victims and witnesses involved in the justice process.

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Further details are provided in the Handbook for Professionals and Policymakers on Justice in matters involving child victims and witnesses of crime, (United Nations Office on Drugs and Crimes & UNICEF) United Nations, 2009.

Sources:

- Manual for the measurement of juvenile justice indicators, United Nations Office on Drugs and Crimes & UNICEF, New York, 2007
- Handbook for Professional and Policymakers on Justice in matter involving child victims and witnesses of crime, Criminal Justice Handbook Series (United Nations Office on Drugs and Crimes & UNICEF) United Nations, New York, 2009
- Criteria for the Design and Evaluation of Juvenile Justice Reform Programmes, United Nations Office on Drugs and Crime, New York, 2011
- Victims and Witnesses, Cross-cutting issues, Criminal Justice Assessment Toolkit, United Nations, New York, 2006
- Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Resolution 2005/20 of the Economic and Social Council
- Human Rights and Prisons: A Compilation of International Human Rights Instruments concerning the Administration of Justice, United Nations, New York and Geneva, 2005, available at <http://www.ohchr.org/Documents/Publications/training11Add1en.pdf>
- UN Rule of Law - victims and witnesses protection, available at http://www.unrol.org/document_browse.aspx?xd=1&cat_id=65
- Marie Wernham: Police Training on Child Rights & Child Protection – Lessons Learned & Manual, (Consortium for Street Children, London, 2005)

Learning objectives

- To provide guidelines and best practices for working with child victims and witnesses or children in conflict with the law;
- To provide guidelines on the best approaches to communicating with a child;
- To familiarise the participants with best practices of gathering and recording evidence that can be used at trial;
- To familiarise participants with the guidelines for the use of a logbook and monitoring logs;
- To familiarise participants with methods of taking witness statements to achieve the best evidence;
- To familiarise participants with techniques on conducting an interview to achieve the best evidence with special emphasis on children and vulnerable witnesses.

Questions

- Have you been involved in a case concerning a child victim, witness or offender?
- What steps would you take in the process of assisting a child victim or a child offender?
- Have you ever collected evidence? If yes, how did you do it?
- Have you ever been involved in a process of gathering and recording evidence on incidents involving human rights abuse of a child?
- Have you ever interviewed a child witness/child victim/in conflict with the law?
- How do you interview a child witness/child victim of human rights abuse/in conflict with justice?
- Have you ever taken a statement from a child witness/child victim/in conflict with the law?
- Does your organisation provide you with any guidelines on dealing with children who have been abused? If so, what are they and how helpful are they?

1. Introduction

When CPN members deal with an incident involving a child victim, child witness or a child in conflict with the law they will be part of the process of gathering and recording evidence. In practice, the authorities that are responsible for dealing with incidents involving children often fail to carry out their duties or themselves violate children's rights. It is therefore important that CPN members step in where the competent authorities fail in order to protect and help a child victim, child witness or a child in conflict with the law.

In order to facilitate the work of CPN members when dealing with children, this part of the manual provides the following:

- Guidelines and best practices for dealing with child victims, witnesses and children in conflict with the law;
- Guidelines on how to communicate with a child;
- How to gather evidence;
- How to record evidence;
- Importance of consent;
- Importance of security;
- Importance of child safeguarding policy;
- How to take a witness statement;
- How to conduct interviews;
- Value clarification;
- Possible involvement of other NGOs.

2. Guidelines and best practices for working with children

When working with a child victim or witness or a child in conflict with the law CPN members should follow the guidelines and best practices that are explained below.

- All interactions with children should be carried out in a caring and sensitive manner in accordance with the best interests of the child.
- Each child should be treated as an individual that is equal to all the other children.
- Interactions with the child should be conducted in a child-sensitive manner taking into account the child's age, language skills, gender, disability and level of maturity as well as the child's needs, wishes and feelings.
- Interactions with the child should take place in a language that the child uses and understands.

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- Interactions with the child should be conducted in a child-friendly environment.
- The child's views and concerns should be considered and, if they cannot be accommodated, the reasons for this should be explained to the child.
- CPN members should introduce themselves and explain that their role is to assist the child in the best possible way.
- The process should be explained to the child, namely what steps are being taken to assist the child and what should the child expect from the process.
- On initial contact the child may be severely traumatised and in need of medical attention. It is important that there is an immediate medical assessment and that these needs are addressed by trained professionals as a matter of urgency.
- Medical examination, especially in cases of sexual abuse, can be a highly stressful experience for children. Such examination should be ordered only where it is absolutely necessary for the investigation of the case and is in the best interest of the child. Medical examinations should be as unobtrusive as possible.
- The safety of the child is a paramount concern. Where the safety of a child may be at risk, appropriate measures should be taken to protect him or her.
- Avoid direct contact between a child victim or witness and the alleged perpetrator.
- Information about the child must be confidential and should be disclosed only to the extent necessary and only to persons who, by reason of their involvement in the process, need to know such information.
- It is crucial that the child should not feel responsible for the crime or the events surrounding it and it not made to feel accountable for what he or she has suffered.
- Listening to and documenting the child's story and details in a kind, caring, compassionate, respectful and patient manner will help to build up a relationship of trust and respect.
- If possible, each child should be assigned a specific caseworker who assesses and monitors the child's progress over time. Every effort should be made for this caseworker to remain the same so as to foster a trusting relationship.
- The child's parents or guardian should be contacted and informed of the incident and the child's whereabouts unless this would jeopardise the child's safety.
- Police, social welfare teams and any other relevant government agencies should be informed of each individual case of children victims or children in conflict with the law.
- The child should be informed of the assistance and support services available. Every effort should be made to help the child access these services.

- The right of the child to decide whether they wish to access support services or live on the streets should be respected at all times.
- Promises should not be made to the child that cannot be kept. Children should only be advised once all the circumstances of their situation have been carefully considered.
- In certain circumstances, subject to the severity of the case and safety of the victim, alternatives to formal proceedings may be utilised in cases of children in conflict with the law, for example, mediation or family counselling.
- CPN members should not see children on their own; they should have another worker with them.
- Organisations that do not have child safeguarding policies are encouraged to draft and implement them, both to protect children and workers. They should be read carefully as they will assist professionals working with children in the justice process.

3. Communicating with a child

This section deals with basic communication skills, including how to listen to children and encourage them to express themselves, how children communicate, the process of getting to know each other and what to do about blocks in communication.

Communication

What is communication?

Communicating is a two-way process involving:

- Trying to understand the thoughts and feelings that the other person is expressing;
- Responding in a way that is helpful.

To communicate well you need to be able to:

- Listen and observe others;
- Understand what other people are trying to tell you;
- Convey your own ideas and feelings so that you can be helpful to the other person.

The value of communication

- Children in emergencies, including abused children, are in need of moral support as well as practical help;
- Such children need someone to confide in otherwise they remain alone with their distress;
- Often children are waiting for someone to ask them what happened and how they feel about it;
- Children usually feel relieved when they tell someone about how they feel;
- Talking things through helps children come to terms with their experiences.

How to be a good listener?

A lot of communication goes on without actually talking.

It is important to think about whether your **non-verbal communication** is helping the child to feel comfortable.

◆ **Tone of voice**

- Try not to speak in loud, harsh or punishing voice because the child might think that you are angry or unsympathetic.
- Try adopting a quieter, more sing-song voice. This shows that the adult is sympathetic and helps the child to feel safe.

◆ **Facial expression**

- Try not to look bored, worried or annoyed while the child talks.
- Encouraging noises, nods and smiles show that you are interested.
- Your expression should change according to what the child is expressing.
- Children are very sensitive to and aware of non-verbal communication so be mindful of your facial expressions.

◆ **Jokes and laughter**

- Jokes, smiles and laughs can help a child to relax and begin to trust you.
- Avoid smiling or laughing when you are embarrassed or do not know what to say, this might make you appear unsympathetic.

◆ **Eye contact**

- Try to maintain eye contact with the child, although try not to stare.
- If you do not look at the child you will not notice if he or she is upset and needs comforting.
- On the other hand, if you stare all the time, this can make the child feel uncomfortable.
- With children who are very timid, it is best to allow time for them to gain confidence, and not to get too close to them or look at them too much at first.

◆ Seating arrangements

- It is important to help a child relax by making sure that they are comfortable and not overwhelmed by the adult, as can happen when a tall adult looks down on a seated child.
- A more comfortable arrangement is for both the adult and the child to be sitting down at a slight angle to each other, so that they are the same level but not completely face-to-face.

◆ Empathy

- Avoid making judgements about the child's behaviour or their story. If you have negative feelings the child may pick up on them through your body language and facial expressions.
- Show empathy rather than sympathy. Sympathy is feeling sorry for the child, empathy is understanding what the child has been through and what they feel about it.

◆ Child safeguarding

- When interviewing a child always try to have another person present.
- It is safer to interview a child with someone else because then you are protected if the child makes any allegations against you.
- Having another worker with you when you interview a child will help elicit more information, enable greater observation of the child and provide you with an opportunity to get feedback on your interviewing technique. The other worker can take notes and if the interviewer has missed anything then the note-taker can interject. Interjections should only take place where it is important as it may disrupt the flow of the interview.

Talking together

Asking questions in the right way helps the child relax and communicate freely. There are three types of question: closed questions, leading questions and open questions.

◆ Closed questions

Closed questions only require a very simple answer, such as 'yes' or 'no', for example, "Do you go to school?". Closed questions can be useful for obtaining some information but they do not encourage the child to talk freely because there is only a short answer to the question.

◆ Leading questions

Leading questions suggest the answer, for example, "You like living here, don't you?" Leading questions will push the child to give a particular answer, especially because most children find it hard to say 'no' and so, when the question is worded in this way, they will say 'yes' even if they really do not agree.

◆ **Open questions and comments**

Open questions and comments encourage the child to express his or her ideas, and talk about his or her feelings, for example, “Tell me about your family”. They do not suggest any right or wrong answer. Making encouraging and relevant comments about what the child is telling you during your conversation will also show that you are listening and trying to understand the child, for example, “That must have been very frightening”. These questions and comments encourage the child to continue and show that you are actively listening to what he or she is telling you.

Remember not to insert your own words into the child's account of the story; try to be as neutral as possible and let the child find its own voice.

Different types of question are discussed further in the section on conducting interviews.

◆ **Using simple language**

- Avoid using long or difficult words and complicated sentences or ideas so as not to confuse the child.
- Try to explain things to the child in a way that links in with his or her own experience.

◆ **Are you being understood?**

- Ask the child if he or she would like you to repeat what you said, if they have any questions, or if something needs clarifying.
- Try asking the child to repeat what she has been told, and then clear up any confusion. You can do this by saying, “Let's see if I've explained it properly. You tell me what I've just said and I'll go over it again if it's not clear”.
- Only ask one question at a time or the child will get confused.
- Give the child sufficient time to answer your question, remember that it takes children longer than adults to process what you are asking them.

◆ **Use the child's mother tongue**

- It is particularly important to check that you have been understood if you are talking in a language that is not your mother tongue, or not the child's.
- If necessary, use an interpreter.
- It is helpful to prepare an interpreter for an interview of this kind by discussing the importance of confidentiality and the effective ways of communicating with a child.

Summary

Communication is a two-way process, which involves:

- Paying attention to the other person;
- Being a good listener;
- Being aware of non-verbal communication;
- Using simple language;
- Being neutral and objective;
- Using open questions;
- Making sure that you are understood.

Creating trust

You cannot expect a child to confide in you immediately if you are a stranger or have never spoken to him or her before. You will have to establish a relationship of trust by demonstrating your interest, empathy and patience. Patience is one of the most important qualities for those who want to help children. Rushing a child to answer a question might make them retreat into themselves and stop communicating. Allow extra time when interviewing a child and give them the space to answer.

Empathy is a skill that takes practice. It requires you to imagine what it would be like to be the child so that you can understand their feelings.

How to behave

- Create an atmosphere of safety and trust in which the child can begin to relax.
- Respect the child's beliefs and customs.
- Try to join the child in some part of her daily life, such as playing or doing school work.
- Maintain the child's dignity and integrity at all times.

Starting a conversation

- Give the child a simple explanation of who you are and why you are there.
- Explain to the child that what he or she says will be confidential. If there are things that you need to discuss with another person – for example, with a member of his or her family – you should explain why and ask the child if he agrees. There may be some things that you are required by law to disclose to other people. If this is the case then explain the situation to the child.
- Ask the child if he or she wants anyone else to be present.
- Help the child to relax by starting the conversation in a neutral way, for example, by asking the child to describe an activity or by giving the child a few things to fiddle with to relieve his or her tension, for example, a few pebbles.
- Instead of beginning a conversation straightaway, try asking the child to draw something, for example his family or a nice experience he has had. You can then use this as the starting point for getting to know each other.
- If resources permit it, ask the child if he or she would prefer a male or female interviewer.

Facts and feelings

- By being aware of the child's feelings and comforting her if she becomes sad, you can provide valuable emotional support. If the child is sad, give her time before you ask your next question.
- By commenting on what the child says, you can show that you are trying to understand how he might have felt, and that you are not going to be surprised or critical of his emotions or experiences.
- Use your imagination when trying to empathise about what the child has been through and might be feeling.
- Show that you accept all the feelings that the child has, whether they are anger, fear, anxiety, sadness or numbness.

Summary

In the beginning phase of getting to know a child:

- Do not hurry. Take the time to build a relationship of trust and get to know the child you are trying to help;
- Spend some time being together, show warmth and interest;
- Remember to respond to the child's feelings;
- Use your imagination when trying to understand what the child has been through and might be feeling.

Children showing us how they feel

After any kind of traumatic incident it is normal to have a strong emotional reaction. Like adults, children vary in how much they are affected by the difficult experiences and the stress that they suffer. We can understand how seriously distressed children are by:

- Observing how they behave and get on with others;
- What they tell us about how they feel.

A child needs extra support if he or she:

- Tells us that he or she feels very upset about what has happened to him or her;
- Shows constant signs of strong emotions, for example, if the child is:
 - Aggressive or destructive;
 - Very excitable, frequently angry or upset;
 - Very active or restless;
 - Isolated and withdrawn, or without friends;
 - Lacking trust, extremely fearful or sad;
 - Having difficulty playing or concentrating;
 - Behaving like a much younger child;
 - Using language that is not appropriate for their age.

Summary

Remember that:

- Children vary in their reactions to stressful experiences;
- Children communicate their feelings through talking and through their behaviour;
- We need to observe and talk to children.

Blocks in communication

It is common for children to have difficulty talking freely. This can be frustrating. Some silence is normal during any conversation, and this should be accepted calmly and patiently. Some reasons for a real block in the conversation might be:

- You are not encouraging communication;
- The child is having language difficulties;
- The child's emotional reaction is preventing easy communication;
- The child is processing the information;
- The child is tired and needs a rest;
- Retelling the story is upsetting the child.

How you communicate

How you communicate influences whether a child feels able to talk freely. An adult may block communication by:

- Talking too much;
- Being critical or judgemental;
- Laughing at or humiliating a child;
- Being aggressive or bullying;
- Getting upset or emotional;
- Contradicting or arguing with the child;
- Being uncomfortable or embarrassed when a child is upset;
- Taking sides;
- Not respecting the child's beliefs or way of life;
- Not creating a situation of trust.

Why children find it hard to communicate

- Many children are not used to talking to adults about how they feel, especially adults they do not know well.
- Many children have never been encouraged to talk about themselves and do not have the words to describe how they feel.
- Children living in adversity often find it hard to trust people and are suspicious.
- Some children are angry with adults because they have been treated badly and not cared for properly.
- Some children are nervous of adults because they expect to be criticised or punished.
- Some children are ashamed of what has happened to them, for example victims of rape.

Not telling the truth

- Like adults, children do not always tell the truth. Instead of getting angry, try to understand why the child is not telling the truth; there are often good reasons for example if the child is trying to protect her family or the perpetrator of a crime.
- For younger children the distinction between what is real and what is imaginary is sometimes blurred.

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- For some children it is easier to avoid a painful subject rather than talk about it. Some children are afraid to mention anything negative about their home in case they are punished for complaining. Make it clear that you will not put the child in a situation where he or she will suffer because you have passed on what the child has said, or because of what is written in his or her record.
- Remind children that they are safe with you and that you will not judge them for what they say.
- Often children try to please adults and say the 'right' thing or what they think adults want to hear.
- Children will only want to confide in you after you have created a relationship of trust.

What can we do to help the silent child?

- Through getting to know each other and creating trust, blocks to communication should be overcome, although this may take some time.
- Remember that children are communicating their feelings even if they are not using words.
- Try to understand what the child is trying to communicate through his or her behaviour; his play, his contact with others and with you.
- Accept that patience is vital, and show the child that you accept him and are not critical of him.

The following tips may help:

- Use appropriate physical contact and attention to show your concern;
- Use games, activities and outings to help the child relax and feel safe;
- Use drawings, stories, puppets and masks to help the expression of feelings;
- Do not pressurise the child to talk, but react positively to his efforts to express himself. Talk to him as much as you can even if he does not reply;
- Children will often start to speak after a long silence. If they don't, try reading a book with the child to help them speak aloud.

Summary

Children may find it difficult to communicate after difficult or painful experiences. Remember the following points:

- Blocks in communication can be caused by poor responses to the child, for example, not building a relationship of trust or a lack of encouragement.
- One of the best ways to improve your skills in communicating is to get colleagues to observe you and suggest how you could improve.
- Support from colleagues will also help you to cope with your own feelings of distress.
- The child's wish to communicate can be hindered by other feelings, such as distrust, sadness, guilt or anger.
- If a child seems not to be telling the truth, try to understand why this might be.
- You can help blocks in communication by providing other means of expression and by being patient.

Giving support and advice

Giving support and comfort

Support can include befriending the child and providing comfort and practical help. The help that a child needs will depend on the particular child, her age and the customs of her community. You may want to talk to the adults who are responsible for the child, to introduce the child to a group of other children and involve the child in recreational or creative activities.

Try to reassure the child by, for example, explaining that his or her reaction is normal in the circumstances. Remember not to belittle what the child is feeling or tell the child that certain things might happen when they might not.

Accepting guilt and anger

Some emotions last a long time and it can be a relief for children to talk about things that they feel guilty or ashamed about. Children can also have thoughts of revenge, just like adults. Children expect fairness in the world and are understandably sad when they feel that there is no justice or no apparent punishment of people who have done things wrong. Children want an explanation of why they have suffered, and need ways of coping with their experiences.

When you are talking to a child who feels troubled by angry feelings and thoughts of revenge, accept the child's feelings and discuss constructive ways of dealing with them. You may want to empathise with the child as a way of educating them about feelings. This will help them name the feelings they are experiencing and understand what is going on inside them.

Giving advice

- When presented with a difficult problem, do not rush to give advice without thinking it through first. Ill-thought out advice can make a child feel angry or misunderstood.
- Sometimes problems have a practical solution, but sometimes your advice will be about trying to understand and cope with feelings or difficult situations, where there is no practical solution.
- Remember that you can help someone just by listening them. You do not have to promise that you are going to solve a problem or resolve it immediately. Often it is necessary to involve other people – for example, the family or social workers – before you can begin to think of resolving a problem.
- Good listeners give advice only when they are sure they understand the problem. Instead of telling others what they should do, good listeners try to work through all the options with the child, and help them choose practical solutions. Even young children can be involved in this kind of discussion.
- Be specific and practical in your advice.

Endings

How you end a conversation is important. When a child has spoken about something upsetting, you should try to comfort the child and leave him or her with something positive, based on the interaction you have had. Let the child know the conversation is ending so that they do not feel abandoned or rejected. This is particularly important because some children do not have a clear understanding of time.

Key points to remember when ending a conversation with a child:

- End with some positive comments and do not leave the child feeling discouraged.
- Find something positive that helps to raise the child's self esteem and makes the child feel valued.
- Throughout your time together, and especially at the end, emphasise positive qualities.
- Do not say anything that is not true and do not make assumptions.
- After exploring the situation, make a plan together.
- Make it clear what is going to happen after your meeting.

◆ At the very end: last minute confidence

As a conversation draws to a close it is common for children and adults to say something that is very important to them that is difficult to talk about. By doing this the child is telling you that they really want you to know, but at the same time that they are nervous about talking about it. This is why ending a conversation takes time.

After discussing future plans, wait a while to see if the child has something else to say. Then say, "Perhaps there is something else you want to say", and wait again. Finally, you could ask, "Is there anything else you would like to ask me?" or, "Is there anything else that is worrying you?"

After the child has gone, think about the meeting, and what was said. How do you feel? Would it help you sort your thoughts out if you talked it through with a colleague? Try and find the time to debrief with someone. This will help you organise your thoughts, and provide you with support. Interviewing children can be challenging and emotionally draining. It is important you get support from your team.

Summary

Comforting a child includes accepting their feelings. Accept that thoughts of revenge and anger are common, arising from suffering, humiliation and guilt. Encourage a constructive expression of these feelings.

Remember that reassurance can be unhelpful if it is not realistic.

When giving advice:

- Take time to understand the problem;
- Work out possible solutions together;
- Make sure advice is specific, practical and realistic.

When ending the conversation:

- Be positive;
- Give clear explanations about future plans;
- Be open to receive a last-minute statement or question. Invite the child to share any final thoughts or feelings.

Talking with family

A child's well being is dependent on his or her family and if possible, they, or the substitute carers, need to be involved when working with children.

It is difficult for parents to care for children when their normal life has become disrupted by any kind of disaster or stress. Tensions can make adults irritable, impatient and angry and they may feel guilty about not giving adequate care or basic necessities to their children, or worried that their traditional values are disappearing.

Communicating with parents or other family members requires the same skills as those for talking to children:

- Listening skills;
- Making sure you are understood and that you understand what is being said to you;
- Acknowledging difficulties and accepting feelings;
- Giving comfort and knowing how and when to give advice.

Getting to know the family

Families have varying beliefs, priorities and ways of doing things. Some families prefer to talk to someone from their community whom they can trust. Others prefer an outsider, as they seem more private and may therefore avoid criticism for failing to conform to family or community norms.

Families do not necessarily welcome others interfering with their children. In times of emergency and stress, feelings of distrust and suspicion can run high. It is essential to show that you are trustworthy and that what is said to you will remain confidential.

It is normal to have to visit a family several times before they learn to trust you. Do not give up after your first visit. Reassure the family you are there to help and keep visiting and providing them with support.

Resolving problems

If possible, try to plan with families, or other carers, ways of helping a child who is in difficulty because if they do not agree with your advice they may not carry it out. This means taking time to understand their point of view, their difficulties and their wishes. Solutions must be based on the ideas, abilities and strengths of the family. Remember to find out who in the family is responsible for making decisions and involve them in your discussions. Look for positive things within the child and family and try to build on these.

It is important that you try to stay on good terms with all family members without taking sides. This is not always possible if a child is being ill treated, or if family members cannot resolve their disagreements.

Summary

Working with the family requires skills in communication and an attitude of acceptance and cooperation. Communicate your respect for the positive aspects and strengths of the family.

Never give up when working with families. They require special attention and you may need to visit them several times before you earn their trust.

4. Recording evidence

Recording evidence is extremely important when dealing with violations of the rights of the child. It is important that all relevant information relating to an incident involving a child victim or a child offender is recorded.

A case file

There are numerous ways of recording evidence, but this manual encourages CPN members to create and manage a case file for each child victim or child offender by using the sample forms created for the CPN networks.

A case file will normally contain the following:

- ◆ Logbook;
- ◆ Monitoring log(s);
- ◆ Other supporting evidence and accompanying documents.

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A case file is a way of:

Systematising the case management process

Ensuring all information is recorded in a logical manner.

Collecting all information in the same format in one place, including supporting documents.

Encouraging the recording of cases in a clear and consistent manner.

Maintaining accurate and contemporaneous records.

Highlighting what information and evidence is missing.

The importance of using a logbook

The logbook can be used to support any work on cases of child rights abuses. The logbook has been designed for the use of CPN members to facilitate the process of recording relevant information on cases involving a child victim or a child in conflict with the law.

It is important that CPN members use the logbook in order to:

- Ensure the well being of children;
- Support litigation;
- Provide an evidence base for advocacy work;
- Provide information.

Ensure the well being of children

- Using a logbook is a way to monitor the needs and wellbeing of children and to identify how best to care for them.
- Regular recording of what is being done to care for a child is a way of ensuring that he or she is cared for as well as possible and of showing the support that has been provided to that child.
- Regular recording means that subtle changes in children's behaviour can be detected. This may alert you to changes in the child's circumstances, such as whether they are being abused.

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- Regular recording provides an avenue to monitor and evaluate the impact of the care the child has been given.

Support litigation

Using a logbook consistently will support effective litigation on child rights abuse cases:

- It is a way of making sure that all information needed to support the case is readily available.
- It is a way of making sure that children are treated in accordance with the standards of child justice administration.
- The information gathered may be used to put pressure on the police and the Government to carry out a proper investigation.
- Coherent, systematised information can be used to support potential international and regional litigation where appropriate.

Evidence base for advocacy work

Using a logbook ensures a good evidence base for advocacy work by providing evidence for:

- Domestic litigation;
- International and regional litigation;
- Reports to international human rights monitoring bodies;
- Reports to regional human rights monitoring bodies;
- Reports to domestic human rights monitoring bodies;
- Reports to State and Federal governments.

Provision of information

- Using a logbook means that information about cases of abuse and the inadequate administration of child justice can be accessed quickly and easily.
- Using a logbook enables you to share information with others, whilst maintaining the confidentiality of each case.
- Maintaining a logbook over time is a way of identifying trends and statistics in order to plan future work.
- Collating all information in one place ensures that work is not being duplicated.

Guidelines on using a logbook

How to use a logbook to support the work of the CPNs?

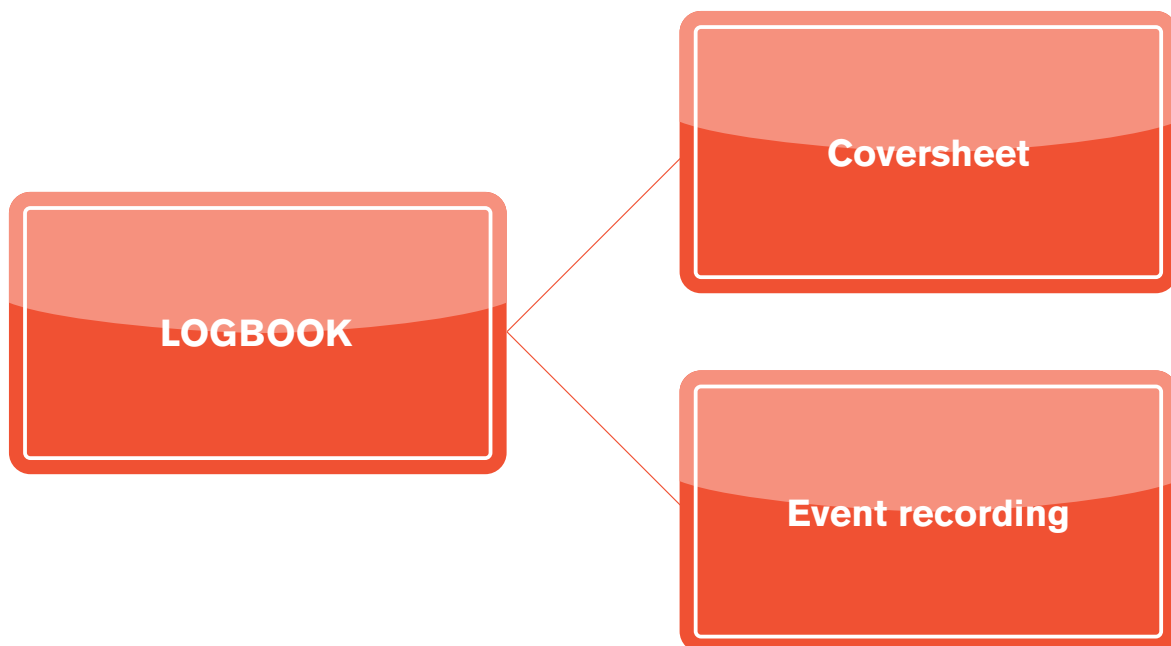
- Use one logbook for each case/child.
- Each time you have a new case, start a new logbook.
- A new case is one which concerns a child whom you did not previously know had suffered abuse/had been in conflict with law and whose details have not previously been documented.
- If you become aware that a child whose circumstances you had already documented is suffering further abuse/continues to be in conflict with law, this should be recorded in the logbook that has already been created for that child.

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- If a case concerns more than one child, one logbook per child should be used, even if the details of their cases are the same.

Elements of the logbook:

- Coversheet
- Event recording



Coversheet

- The coversheet is the front page of the logbook (a sample coversheet is provided below);
- Use the coversheet to record as much information as possible about the child and their background, including details of their parents or guardian, medical conditions and contact details.

Event recording

- **An event is anything that happens in relation to the case.** For example, a visit to the child, a visit to the police station about the case, a report about the child from a community member or a phone call to a family member.
- **Everything connected to the case needs to be recorded** in as much detail as possible. You should put everything on record, even if it does not seem important. For example, if you make a phone call and no-one answers you should still record the fact that you made the call, as is it important information.
- You should use the events pages to **record the key points** regarding what has happened, and then include supplementary evidence, such as statements from the child or medical records, in order to provide further detail.
- Events should be recorded in **chronological order**.
- Be sure to record the **names** and **contact details** of everyone you deal with in each event, especially the names and contact details of police officers.

Recording information in the logbook

◆ **The first entry**

- The first entry should document how you became aware of the child and his or her situation.
- You should give information on who reported the case to you and what abuse the child has suffered.
- This information should include where you first found the child, who else was present and what the child said.
- Document what follow-up action you plan to take and when.

◆ **The second entry**

- The second entry should record the immediate action taken – this would usually be an assessment of the initial care or support given to the child and a phone call or visit to investigate the case. You should also identify what will be done next and when.
- The second entry may also contain a statement given by the child of what has happened to them, although if they are particularly traumatised this may take place at a later date.
- This entry may also contain information on the legal assistance that has been offered to the child/has been required by the child who is in conflict with the law.
- Remember to document the names and contact details of all people who you have had contact with as they may be witnesses in the case.

◆ **Subsequent entries**

Subsequent entries should record the following information:

- Care of the child;
- Contact with parents;
- Contact with the police;
- Investigation of the case;
- Information on litigation;
- Advocacy activities;
- Follow up actions.

◆ **Care of the child**

- All details of any support given to the child and/or their family should be recorded including medical care, counselling, attempts at reunification and food/clothes provided.
- You may need to source some of this information from another person, for example a staff member, counsellor, doctor, officials at the detention facility or other person involved in the case.
- All entries should be as detailed as possible including the time and date and the names and contact details of all persons involved.

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◆ **Contact with parents**

- All contact with those responsible for caring for the child should be recorded. Details of what was discussed and agreed must be documented.
- If the child has been reunited with its parents or guardian the log book should provide details of monitoring visits to check whether the child is being cared for properly.
- If you need to take photographs of the child then you must seek the parent or guardian's written consent first. Attach the written consent to the logbook.

◆ **Contact with the police**

- Each case must be reported to the police as soon as possible. Consent should be sought from the child and/or their parents for this to happen. Try to obtain written consent and attach it to the logbook. If this is not possible then record that you have obtained verbal consent and the name of the person giving consent.
- You need to record in the logbook when and where you reported the case to the police, what they said, including if they told you there would be an arrest, and the name and contact details of the police officer to whom you spoke. If possible try to get the name and contact details of the Investigating Police Officer (IPO) as you will need to contact this person regularly.
- If the case has been reported to the police by someone else you should record this information – who reported it, when, to which police station and to which police officer.
- The police should be able to give you a crime entry number from their record of the crime. Make a note of this number in the logbook.
- All cases should be followed up with the police at regular intervals – initially you should telephone or visit the IPO weekly and then monthly – to see if there has been any progress. Try to develop a relationship with the IPO; they can be very helpful in progressing the case and assisting the child.
- If the police demand a bribe this should be recorded. If a bribe has been paid (by anyone) this should also be recorded.

◆ **Litigation**

- Any litigation activities in relation to the case should be recorded, for example, if arrests are made, bail is granted, charges are brought or the case is brought to court.
- In cases of children in conflict with the law, all the details relating to the administration of justice, including the charges, whether bail is granted, the detention facility where the child is held, the name of the court dealing with the case, whether the child has a legal representative, legal aid and the details of the trial such as its length, the judgement and the measures taken by the court, if the child is institutionalised, the name of the institution and any other relevant information.

◆ **Advocacy**

- All advocacy activities, by the CPNs or others, in relation to each case should be documented, such as media releases about the case, lobbying of or letters to the Government, involvement of other NGOs, training, education and other activities.

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◆ Follow up

- It is very important that each time you make an entry in the logbook you identify the follow up actions to be taken for each event and record if these have been carried out.
- If you have not managed to carry out the follow up action then this must be recorded with an explanation of why the action has not been carried out. You should then state the next planned follow up action.
- You should identify the name of the person who is responsible for each action if there is more than one person dealing with the case. For example, if the child has been referred for counselling you should note that the counsellor is responsible for ensuring that this takes place.
- It is helpful to state the date when the follow up action needs to take place. The date does not have to be exact but having an idea of when things need to happen will help you manage the case effectively.
- Sometimes all you will need to fill in is that no further action is to be taken.

Sample coversheet

CASE IDENTIFICATION NUMBER			No.
PERSONAL INFORMATION			
Full name of child		Previous name(s)	
Age		Date of birth	
Gender		Tribe	
Marital status		Number of children	
Language(s) spoken		Religion	
Contact telephone number			
LOCATION			
Origin	Address/Town/Village:	LGA:	STATE:
Home address	Address/Town/Village:	LGA:	STATE:
Current location (if different)	Address/Town/Village:	LGA:	STATE:

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CARE OF CHILD			
Mother / Father / guardian / aunt / uncle / sibling / other (please circle)			
PARENT OF CHILD			
Father	Name:	Nationality:	Address:
	Address/Town/village:	LGA:	State:
	Contact telephone number		
Mother	Name:	Nationality:	Address:
	Address/Town/village:	LGA:	State:
	Contact telephone number		
OTHER INFORMATION			
Household structure		Siblings:	
School(s) attended		Level of education	
General health		Medical condition	
Level of cooperation		Previous arrests, charges, convictions	
CASE WORKER			
Name		Contact telephone number	

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Sample logbook

LOGBOOK

CASE IDENTIFICATION NUMBER:

Date of entry: [INSERT DATE]

Time of entry: [INSERT TIME]

Name of person making entry: [INSERT NAME]

Signature: [SIGN]

DESCRIPTION AND ACCOMPANYING DOCUMENTS

Child's name: [INSERT NAME]

Case entry number: [INSERT ENTRY NUMBER]

Date of event: [INSERT DATE]

Time of event: [INSERT TIME]

Description of event:

Entries of events should be made as soon as is practically possible after the event because that is when your memory will be clearest. The more contemporaneous the entry the more the court is likely to accept the information as true and accurate.

Include as much information as possible, including:

- *Details of your first contact with the child;*
- *All contact with the police, including their names and contact details;*
- *Details of detention (if the child is detained) including the name of the detention facility, the conditions of detention, reasons for detention, charges filed against the child;*
- *Any medical examinations (record the injuries and other conditions);*
- *All field visits;*
- *Any significant statement made by the child using his or her exact words;*
- *Reunification visits and events; and*
- *Any other significant event.*

Always identify the child by their name in this section.

In a reunification case the details of attempts to achieve reunification should be included.

If the child leaves the centre for good, his/her contact details should be recorded in the log.

Any further relevant information:

Include any further information that you consider may be relevant to the child's case. This could include long-term medical assistance or areas that may need further investigation.

Accompanying documents (place these in a safe place or staple to the logbook):

Always include the following documents with the logbook:

- Registration form;
- Photographs;
- Medical examination forms;
- Statements of complaint from the child, the rescuer, and other witnesses;
- Indictment in case of a child in conflict with the law;
- Police statements;
- Referrals to government and nongovernment agencies; Advocacy letters;
- All field visit forms; and
- Any other documents you consider relevant.

These should be attached to the logbook if copied.

Even if these documents are not immediately available, they should be noted and sourced at the earliest possible time.

Follow up action:

Provide full details of follow up action that is to take place, including care and legal activities. It should be noted who will be responsible to carry it out and when.

Guidelines for the use of monitoring logs

Two monitoring logs have been designed to help the CPNs record the events and the detention of children who are in conflict with the law.

Event monitoring log

The event monitoring log has been designed to provide for a systematic overview of the events involving violations of children's rights. The event log provides a summary of the information recorded in the logbook. It is not essential to use the event monitoring log but some CPN members might find it useful.

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Date of event	Time of event	Date of entry	Time of entry	Event	Document	Name of person making entry
[enter the date of the event]	[enter the time of the event]	[enter the date of the entry into the event log]	[enter the time of the entry into the event log]	[describe the event by providing sufficient information for the purpose of identifying the event]	[provide the information on the documents collected with regard to the event]	[enter the name of the person making the entry]

Detention monitoring log

- The detention monitoring log is a document used for recording visits to the detention facilities where children in conflict with the law are held;
- The detention monitoring log serves the same purpose as the logbook;
- You should use the detention monitoring log to record all the key points regarding the detention of a child and to document details about the judicial procedure;
- One entry is used for one child to record one visit. If you visit the same child at some other time, you should use a new entry to record that visit;
- Visits should be recorded in chronological order.

CIN	Name of Client	Age	Sex	LGA State Town	De-tention Facility	Visit date	Len-gth of den-tion	Off-ence	Court	Legal aid	Pre-sent status	Status of pro-ceed-ings	CPNs Inter-ven-tion
1	2	3	4	5	6	7	8	9	10	11	12	13	14

The entries should be filled with the following information:

1. CIN: enter the case identification number given
2. Name: enter the full name of the child
3. Age: enter the age of the child
4. Sex: enter the sex of the child (male or female)
5. Address/LGA/State/Town: enter the address, the name of the LGA, state and town
6. Detention facility: enter the name of the detention facility (police, remand home, borstal, prison, other)
7. Visit date: enter the date of the visit
8. Length of detention: enter information on the length of the detention (24 hours, 24-27 hours, 3-21 days, more)
9. Offence: enter information on the (alleged) offence committed by the child (stealing, assault, robbery, terrorism offences, rape)

10. Court: enter the name of the court which is dealing with the case (upper area court, magistrate court, high court, federal high court)
11. Legal aid: indicate whether the child has been granted legal aid (yes/no)
12. Present status: indicate whether the child is presently in custody or in family care (in custody/in family care)
13. Status of the legal proceedings: provide information on the status of the legal proceedings
14. CPNs intervention: provide information on the CPNs intervention (for example, free legal representation in court/settled out of court/ensured that medical treatment was received perfected bail condition at the court or police/representation made to police/other)

5. Securing and gathering evidence

How to gather evidence?

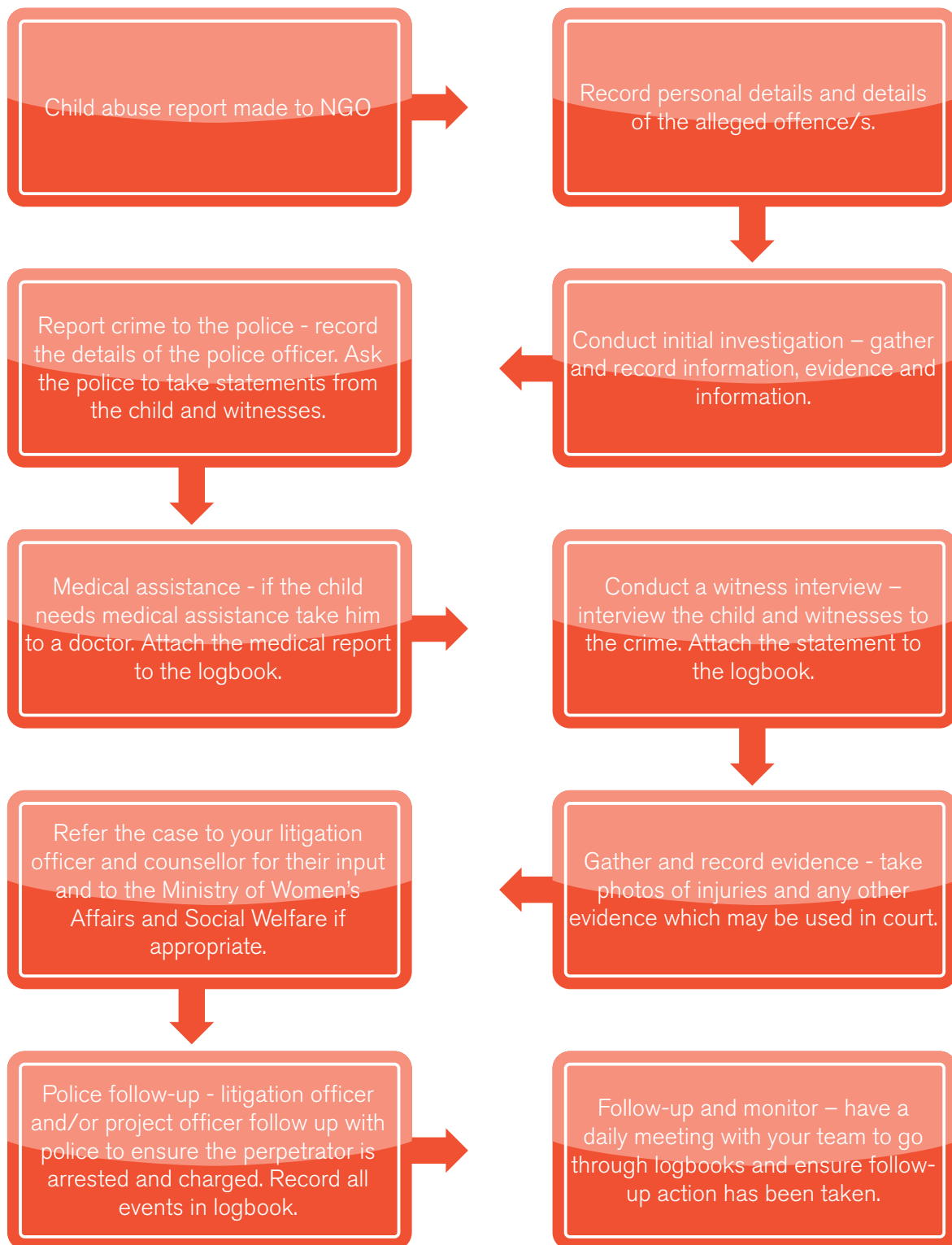
- Try to collect as much **supplementary evidence** as possible.
- The **sooner** you gather the evidence, the **more reliable** it will be.
- It is important to gather **direct evidence** rather than hearsay evidence. Hearsay evidence is second hand evidence. Direct evidence can be obtained from those who have witnessed the events or from the victims themselves.
- If only hearsay evidence is available, you should try to get as much detail as possible and record the sources of the hearsay as they may be potential witnesses.
- It is useful to take **photographs** of any evidence, location of events, injuries, weapons or anything else that may be useful for the case.
- When taking photographs you should ensure that they are safely and confidentially stored and printed as soon as possible. Always seek the consent of the child and his or her guardian before you take photographs of the child. Remember that the child's dignity and integrity must be maintained at all times; do not show their genital area in a photograph and keep their underwear on.
- When collecting **medical evidence**, timing is essential because some of the injuries may not be visible for long after the commission of the offence.
- When collecting documents, you should always make more than one copy.
- Keep a copy of the case file separate from the original. Lock the files in a secure place.
- It is good practice to scan all supplementary documents and keep an electronic copy of these. These will also need to be stored securely.

Securing and gathering evidence is vital for prosecuting cases of child abuse. Keep evidence at the forefront of your mind when you are investigating a case or collecting information. Remember that the law is about proof and the more evidence you gather the more chance you have of securing a prosecution and a conviction.

What type of evidence should be gathered?

Statements:	<ul style="list-style-type: none">▪ From the child▪ From the parents▪ From the family members▪ From the neighbours▪ Any persons that witnessed the incident▪ From the police▪ From the social workers▪ Any person that may have any relevant information about the incident, about the child and circumstances of the case▪ Copies of statements taken by the police
Documents/ official records	<ul style="list-style-type: none">▪ Birth certificate
records (copies):	<ul style="list-style-type: none">▪ Police records▪ Medical records▪ Records by the social workers▪ School records▪ Any tape recorded information
Photographs:	<ul style="list-style-type: none">▪ Photographs of injuries▪ Photographs of the scene of incident▪ Photographs of exhibits▪ Photographs of weapons
Exhibits:	<ul style="list-style-type: none">▪ Any object relating to the incident that may have evidential value

Case investigation and documentation protocol



6. Consent

- You should try your best to obtain consent from the child, or, if appropriate, their parents or carers, before you record their details in the logbook. Record the child's/parent's guardian's consent in the logbook.
- You should always explain why you are making the record and how the information might be used.
- Take extra care to obtain consent for any photographs that are taken.
- Specific consent should be gained if you intend to release any photographs to the media, including those in which the child cannot be identified. Ideally consent should be written and signed by the child and/or their parent or guardian, a copy of the consent form should be kept with the logbook. If written consent is not possible, try to record the child and or their parent or guardian giving their consent on tape by saying aloud their name, the date and what they are consenting to.
- Reassure the child that their personal information will not be made public.
- Consent required from victims or witnesses that are giving witness statements is explained below.

7. Security

- It is important to pay special attention to the security of the information that you record.
- Remember that the case file contains personal information about children which must be kept secure because it is confidential.
- Always ensure that the case file is kept in a safe and secure place and it is not accessible to anyone except those who are working on the case.
- You need to decide on the most secure way to store supplementary evidence. It could be stored with the case file or in a separate file with documents.
- Your decision may be influenced by whether you will carry the case file around with you or if it will be kept in the office.
- Case files should only be taken out into the field in exceptional circumstances. Carry a notebook with you and transfer the information into the logbook when you return so that the logbook does not get lost or seen by others.
- You need to think about what you would do if the logbook was lost or stolen, and balance this risk against the importance of recording information as soon and as accurately as possible.
- If you take the logbook with you on visits to children, you must be aware of where the book is kept on your person and where you are putting it whilst you are talking to children.
- You must ensure that all the people that have access to the file take the same precautionary measures to ensure that the case file and the supplementary evidence are kept safe.
- CPN members who are working on the same case or have access to the case file should agree on a security policy.
- It is important that CPN members take care of their own safety when they are dealing with the incidents. CPN members should never transport money or engage in any activity which may compromise their safety.

8. Witness Statements

When CPN members deal with incidents they might need to take witness statements from the child victim, from those who witnessed the incident or from anyone with relevant information about the incident or the child.

What is a witness statement?

A witness statement is a document recording a person's evidence, which is signed by that person to confirm that it is true.

A witness statement should record:

- What the witness **saw;**
- What the witness **heard;**
- What the witness **felt;**
- Anything that may open up a new line of enquiry;
- Anything that may help in corroborating other information.

Consent

- The witness should always be asked if he or she consents to giving a statement.
- You should carefully explain the reasons for interviewing him/her.
- If you interview a witness who is not a victim you might need to explain that he or she is not being targeted as a suspect and that you propose to take a statement from him or her only as a witness.

When to record the witness statement?

- Witness statements should normally be taken as soon as possible after the events so that that the incidents are still fresh in the mind of the witness.
- It may be useful to record the evidence before the witness is tempted/has had the opportunity to discuss what happened with others.
- Before you take a witness statement from a child victim you have to make sure that he or she is fit to talk about the incident.

How to approach the witness

- All witnesses should be treated with courtesy and every attempt should be made to put witnesses at their ease.
- It is preferable to speak to witnesses in a private room so that they feel more relaxed and will not be overheard.
- At the outset, you should explain to the witness that the primary aim of taking a statement from them is to find out what happened.

How to record a witness statement

- Witness statements should be written and signed in ink. If the child cannot sign it then take a fingerprint.
- The statement may be handwritten or typed. You can handwrite it initially and then type it up later.
- Witness statements should be drafted so that they are concise and to the point. The best way of doing this is to keep the statement factual rather than emotive.
- Witness statements should only deal with matters within the direct knowledge of the witness.
- As far as possible, try to record the witness' own words.
- You may find it helpful to take notes before beginning to write the statement.
- Once the statement has been completed, the witness should read it in order to have the opportunity to make any corrections before he or she signs it.
- If the witness cannot read the statement, you should read the statement aloud before they sign it and you must then sign a declaration that you have done this.
- If there are any alterations to the statement, these should be initialled by the witness.
- If there is any information relevant to the weight to be attached to a witness's evidence, this should be recorded in your notebook.
- It is essential that you record each witness' home address, telephone numbers and dates to avoid for any court appearance (if known) on the form attached to the statement, so that you can contact the witnesses at any time, if necessary.
- It is important that you record the witness's date of birth on the back of the statement where indicated.
- If the statement is made by a person under 18, you must ensure that the age of the witness is included.
- If the witness statement refers to any document which may be used as an exhibit, you should try to get a copy of that document and attach it to the statement.

Declaration of truth

- At the end of the statement you should ask the witness to sign a declaration of the truth, stating:

"I, the undersigned, state that this is the truth to the best of my knowledge and belief."

Summary

You should ensure that the following information is always included in a witness statement:

- The witness' name;
- The witness' age, if under 18;
- A declaration of truth;
- If the witness cannot read the statement, a signed declaration by someone else that it was read aloud to the witness; and
- The witness' signature and date.

9. Conducting an interview

This part provides guidelines on how to conduct an interview in order to obtain the best evidence, with a special emphasis on interviewing children.

Basic principles for conducting interviews

- Listen to the witness.
- Do not stop a witness who is freely recalling significant events.
- Questions should, as far as possible be open or closed rather than forced-choice, leading or multiple of questions.
- Ask no more questions than is necessary in the circumstances.
- Make a comprehensive note of the discussion, taking care to record the time, setting and people present, as well as what was said by the witness and anybody else, including the questions the witness was asked.
- Make a note of the demeanour of the witness and anything else that might be relevant to any subsequent formal interview, or the wider investigation.
- Fully record any comments made by the witness or events that might be relevant to the legal process.

The goal of an interview

The basic goal of an interview is to obtain **an accurate and reliable account** that may be used as evidence in complaints procedures before any international, regional or national human rights monitoring body or in domestic judicial proceedings.

It is generally recommended that the CPNs should use the **phased approach** to interviewing (see below). However, this does not mean that all other techniques are unacceptable. For example, the phased approach may not be appropriate for interviewing some witnesses who have difficulty communicating, for example those only able to respond 'yes' or 'no' to a question.

The key to successful interviewing is **flexibility** although it is recommended that you follow the guidelines in this manual.

Planning an interview

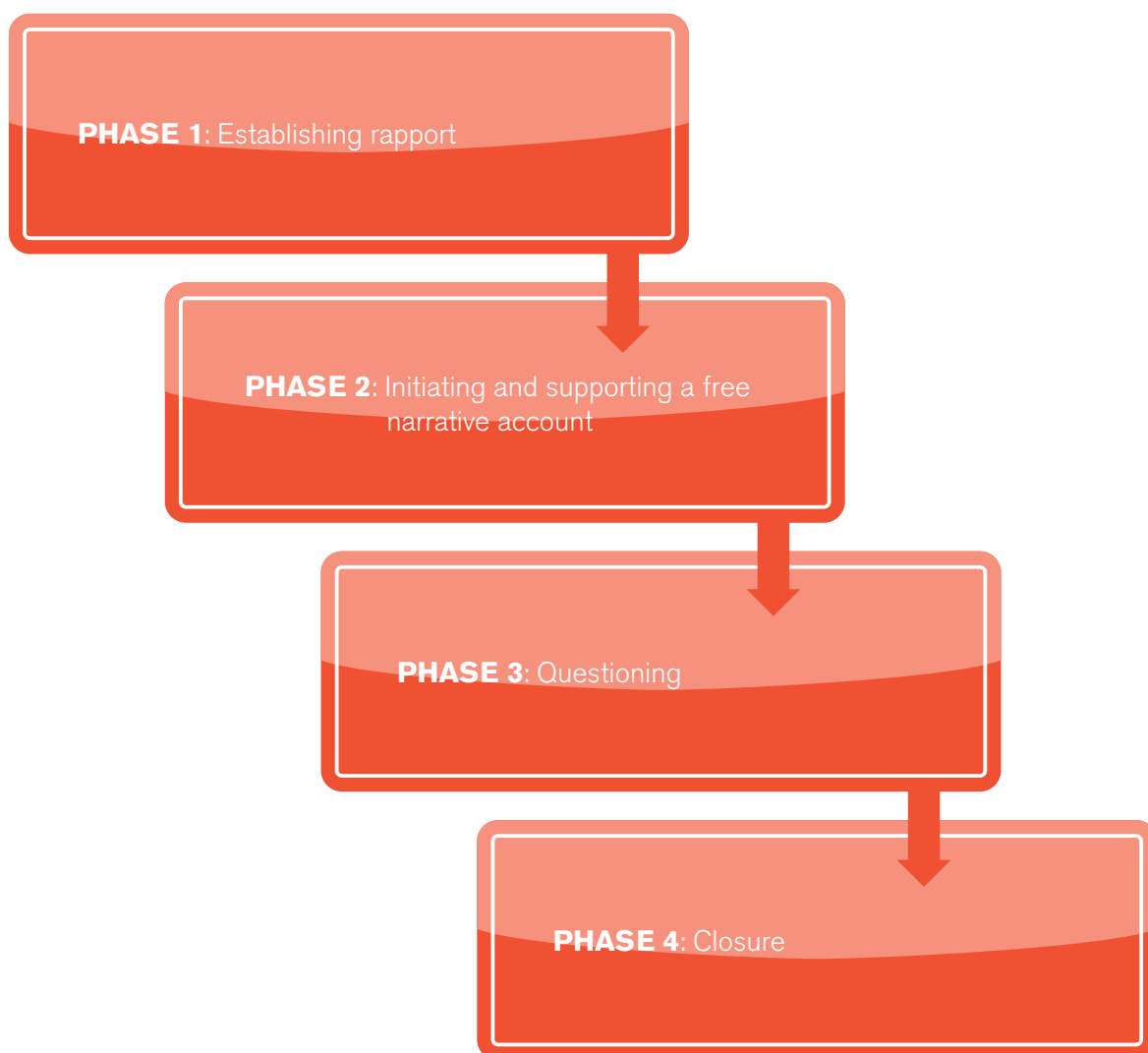
The interview should always be planned in advance. The interviewer should plan what needs to be achieved in each of the four main phases of the interview.

Recording an interview

It is advisable to record an interview on a video device, for example a video camera. If a video device is not available, you may use an audio recording device. If no recording device is available then take a hand- or type-written not of the interview.

Phases of an interview

The recommended **structure of the interview** is as follows:



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Phase 1: Establishing rapport

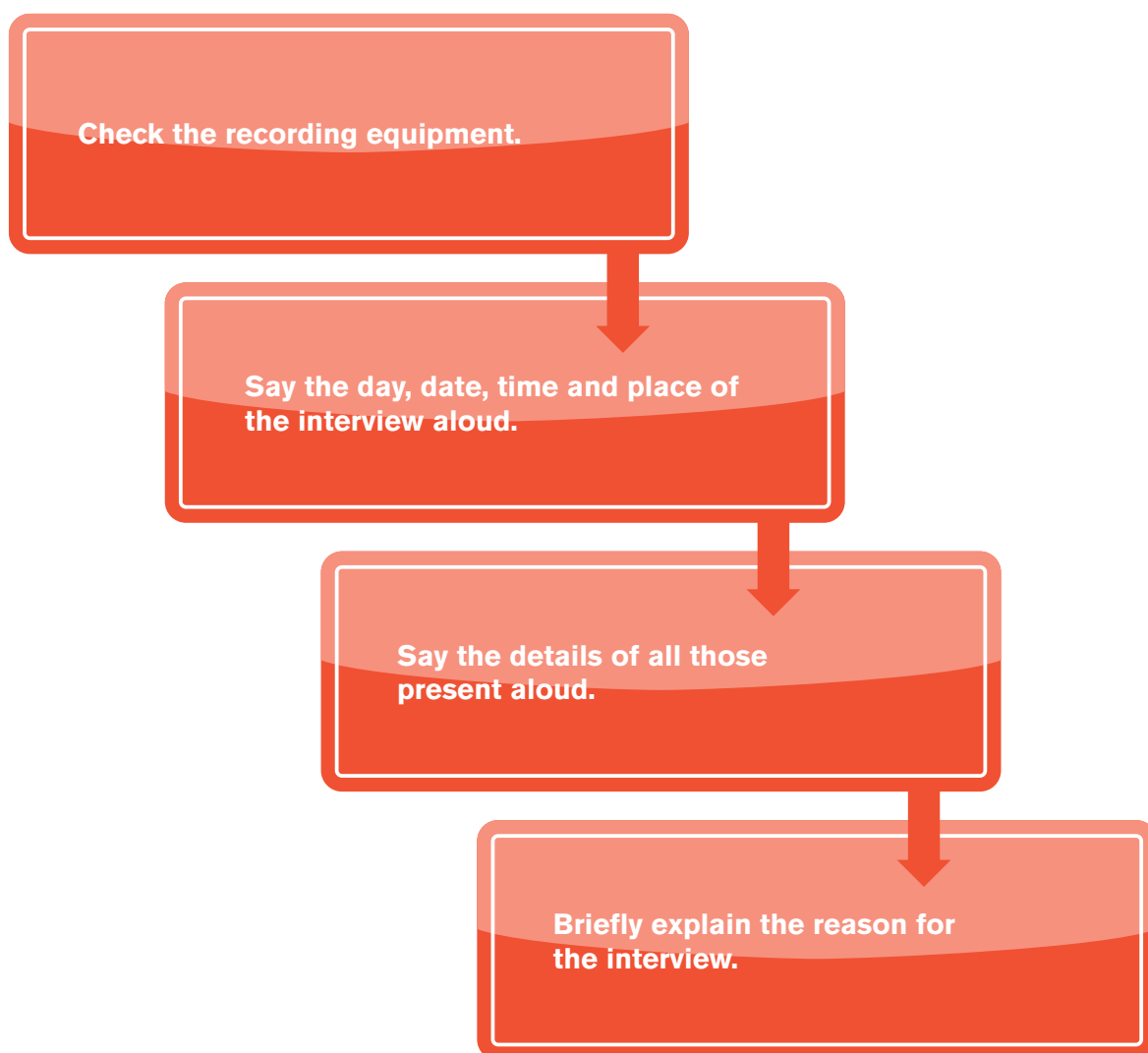
Phase 1 of the interview involves consideration of the following issues:

- Preliminaries
- Neutral topics
- Ground rules

Preliminaries

After confirming that the equipment is working and has been set up correctly, the interviewer should say out loud the day, date, time and place (not the detailed address) of the interview and give the relevant details of all those who are present.

The interviewer should then briefly mention the reason for the interview in a way that does not refer directly to an alleged offence. Interviewers should remember that they may need to take time to explain the process and purpose of the interview to the witness.



Neutral topics

A good rapport between the interviewer and the witness can improve the quantity and quality of the information obtained in the interview. One of the reasons that rapport is so important is to reduce any anxieties that the witness may have as much as possible. The interviewer's aim should be to have the witness's attention focussed on retrieving as much information as possible.

One way to achieve this is to start by asking some neutral questions that are not related to the event and which can be answered positively to create a more positive mood. It is important that the interviewer uses open questions from the outset so that the witness grows comfortable with providing detailed and substantial responses.

It is advisable to keep the discussion of neutral topics brief. A lengthy rapport phase may result in some witnesses:

- Getting tired before they are asked to provide an account of the incident which could have an adverse impact on the quality of their evidence;
- Getting confused about the purpose of the interview.

If the interview plan suggests that discussing neutral topics for a lengthy period of time may be beneficial (for example, with very young witnesses, witnesses with a learning disability or traumatised witnesses), this should take place as part of witness preparation before the interview commences.

It is not essential to discuss neutral topics in every interview. Where a witness is anxious to begin their account of the alleged incident(s), a discussion of neutral topics could be counterproductive. In any event, rapport should not be regarded as something that is confined to the first phase of an interview; it begins when the interviewer first meets the witness and continues throughout the interview.

BUILD A RAPPORT

Ask neutral questions/discuss neutral topics

Ground rules

It is important to explain to the witness what is expected from them, as for most witnesses an investigative interview is an unfamiliar situation. The interviewer should give an explanation of the structure of the interview in order to allay any fears the witness might have. The interviewer should explain that he or she will ask the witness to give a free narrative account of what they remember and that this will be followed by some questions to clarify what the witness has said.

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Witnesses should also be told that:

- If the interviewer asks a question they do not understand or asks a question that they do not know the answer to, they should say so; and
- If the interviewer misunderstands what they have said or incorrectly summarises what has been said, they should point this out.

Some vulnerable witnesses may be under the false impression that the interviewer already knows that happened and that their role, being eager to please, is merely to confirm this. It is crucial that interviewers tell witnesses that:

- They were not present at the event(s);
- They do not know what took place; and
- Supplying detail is important.

It should be made clear that the witness can ask for a break at any time. Vulnerable witnesses may require more frequent breaks. In order for vulnerable witnesses to have some control over a request for a break without having to make a verbal request, a 'touch card' can be useful. A touch card is a card that is placed beside witness that they can touch when they want a break. The break can provide an opportunity for refreshment.

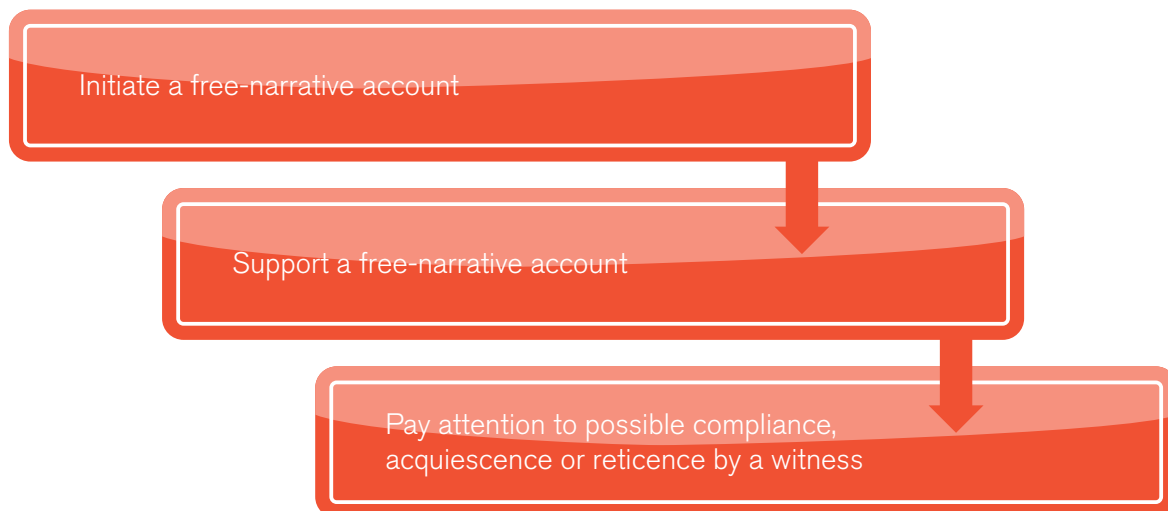
Towards the end of the rapport phase of an interview with a child witness, and after the ground rules have been explained, the interviewer should ask the witness to give a truthful and accurate account of any incident they describe. This is important because the video may be used in court and it is much more reliable if the child was made aware of the importance of telling the truth.

SET THE GROUND RULES

Explain what the witness should expect from the interview

Phase 2: Free-narrative account

Phase 2 of the interview involves the following steps:



Initiating a free-narrative account

In this phase of the interview the interviewer should initiate an uninterrupted free narrative account of the incident/event(s) from the witness by using an open-ended invitation. Interviewers should initiate a free narrative account by asking the witness to concentrate on the incident that is the subject of the investigation.

It is essential not to interrupt the witness during their narrative to ask questions; these should be kept for later.

In the free narrative phase, the interviewer should encourage the witness to provide an account in their own words by using non-specific prompts such as:

- Did anything else happen?
- Is there more you can tell me?
- Can you put it another way to help me understand better?
- Verbs like “tell” and “explain” are useful.

Supporting a free-narrative account

Use active listening techniques to let the witness know that what they have communicated has been understood by the interviewer. This can be achieved by reflecting back to the witness what they have just said, for example:

Witness: “I didn’t like it when he did that”

Interviewer: “You didn’t like it”

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The interviewer should be aware of the danger of indicating approval or disapproval of what the witness has said. Be aware of non-verbal behaviour such as body language and facial expressions, which might give away what you are thinking. Try to remain objective, neutral and non-judgmental.

Compliance

Some witnesses may be overly compliant in that they will try to be helpful by going along with what they believe the interviewer wants to hear and/or is suggesting to them. This is particularly so for witnesses who see the interviewer as an authority figure. Some witnesses may be frightened of authority figures. The interviewer should, therefore, try not to appear too authoritative, but should be confident and competent so as to reassure the witness.

Many vulnerable people want to present themselves in the best possible light and might try to appear as 'normal' as possible by, for example, pretending to understand when they do not. Explain to the witness that they should say if they do not understand something.

Acquiescence

Research has consistently found that vulnerable witnesses acquiesce to 'yes/no' questions. That is, they answer such questions with 'yes' regardless of the question's content or the truth of the answer. This tendency occurs particularly frequently with vulnerable witnesses. The way that the interview is conducted (for example if it is done too authoritatively) and the nature of the questions asked (for example if they are suggestive or complex) will also influence the number of unconditional positive responses.

Reticence

In many interviews, particularly those relating to allegations of sexual abuse, witnesses may be reluctant to talk openly and freely about what has happened. This can sometimes be overcome by the interviewer offering reassurance, for example: "I know this must be difficult for you. Is there anything I can do to make it easier?" It is appropriate for the interviewer to refer to a witness by their first or preferred name, but the use of terms of endearment, verbal reinforcement and physical contact between the interviewer and the witness are usually inappropriate. However, this should not preclude physical reassurance being offered by an interviewer to a distressed witness, if the witness consents to this.

Phase 3: Questioning

Phase 3 of the interview involves consideration of the following issues:

- General approach
- Interview structure
- Types of questions
- Summaries
- Inconsistencies

General approach

During the free narrative phase of an interview most witnesses will not be able to recall everything and their accounts will benefit from the interviewer asking questions that assist further recall.

Before asking the witness questions it may be beneficial to outline what is expected of them in this phase of the interview. It is helpful for the interviewer to tell the witness that they will now be asking them some questions based on what they have already communicated, in order to expand on and clarify what they have said. It can also be beneficial to reiterate a number of the ground rules outlined in the rapport phase of the interview, for example to explain to the witness that detail is required and that it is acceptable to say "I don't know" or "I don't understand" to a question.

When being questioned some witnesses may become distressed. If this occurs, the interviewer should consider moving away from the topic for a while. Shifting away from and then back to a topic the witness finds distressing and/or difficult may need to occur several times within an interview.

QUESTIONING

Tell the witness that he or she will be asked some questions to clarify and expand on what has already been already said

Interview structure

Having elicited an account from the witness during the free narrative phase of an interview, the interviewer should divide this section of the interview into manageable topics. Each topic that was not adequately covered in the witness' free narrative account should then be:

- Introduced using an appropriate technique (for example, an open-ended invitation to the witness to focus on and recall the subject matter of the topic); and
- Systematically probed using open and closed questions until all the relevant material relating to it has been elicited.

Interviewers should try to avoid topic-hopping (rapidly moving from one topic to another and back again) as this is not helpful for the witness's recall process and may confuse them.

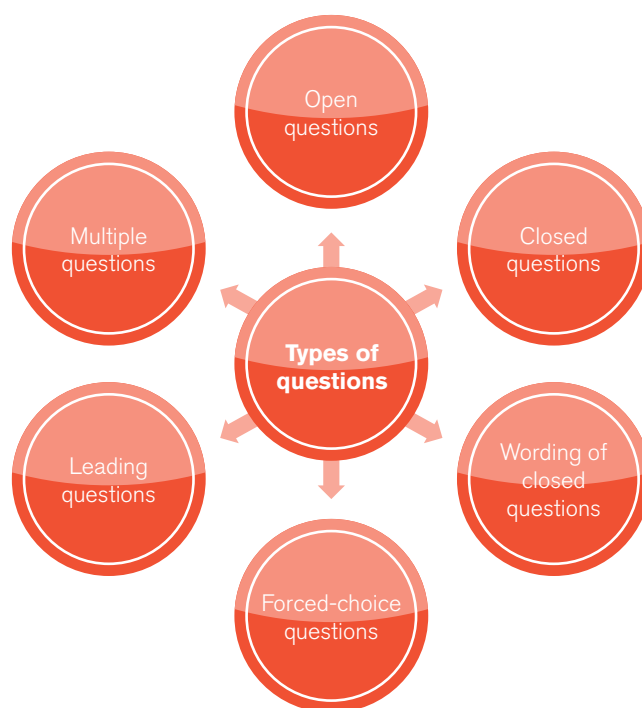
After probing the witness's account of the incident, the interviewer should move on to deal with any case-specific information that the witness may be able to provide information about. Such case-specific information should be organised into topics; each topic should then be systematically probed in a similar way to the witness's account of the incident(s).

PROBING

Ask questions to obtain information on all topics relevant to the case

Types of questions

Interviewers need to appreciate that there are different kinds of question that vary in how directive they are. Questioning should, whenever possible, start with open questions and then proceed, if necessary, to closed questions. Forced-choice questions and leading questions should only be used as a last resort.



◆ Open questions

An open question is the best kind of question for information gathering. Interviewers should predominantly use open questions when conducting an interview. Open questions are framed in such a way that the witness is able to give an unrestricted answer. This questioning style minimises the risk that the interviewer will impose their own view of what happened on the witness.

Questions beginning with phrases such as, “tell me”, “describe to me” or “explain to me” are usually open questions, for example, “You said you were in the market this morning when something happened, **tell me everything that you can remember.**”

◆ Closed questions

A closed question allows only a relatively narrow range of responses. **Closed questions are the next best type of question** and should be used to obtain information that the witness has not provided in his or her free narrative account or in the answers to the open questions. Closed questions allow the interviewer to focus on the relevant issues. Closed questions should be used after open questions otherwise the witness might get used to giving short answers.

Closed questions usually start with the words, “who”; “what”; “where”; and “when”.

Questions beginning with “why” should be avoided as they are usually seeking an emotional rather than factual response. Children will often respond to a “why” question by saying, “I don’t know”. This creates a block in the flow of the interview and is unhelpful as a result.

◆ Wording of closed questions

The interviewer should tailor the language of each individual question to the witness and avoid using grammatically complex questions. Interviewers should also avoid using questions that include double negatives. The key is to keep questions short and simple, making only one point per question.

If the interviewer wants the witness to elaborate on what he or she mentioned in the free narrative account, the interviewer should try to use the same words that the witness used. Negative phrasing should also be avoided as this suggests, and often prompts, a negative response. Negative phrases include things like, “You can’t remember any more, can you?”

Jargon and technical terminology should be avoided as these reduce the witness’ confidence and may alienate them. Moreover, a witness may just respond in the affirmative to avoid admitting that they do not understand.

Closed questions should not be repeated word for word because the witness may feel that their first answer was incorrect and change their response accordingly. When a question is not answered or the answer is not understood it should be reworded, not repeated. Also, if the witness has been unable to answer a number of questions in succession, the interviewer should change to an easier line of questioning, otherwise the witness may lose confidence.

◆ Forced-choice questions

Forced-choice and multiple questions (see below) should only be used as a last resort.

A forced-choice question gives witnesses only a small number of alternatives from which they must choose and which may, in fact, not include the correct option; for example, the question “would you like tea or coffee?” does not allow for the fact that the witness might want water. The result of asking this type of question is that the witness may guess the answer by selecting one of the options given.

Some very vulnerable witnesses may only be able to respond to forced-choice questions that contain two alternatives. Such interviews are likely to require extensive planning.

If forced-choice questions are to be used, it is particularly important to remind the witness that “don't know”, “don't understand” or “don't remember” responses are welcome. If a witness replies “I don't know” to an either/or question (such as, “was the car large or small?”), interviewers should try to avoid offering a compromise “yes/no” question in response (such as, “if it wasn't large or small, was it medium sized?”) that the witness may simply acquiesce to.

Forced choice questions risk putting words in the witness' mouth and undermining the quality and credibility of the evidence as a result.

◆ Multiple questions

A multiple question is one that asks several things at once. For example: “Did you see him? Where was he? What was he wearing?” The main problem with this type of question is that people do not know which part of it to answer. The witness has to remember all the different questions asked while trying to retrieve the information required to for each one. Moreover, when a witness responds to such a question, misunderstandings can occur as the interviewer may wrongly assume that the witness is responding to the first question, when actually they are responding to the second.

Less obvious examples of this type of question include questions that refer to multiple concepts, for example, “What did they look like?” This question asks the witness to describe more than one person; it may limit what the witness remembers about each individual and confuse the interviewer as to which person the witness is describing.

◆ Leading questions

A leading question is one that suggests the answer to the witness or makes assumptions about facts that are in dispute. If the interview is used in court, any leading questions may be edited out because they do not produce reliable answers. **Leading questions should be used as a last resort**, where all other questioning strategies have failed to elicit any kind of response.

Leading questions come in a number of different forms and some are more suggestive than others. The leading questions thought to be the most suggestive are called tag questions, for example, “You did see the gun, didn't you?”

On occasion, a leading question can produce relevant information. If this does occur, interviewers should take care not to follow up this question with further leading questions. Rather, they should revert to open questions in the first instance or closed questions as a second option.

The interviewer should never be the first to suggest to the witness that a particular offence was committed, or that a particular person was responsible. Once such a step has been taken, it will be extremely difficult to counter the argument that the interviewer “put the idea into the witness's head” and that their account is, therefore, tainted.

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Summaries

Interviewers should only summarise what the witness has said at the end of each topic if it is appropriate to do so. It may be appropriate if what the witness has said appears disjointed or ambiguous. **Interviewers should not summarise as a matter of routine.**

Where a summary is appropriate, the interviewer should try to use the same words and phrases as the witness.

Only summarise what the witness has said at the end of each topic if it is appropriate to do so

Inconsistencies

Witnesses can sometimes provide misleading accounts of events; these are often the result of misunderstandings or misremembering rather than deliberate fabrication.

Where there are significant inconsistencies in the witness' account interviewers should explore them after they have probed their basic account. Witnesses should only be challenged directly over an inconsistency when it is essential to do so. Rather, such inconsistencies should be presented to the witness using a tone of puzzlement or curiosity and framed as a need for clarification. On no account should the interviewer label a witness as a liar: there may be a perfectly innocent explanation for the inconsistency.

Avoid directly challenging the witness over any inconsistency (unless it is essential to do so).

Special considerations: children and vulnerable witnesses

It is important that the interviewer asks **only one question at a time**, and allows the witness enough time to complete their answer before asking a further question. Patience is always required when asking questions.

Interviewers **should not be tempted to fill pauses** by asking additional questions or making irrelevant comments.

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It is important that the interviewer **does not interrupt the witness** when they are speaking as this may suggest that only short answers are required.

When posing questions, interviewers should try to **make use of the information that the witness has already provided** and the words/concepts that the witness is familiar with. Some vulnerable witnesses have difficulty understanding pronouns (for example, he, she, and they); it is better for interviewers to use people's names.

Some children and vulnerable witnesses will find it difficult if the interviewer switches the questioning to a new topic without warning. Interviewers should **indicate a topic change** by saying, for example, "I'd now like to ask you about something else."

Many children and vulnerable witnesses will have difficulty with questions unless they are **simple, contain only one point per question, do not contain abstract words or double negatives, and avoid suggestion and jargon.**

It is important that interviewers **check that witnesses understand** what has been said by asking the witness to convey back to the interviewer what they understand the interviewer to have said. Merely asking the witness "do you understand?" may result simply in an automatic positive response.

Questions should always **take account of a child's stage of development.** Questions that rely on the grasp of adult concepts may produce misleading and unreliable responses from children. Concepts that children may struggle with include:

- Dates and times;
- Duration and frequency of events; and
- Weight, height and age estimates.

To help a child witness with the concept of time, try referring to their home or school routine, or when their favourite television show is on. Children can be helped to make a date estimate if the interviewer makes reference to markers in the child's life, such as their birthday, festive seasons or their class at school. An interviewer can assist a child with a weight, height or age estimate by drawing a comparison with someone the child knows and asking questions such as, "Is this person taller than you father?"

If, for the sake of clarity, interviewers decide to repeat one or more questions later on in the interview, even with changed wording, they should explain that it does not mean that they were unhappy with the witness's initial responses but that they just want to check that they have understood what the witness said.

Basic guidelines on interviewing children and vulnerable witnesses:

- Ask only one question at a time.
- Allow the witness enough time to complete their answer.
- Be patient.
- Do not fill pauses by asking additional questions or making irrelevant comments.
- Do not interrupt the witness when they are still speaking.
- When posing questions use the information that the witness has already provided.
- Use simple and easily understandable language.
- Do not change topic without an explanation.
- Make sure that the witness understands you.
- Take account of the child's stage of development when requesting information.
- If you repeat the question, explain that you are just checking your understanding of what the witness said.

Phase 4: Closing the interview

Phase 4 of the interview involves the following steps:



Recapitulation

In the final phase of the interview interviewers should consider briefly summarising what the witness has said, using the words and phrases used by the witness as far as possible. This allows the witness to check whether the interviewer has recalled and understood his or her account accurately. The interviewer must tell the witness to correct them if they have missed anything out or got anything wrong.

Summarising the interview can spark new recollections. The witness should be told that they can add new information at this point in the interview.

Interviewers should not attempt to summarise what the witness has said where the witness is tired, in an emotional state, has a short attention span, or is otherwise distracted because they may not be able to listen properly to the summary.

If there is a second interviewer present, the lead interviewer should also check with them whether they have missed anything.

Provide a brief summary using the witness' own words in order to allow him/her to correct you if you have missed anything

Closure

The interviewer should ensure that the interview ends appropriately. Every interview must have a closing phase. In this phase it may be useful to discuss some of the “neutral” topics mentioned in the rapport phase.

Every effort should be made to ensure that the witness is in a positive frame of mind at the end of the interview. Even if the witness has provided little or no information, they should not be made to feel that they have failed or disappointed the interviewer. However, praise or congratulations for providing information should not be given.

The witness should be thanked for their time and effort and asked if there is anything more they wish to say. An explanation should be given to the witness of what, if anything, may happen next.

The witness should be asked if they have any questions and these should be answered as appropriately as possible. It is good practice to give the witness (or, if more appropriate, an accompanying person) a contact name and telephone number in case the witness later decides that they have further matters they wish to discuss with the interviewer. It is natural for witnesses to think about the event after the interview and this may elicit more valuable information. Advice on seeking help and support should also be given.

Finally, the interviewers should report the end time of the interview on the video/audio-recording device.

End the interview by discussing some neutral topics

Thank the witness for their time and effort

Ask the witness if he or she has any questions

Give the witness a contact name and telephone number

Report the end time of the interview on the recording

10. Value clarification

- When you work on cases involving child victims, witnesses or children in conflict with the law it is important that you stay objective and impartial throughout your involvement.
- You should leave behind your personal views, feelings, preferences and political opinions.
- You should carry out all tasks professionally and expeditiously.
- You should work on the cases with professional distance and always be guided by what is in the best interests of the child.
- You should always be respectful and polite to people that you are engaging with even when you disagree with them.
- Before you engage with communities you should do research to get familiar with their structure, relationships and ways of operating.
- When working within the community you must be respectful and avoid any conflict that could jeopardise the child's position.

11. Involvement of other NGOs

- It may be appropriate to refer some cases to other NGOs for assistance if they are better placed to support the child.
- If this is done try to continue to gather information from the other NGOs on the welfare of the child and how the case is progressing. Record this information in the case file.

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