



THE NIGERIA POLICE FORCE

**Standard Operating Procedures on Handling Cases involving Children in Conflict
with the Law**

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INTRODUCTION TO THESE STANDARD OPERATING PROCEDURES

THE OBJECTIVES AND PURPOSE OF THE NPF STANDARD OPERATING PROCEDURES ON HANDLING CASES INVOLVING CHILDREN IN CONFLICT WITH THE LAW

An effective, appropriate justice system is one in which justice officials, including members of the police, prevent and respond to cases involving children in conflict with the law in a child-friendly, sensitive manner that recognises their inherent vulnerability and that prioritises the child's rehabilitation and reintegration.

The need for a separate system of juvenile justice is established within international and regional legal instruments and best practices and within the national laws of Nigeria, specifically in section 204 of the Child's Rights Act 2003 which states:

'No child shall 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 and processes set out in this Act.'

The aim of these Standard Operating Procedures is to ensure that the NPF handles cases involving children who are suspected of or accused of committing a criminal offence in a manner that:

- Upholds the rights of the child;
- Preserves the child's welfare and dignity;
- Protects the child from harm and abuse; and
- Supports the child's continued development, rehabilitation and reintegration.

The SOPs aim to achieve this by:

- Raising awareness within the NPF of the rights of children in conflict with the law;
- Raising awareness within the NPF of the root causes of child offending and effective prevention activities;
- Raising awareness within the NPF of effective measures to support rehabilitation and reintegration of children in conflict with the law; and
- Setting out uniform procedures and practices for handling these cases by NPF.

APPLICABILITY OF THE SOPS

These Standard Operating Procedures have been developed to guide the handling of cases involving children who are in conflict with the law. While specialised police units have been established in several locations in Nigeria, in other areas, cases involving children in conflict with the law will be handled within non-specialist police units or stations. These SOPs are applicable in all contexts and cases involving children in conflict with the law and set out the procedures and practices that must be followed by all Police Officers who engage with children who are suspected of or accused of committing criminal offences.

These SOPs set out procedures and practices for each step of the criminal justice process, including prevention, arrest, investigation, charge, diversion and referral to a prosecutor, Court, social welfare department or other agency.

LEGISLATIVE BACKGROUND

In 1993, a Children’s Bill was drafted to implement the principles enshrined in the UN Convention on the Rights of the Child¹ and the African Charter on the Rights and Welfare of the Child². The Child’s Rights Act was assented to by the President of Nigeria in September 2003 and was intended to be the definitive law concerning children in Nigeria. As of October 2016, the CRA had been adopted into law in the Federal Capital Territory and has been domesticated in 23 states: (i) Abia (ii) Akwa Ibom (iii) Anambra (iv) Bayelsa (v) Benue (vi) Cross River (vii) Delta (viii) Ebonyi (ix) Edo (x) Ekiti (xi) Imo (xii) Kogi (xiii) Kwara (xiv) Lagos (xv) Nasarawa (xvi) Niger (xvii) Ogun (xviii) Ondo (xix) Osun (xx) Oyo (xxi) Plateau (xxii) Rivers and (xxiii) Taraba.

The following 13 states are yet to domesticate the CRA: (i) Adamawa (ii) Bauchi (iii) Borno (iv) Enugu (v) Gombe (vi) Jigawa (vii) Kaduna (viii) Kano (ix) Katsina (x) Kebbi (xi) Sokoto (xii) Yobe and (xiii) Zamfara. In these States, the applicable laws include: the Children and Young Persons Act (1943), State Children and Young Persons Laws, Criminal Code Act (1916), Criminal Procedure Act (1945), State Criminal Procedure Code Laws, the Penal Code (1960) and Sharia laws.

These SOPs are compatible with both national laws, and state equivalents. Where legal references are relevant, citations to both the Child’s Rights Act and the Children and Young Persons Act are included. The SOPs are also intended to be compatible with existing laws across Nigeria, including the Criminal Code and Penal Code. They are also intended to be compatible with the Violence Against Persons (Prohibition) Act 2015.

¹ G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990.

² OAU Doc. CAB/LEG/24.9/49 (1990), *entered into force* Nov. 29, 1999.

SECTION A – INTERPRETATION, DEFINITION AND EXPLANATION OF TERMS

A.1 INTERPRETATION

The following terms used in these Standard Operating Procedures shall, unless otherwise indicated, bear the meanings ascribed to them in this sub-section.

Child means any person below the age of 18 years old. In these SOPs, the word ‘juvenile’ is also used to mean any person below the age of 18 years old.

Child abuse includes **physical abuse** such as causing of physical harm to a child; **emotional abuse** such as making the child feel worthless, unloved, or inadequate or valued only if they meet the needs of another person or causing the child to feel threatened or in danger; and **sexual abuse** such as involving the child in any activity for the sexual gratification of another person – even if the child could be considered to have ‘consented’. **Sexual abuse** may include non-contact activities including making the child look at or watch pornography or sexual activities. It may also include the use of sexual language when speaking to a child or encouraging a child to behave in a sexually inappropriate manner. **Child abuse** also includes child neglect (see below for a separate definition), harmful traditional practices such as female genital mutilation and child marriages, child trafficking and engaging a child in **exploitative labour** that may be harmful to the child’s health, education, mental, physical or moral development. **Child in conflict with the law** means any individual who is alleged as, accused of, or recognised as having infringed the penal law or criminal law of Nigeria in relation to an incident or incidents that occurred while the child was below the age of 18 years old.

Child in need of care and protection is a child suffering significant harm or who is at risk of suffering significant harm as defined in Section 50(1) of the Child’s Rights Act.

Child neglect refers to the failure of a child's parent or caregiver to provide necessary care and means of sustenance to a child such as food, shelter, clothing, education, medical care etc., or failure to protect such child from violence by a parent, guardian or child care institution.

Crime means an act or omission which violates an existing criminal law or an attempt to that effect. It is also defined as a legal wrong, the remedy of which is punishment of the offender at the instance of the state. Specific crimes are given the definition and understanding set out in the Criminal Code and Penal Code in Nigeria.

Crime scene refers to a place or body where a crime has been committed, irrespective of whether the identity of the perpetrator is known or not.

Exhibit means any document or object, either in material/solid or liquid form, recovered in connection with a case and which is later produced in Court by a witness in accordance with the provisions of the Criminal Procedure Act, or any other law.

Exploitation means the use of a child for one's own advantage. It includes several forms of exploitation, including child labour exploitation and sexual exploitation such as: photographing the child for pornography, kidnapping and selling children into prostitution and forcing sex with the child.

Found Child means a lost or abandoned child who has been located and taken to a place of safety.

Gender means socially and culturally constructed identities, often described using the terms 'male and female' but covering numerous identities. Gender identities are socially constructed, changeable and constantly changing, and vary according to culture and location.

Interpreter means a person who is appointed to support a child, or his or her parents, guardians, or carers, to facilitate understanding of communications by translating or interpreting between languages.

Investigating officer means a member of Nigeria Police Force or a social worker any person legally authorised to investigate cases.

Juvenile justice means the systems, structures and institutions that address cases of children in conflict with the law, or at risk of coming into conflict with the law, on an individual, and policy level.

Legal representative/ other appropriate assistance is a person with legal training, which may include a lawyer, or other individual with legal knowledge and training.

Lost or abandoned child means a child who as a result of parental action or for some other reason finds himself left without a parent.

Physical evidence means anything that the suspect has taken from or left behind, or that may be otherwise connected with the crime scene or the crime itself.

Specialised Children's Police Unit is a specialised unit within a Police Station or other division as designated by NPF, with specially trained officers who are tasked with attending cases involving children in conflict with the law, child victims/ witnesses and child abuse cases. (S.207 of the Child Rights Act 2003 is included in these SOPs as CRA as an Appendix I). **Sexual violence** means any sexual act, attempt to obtain a sexual act, or acts to traffic for sexual purposes, directed against a person using coercion, and unwanted sexual comments, harassment or advances made by any person regardless of their relationship to the survivor, in any setting, including but not limited to home and workplace.

Violence includes and is not limited to physical violence, emotional violence, and sexual violence.

A.2 ACRONYMS

The following Acronyms shall have the construction ascribed to them below:

ACRWC	African Charter on the Rights and Welfare of the Child
CC	Criminal Code
CRA	Child's Rights Act
CYPA	Children and Young Persons Act
DNA	Deoxyribonucleic Acid
FBO	Faith Based Organisation
IGD	Investigation General Directive
IR	Investigation Register
NGO	Non-governmental Organisation
NPF	Nigeria Police Force
RB	Report Book
SCPU	Specialised Children's Police Unit
SOP	Standard Operating Procedure
SWO	Social Welfare Officer
PC	Penal Code
UNCRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations Children's Fund

SECTION B – THE GENERAL CONTEXT OF THE STANDARD OPERATING PROCEDURES (SOPS)

B.1 INTRODUCTION

The overall mandate of the NPF is to ‘make Nigeria safer and more secure for economic development and growth; to create a safe and secure environment for everyone living in Nigeria’. Its mission statement is as follows:

1. To partner with other relevant Security Agencies and the public in gathering, collating and sharing information and intelligence with the intention of ensuring the safety and security of the country;
2. To participate in efforts aimed at addressing the root causes of crime while ensuring that any criminal act is investigated so as to bring the criminals to justice in a fair and professional manner;
3. To engender an efficient, effective, well-trained and highly motivated workforce, with deliberate efforts aimed at improving the capacity and welfare of all officers and men of the Force.
4. To build a people’s friendly Police Force that will respect and uphold the fundamental rights of all citizens; and
5. To build a gender sensitive and gender friendly Police Force that will give equal opportunity to female Police Officers, while at the same time respecting their peculiarities.

Based on this mandate, and mission statement points 2 and 4 in particular, Police Officers have the responsibility to take measures to prevent criminal offending by children, and to address any criminal offending (or allegations of criminal offending) by children in a child-friendly manner that safeguards and protects children’s fundamental rights.

B.2 THE OVERALL GOAL IN HANDLING CASES INVOLVING CHILDREN IN CONFLICT WITH THE LAW

The overriding goal in handling cases involving children in conflict with the law is elaborated within international and regional instruments including, the UN Convention on the Rights of the Child 1989 (UNCRC) and the African Charter on the Rights and Welfare of the Child 1990 (ACRWC). The Convention on the Rights of the Child provides that the primary goal in handling cases involving children is to ensure the child is treated in a way that promotes:

“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.”³

Nigeria has ratified both the Convention and the Charter and has therefore agreed to ensure that all aspects of the Nigerian government follow this provis

³ Article 40(1) of the UN Convention on the Rights of the Child.

B.3 UNDERPINNING PRINCIPLES OF HANDLING ALL CASES INVOLVING CHILDREN

Four key principles must underpin any actions and decisions when handling cases involving children:

- The **best interests of a child** shall be *the* primary consideration in all actions concerning a child whether undertaken by public or private social welfare institutions, Courts or administrative bodies (Section 1 Child's Rights Act (CRA) 2003).
- A child shall have the right to live **free from any discrimination** and a person shall not discriminate against a child on the grounds of gender, race, age, religion, language, political opinion, disability, health status, custom, ethnic origin, rural or urban background, birth, socio-economic status, being a refugee or of other status (Section 10 CRA).
- A child shall have a **right of opinion** and no person shall deprive a child capable of forming views the **right to express an opinion**, to be listened to and to participate in decisions that affect his well-being (Section 158 CRA).
- The final underpinning principle is the **right to life, survival and development**, which should be promoted within standard police practices through the child-sensitive procedures set out in these SOPs (Section 4 CRA). (include cross reference)

B.4 GUIDING PRINCIPLES OF HANDLING CASES INVOLVING CHILDREN IN CONFLICT WITH THE LAW

In addition to the underpinning principles set out in Section B.2, there are a number of guiding principles of handling cases involving children in conflict with the law.

The way in which Police Officers handle cases involving children who are accused of criminal offences must promote the child's sense of **dignity and self-worth**. The approach to these cases must also focus upon **rehabilitation and reintegration**, rather than retribution or punishment.⁴ A focus on rehabilitation and reintegration can be viewed as a departure from more traditional, outdated forms of policing and as progress towards more effective policing that addresses root causes of criminal activities by children and helps to prevent further crimes.

A number of other principles involving children are important to the appropriate handling of cases involving children in conflict with the law, including:

- **Prevention of offending:** the prevention of child offending is as important as appropriate handling of cases where children have already come into conflict with the law. Prevention activities include working with social welfare officers, parents, and community leaders to identify children who are at a higher risk of offending, and

⁴ See, e.g. Committee on the Rights of the Child, General Comment No. 10 (2007), para. 13.

working together to support the child not to offend (rather than victimising the child simply because this risk exists).

- **Minimisation of delay:** the time between the alleged commission of an offence and the police response should be as short as possible in order to limit the impact on the child's life and development. Some of the factors that cause delay are: locating the child's parents, home, getting witnesses etc. Police responses and procedures should be conducted carefully and correctly, but as promptly as possible. Police play a central role in minimizing delay by, for example, gathering sufficient evidence to lodge a charge without the case being dismissed or adjourned.
- **Protection of privacy:** involvement with the criminal justice system can lead a child to be stigmatised within the community. Avoid re-victimizing the child e.g. through talking down to the child because this can have a negative impact upon the child's future outcomes and lead to psychological trauma and even further offending by the child. A child's privacy and confidentiality should be protected at all stages of the criminal justice process, including within Police Stations, to the extent possible. Police officers should be sensitive about the public (non-private) aspect of any interventions and should seek to protect the child's privacy at all opportunities. (See Section 8(1) and 205 CRA).
- **Proportionality of response:** any response to a child's offence must be proportional to the circumstances and impact of the offence itself. The least restrictive intervention should be used to address the offence – this will commonly include diversion measures (see below and Section J of these SOPs)
- **Use of alternative measures where possible:** international standards promote the use of alternative measures wherever possible. 'Diversion' involves a decision by a Police Officer, or other justice official, to end a case prior to prosecution, or a judicial decision to apply an 'alternative disposals'.

It is the responsibility of the Officer in Charge to make all Police Officers aware of these SOPs. This includes Charge Room Officers, Specialised Children's Police Unit Officers and all other Police Officers.

SECTION C – AGE OF CRIMINAL RESPONSIBILITY AND AGE DETERMINATION

C.1 AGE OF CRIMINAL RESPONSIBILITY IN NIGERIA

In Nigerian States in which the CRA has been incorporated into State Law, or is in effect, all children in conflict with the law must be dealt with through a separate justice system, in line with section 204 of the CRA (Appended at Appendix I).

The CRA does not signal a minimum age of criminal responsibility but the Criminal Code Act 1916 sets a minimum age of 7. Therefore, in jurisdictions in which the Child's Rights Act and Criminal Code Act are in force, the relevant age group is 7-17. In relevant jurisdictions, section 50 of the Penal Code provides: "50. No act is an offence which is done (a) by a child under seven years of age; or (b) by a child above seven years of age but under twelve years of age who has not attained sufficient maturity of understanding to judge the nature and consequences of that act".

The minimum age of criminal responsibility under the Children and Young Persons Act is 7. Under the CYPA, a child is defined as any individual under the age of 14, and a young person as an individual aged 14 to 16. It is not clear what treatment a child aged between 14 and 17 should receive in States in which the CYPA is in force. However, in line with international and national standards and best practices, for the purposes of these SOPs, all children below the age of 18 must have their cases handled according to these SOPs.

Therefore, all children below the age of 18 should be treated in accordance with these SOPs. Children who are 18 years old or more but who were alleged to have committed an offence when under the age of 18 may be treated as adults, in accordance with general SOPs, though sentencing decisions and outcomes must be based on the fact that they committed the offence when below the age of 18.

C.2 HOW TO DETERMINE THE CHILD'S AGE

It is essential to determine the child's age as soon as possible because the child's age will affect how the Police should handle cases and whether the case falls under the remit of these SOPs. This is especially important where the child's (perceived, real or alleged) age is close to the age parameter of 18.

The simplest way to determine a child's age is to have sight of an identity document, such as a birth certificate or other formal identification document, such as a passport or identity card. Alternative measures may include evidence such as information from a school, a school-leaver's certificate or other equivalent certification from a school.

Police investigating cases involving children should ask the child's age and attempt to find one of these forms of evidence to verify the age, if possible, though such investigations should be handled sensitively, so as not to cause any harm or distress to the child. Practical problems may occur where a child does not know his or her age, no identification is available, or the child refuses to provide identification. Police officers should remember that the child's refusal to provide information does not necessarily mean that the child is lying – the child may feel threatened or nervous about providing personal information.

If no immediate identification is available, the Police Officer should ask the child to state his or her age and should proceed according to the presumption that the stated age is correct.

To support the determination of the age of the child, the officer in charge may choose to write an official letter requesting a Medical Officer to determine the age of the child. However, it is imperative that the search for identification or age verification, though important, does not lead to delay in proceedings.

C.3 WHAT HAPPENS IF THE CHILD'S AGE IS IN DISPUTE?

In some circumstances, a child's age will be in dispute, or the Police Officer will have reason to doubt the child's given age. This is especially likely in areas with low rates of birth registration, or if an individual child is not birth-registered and does not attend school. It can be difficult to know exactly how old a child is because children vary widely in terms of their height, build and development.

Police Officers are not expected to be experts in age determination. The Police should accept whatever age the child claims to be and process the case in line with this age. It is likely, in these instances, that a more detailed examination of the child's age will be undertaken prior to prosecution or trial. If it is not or has not been possible to determine the child's age, or if there is *any doubt* about the child's age, the Police Officer must *presume that the individual is under the age of 18*, and must treat the individual as a child, ensuring that **all** protections and provisions of these SOPs apply.

C.4 WHAT HAPPENS WITH CHILDREN BELOW THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY?

On rare occasions, a child who is below the age of 7 years old will come into conflict with the law. When this happens, the Police should always consider this child a child in need of care and protection and should refer the case to the Social Welfare Department or relevant statutory agency.

In making this referral, the Police Officer should pass on relevant information regarding the child's background and family situation. If the child is without parental care or without a fixed abode (is a child living or working on the streets), the Police Officer should make a special note of this when making an urgent referral to the Social Welfare Officer or relevant statutory agency, to ensure that the child could be assisted through a residential care provider, or other appropriate option, if available.

Police Officers should also liaise with community-based service providers and FBOs to ensure that the child receives services that may assist him or her not to come into conflict with the law in the future.

C.5 WHAT HAPPENS WITH CHILDREN WHO ARE VICTIMS OF CRIMES?

These SOPs focus on children who are in conflict with the law, rather than children who are victims of or witnesses to crimes. There will sometimes be overlap, for example, if a child is coerced into committing an offence; or it may not be clear whether a child is the victim of an offence, or a potential perpetrator of the offence. Children may also be involved in prostitution

and being sexually exploited. However, it must be noted that these SOPs are targeted specifically at children in conflict with the law and not those who are victims or witnesses, though many of the principles are shared across handling of these cases.

If a child is considered to be the victim of a crime, the Police should follow the procedures set out in the SOPs on Handling of Cases involving Children who are the Victims or Witnesses of Offences.

SECTION D – PREVENTION OF OFFENDING BY CHILDREN

D.1 IDENTIFYING RISK

Prevention of child offending begins with identifying and understanding risk. Risk factors tend to focus on a child's circumstances but a child's behaviour patterns can also indicate potential risk of offending. For example, if a child is consistently engaging in anti-social behaviour this could lead to low-level, and, subsequently higher-level, criminal offending.

There are several effective and simple ways that Police Officers can become aware of children at risk in their community:

- a. Go in to schools, youth groups and other relevant groups and talk to children – make yourself a 'go-to' person for the children and young people in a community;
- b. Get to know community leaders, families and children in the community;
- c. Develop positive relationships with community members and aim to make community interactions positive (rather than threatening);
- d. Talk to teachers, parents, and community leaders about the community – find out what is happening and be a positive presence;
- e. Spend time in the community, gathering intelligence and observing behaviours, especially in known areas of 'difficulty'; and
- f. Talk to Social Welfare Officers and other front line workers in the community.

When engaging in these activities, Police Officers must remember that the purpose of these actions is not to solve crimes, but to help to prevent offending by children. Police Officers should also always remember the importance of protecting a child's privacy – especially children with whom they have had contact through criminal cases (either as alleged offenders or as victims or witnesses).

D.2 WHAT POLICE OFFICERS CAN DO TO ADDRESS RISK AND PREVENT OFFENDING

Once risk has been identified, either through the methods noted above, or through other means, Police Officers can help to address risk of offending and prevent offending through a number of activities, including the following:

- a. **Talk to children** who have been identified as at risk about their behaviour, their lives, backgrounds and life-styles. Consider speaking to the child's parents, guardians or carers, if this would be in the best interests of the child and would not put the child at risk of harm, either through reprimand by the parents, guardians or carers, or through stigmatisation within the community. Explain to children the consequences of criminal offending, and provide information and contact details for services that could help address the child's behaviour;

- b. Host **community outreach activities**, such as open days at the Police Station, to build a positive view of the Police;
- c. Arrange to **go into schools** to talk to children about offending, the role of the police, and other safety issues. Make sure that any activities in schools protect the privacy of children who are in conflict with the law, and focus on prevention and positive actions, rather than on punishment or frightening children;
- d. Be aware of and **meet regularly with civil society organisations, NGOs and FBOs** to find out about their work to prevent offending, and to offer help where possible; and
- e. **Work together and promote cross-working** and discussions within the Police Station, including, in particular, with Officers of the Police Gender and Children's Desk. Share lessons learned, awareness about community services and implementation of best practices.

D.3 INTER AGENCY COLLABORATION

Prevention of offending by children is a team-effort and must involve the support of a number of agencies and actors. Police Officers should maintain regular communication with community and relevant statutory agency professionals working on children's issues. Regular meetings, face to face conversations and phone calls can help Police Officers to be aware of potential problems, and can help to ensure that children who need care and protection are properly referred to Social Welfare Officers.

It is good practice to ensure that at least one Social Welfare Officer is assigned to each SCPU. Where possible, and as further good practice, a Social Welfare Officer should be available in all Police Stations, or as many as is practicable given local circumstances. Officers in Charge should ensure that all Police Officers are sensitised on issues of child care and protection and are able to identify children who are in need of care and protection and whose cases should therefore be referred to Social Welfare Officers.

SECTION E – ARREST

E.1 KEY PRINCIPLES OF ARRESTING CHILDREN

This Section focuses on principles and procedures when a Police Officer arrests a child, or children. The following principles should be followed at all times during any arrest of a child:

- a. **Prohibition of violence and abuse** – violence or abuse towards children is never acceptable under any circumstances. If a Police Officer is found to have perpetrated violence or abuse towards a child, this shall be considered a criminal matter and the perpetrator shall be prosecuted;
- b. **Avoidance of harm** – during arrest, all Police Officers must act in a way that avoids bringing harm to a child and promotes the well-being of the child. This includes avoiding actions, attitudes, and language that could harm the child physically or psychologically;
- c. **Minimisation of force and restraint** – it is recognised that in some limited circumstances, a small amount of force and restraint may be necessary in order to arrest a child. However, violence is never acceptable, under any circumstances. All use of force and restraint should be minimised and the last possible resort. This includes forceful language, use of handcuffs and physical restraint. Violent or threatening language, restraint or behaviour is unacceptable under any circumstances and the need to arrest may never be used to justify violence of any form. Police should be trained in and practice non-violent methods of restraint and arrest;
- d. **Non-use of weapons** – as far as possible, Police Officers should avoid showing, and especially using, weapons when arresting children. This includes batons and sticks, and especially firearms;
- e. **Non-delay** – when a child is arrested, the arresting Officers must endeavour to bring the child to the Police Station as soon as possible to begin investigation proceedings. Children shall not be interviewed outside the Police Station, unless the best interests of the child dictate otherwise (e.g. to receive necessary medical attention);
- f. **Separation of children and adults** – children must be separated from adults while in police custody and attempts should be made to separate children from adults at all times, including in transportation to the Police Station and to Court. Where separation is not possible, a Police Officer should be present to ensure that the child is not harmed;
- g. **Child protection** – as with all interactions with children, Police Officers must be conscious of child protection concerns and must be prepared to notify Social Welfare Officers if it is felt that the child being arrested, or any other children with whom the Police Officer has interacted, is at risk of or suffering from harm;

- h. **Dressing** – as far as practicable, a Police Officer should not wear uniform when arresting a child. Officers deployed to arrest children should be dressed in civilian attire; and
- i. **Internal transferral** – whenever a child is arrested, the case must be transferred immediately to a Specialised Children’s Police Unit or similar unit if it exists.

E.2 TRAINED OFFICERS TO ARREST A CHILD

Where possible, only Police Officers who have been trained in handling cases involving children in conflict with the law should arrest children. If possible, it is desirable that Police Officers from Specialised Children’s Police Unit should arrest children, however, it is noted that this will not always be possible. It is recommended that, where possible, female officers should arrest female child suspects. Where circumstances require, a female officer should be accompanied by a male police officer.

E.3 PREPARING TO ARREST A CHILD

When preparing to arrest a child, it is important to decide when and how to go about the arrest. Where possible, a child should be summoned to the Police Station for arrest. This may not always be practicable, if, for example, the child is without a fixed abode, in which case the Police Officer should follow procedures set out below. It may also be felt that a child is a flight risk if he or she is forewarned, and Police Officers may choose to arrest the child on location, in line with standard police procedures.

If a child does not attend the Police Station after two summonses issued by the Police, a Police Officer may request a warrant to be issued by the Court. In such circumstances, it is preferable that the child be arrested in the presence of his or her parents or guardians, as long as this would not be considered to be contrary to the best interests of the child. For example, it could be against the best interests of the child to arrest him or her in front of his or her parents if the parents or guardians are already known to the Police to be abusive or violent towards the child, or if the arrest could otherwise place the child at risk of harm or significant harm.

Before making a plan to arrest the child, to help inform the decision as to the best interests of the child, the Police may wish to consult, confidentially, with a Social Welfare Officer in advance of the arrest.

If the child is without parental care and/or has no fixed abode, the Police Officer should ask a Social Welfare Officer to accompany him or her to carry out the arrest. Such arrests are likely to take place in public spaces, and, therefore, the Police Officer should aim to minimise any disturbance, to protect the child from stigmatisation in the community. The Police Officer shall take all practicable measures to locate the child.

It is not advisable to arrest the child at school or in another public setting, as this could be a violation of the child’s privacy, could lead to stigmatisation, and could harm the child’s reintegration into the community after proceedings are completed.

E.3.1 WHEN EXECUTING A WARRANT OF ARREST WHERE PRACTICABLE AN OFFICER FROM A SPECIALIST CHILD UNIT SHOULD EXECUTE THE WARRANT

In line with Section E.2, when executing a warrant of arrest, where possible and practicable, an officer from a Specialised Children's Police Unit should execute the arrest warrant. It should be noted that, given the additional planning time involved in executing an arrest warrant, compared to an urgent or on the spot arrest (see Section E.4), it may be more likely or practicable for a SCPU Officer to execute an arrest warrant.

E.4 URGENT/ ON THE SPOT ARREST

On occasion, an urgent or on-the-spot arrest will be necessary, for example if the Police Officer observes the commission of a crime in progress, or receives a report of a crime in progress or attempted flight by a suspect. Where this is the case, and where a child is involved in the offence, the Police Officer may arrest the child urgently or on-the-spot but must follow the principles set out in Section E.1.

E.5 RESTRAINT

Forms of restraint, such as physically holding a child, or placing the child in shackles or handcuffs, should be avoided as much as possible. There is often little reason or call for restraint, as children are likely to cooperate. However, where a child is placing himself or others at danger, or where the child is attempting to escape, the least restrictive form of restraint should be used to prevent the harm, or prevent the child from fleeing. Any use of restraint must be recorded in the arrest record. Physical violence or verbal abuse is never acceptable, under any circumstances.

E.6 NOTIFICATION OF THE REASONS OF ARREST

Upon arrest, the child must be notified of the reasons for his or her arrest in a language and in words that he or she understands. At this time, the child must also be notified of his or her rights, including the right to remain silent and the right to legal representation or other appropriate assistance.

It is very important that the child understands why he or she is being arrested. The Police Officer should ensure he or she explains the warrant of arrest or reasons for arrest in a language and in a manner that the child can understand. The Police Officer should bear in mind that the child may be distressed and may find it difficult to concentrate on what is being said. Ensuring that the child understands the reasons for the arrest goes beyond just reading the warrant. Police Officers should take their time to explain in simple language and to ensure that the child really does understand what is happening, as well as that he or she fully understands his or her rights.

E.6.1 NOTIFICATION OF PROCESSES AND PROCEDURES

In addition to notifying the child about the reasons for arrest, the Police Officer must explain to the child the processes and procedures as they happen, and in advance where possible. This can reduce the child's anxiety levels and can therefore reduce or minimise harm to the child (thus promoting the underpinning principles of child justice set out in Section B.3).

E.7 NOTIFICATION OF PARENTS, GUARDIANS OR CARERS

As soon as possible after the arrest of the child, a Police Officer must notify the child's parents, guardians, or carers of the child's arrest and the reasons for this arrest. This may be done through telephone, or, if that is not feasible, through a face-to-face meeting. In some cases, it will not be possible to notify the parents, guardians or carers immediately. Where this happens, a Police Officer must continue to complete the notification as soon as possible. Full records of all attempts must be recorded within the investigation diary.

If the Police Officer is unable to locate the child's parents within 24 hours, he or she must notify the Social Welfare Department or relevant statutory authority, at which point the child should be considered in need of care and protection.

E.8 NOTIFICATION OF SOCIAL WELFARE DEPARTMENT

E.8.1 GENERAL NOTIFICATION OF ARREST OF A CHILD

As soon as possible, and within 24 hours of arresting a child, a Police Officer must notify the Social Welfare Department or relevant statutory agency of the child's arrest. If a Social Welfare Officer is not available, the Police Officer should notify the relevant statutory authority within 24 hours and then notify the Social Welfare Officer as soon as possible thereafter.

E.8.2 ADVANCE NOTIFICATION THAT A CHILD IS WITHOUT PARENTAL CARE, OR PARENTS/GUARDIANS/CARERS CANNOT BE LOCATED

If a child without parental care is arrested, or the Police are not able to locate the child's parents immediately (within 24 hours), a Police Officer must notify the Social Welfare Department, or, if a Social Welfare Officer is not available, the relevant statutory agency. The purpose of this notification is to make the Social Welfare Department aware, as soon as possible, that a child protection referral under Section 50 of the Child's Rights Act 2003 will be made.

If the Police are unable to locate the child's parents within 24 hours, and once a referral has been made to the Social Welfare Department (or relevant statutory agency), responsibility for finding the child's parents passes to the Social Welfare Department (or relevant statutory agency). Where this is the case, the Police must ensure that children who are without family or parental support are provided with legal representation or other appropriate assistance.

If a Social Welfare Officer (or equivalent officer from the relevant statutory agency) is not available, the Police Officer shall attempt to contact the Social Welfare Department or relevant statutory agency urgently, to find out where the Officer is. The Officer must make all efforts to locate a suitable representative to notify, either from the Social Welfare Department or the relevant statutory agency.

E.9 INTERNAL TRANSFERRAL TO SPECIALISED CHILDREN'S POLICE UNITS UPON ARREST

After arrest, the arresting Officer should notify the Officer in Charge or Charge Room Officer who must immediately transfer the case internally to a member of the Specialised Children's Police Unit.

In Police Stations that have SCPUs, where a child is arrested and brought to a Police Station, the child should be immediately brought to the attention of SCPU Officers if available and should be met in the Charge Room by a SCPU Officer, who should bring the child to the SCPU. If no SCPU Officer is available to meet the child, another Police Officer should bring the child to the SCPU office and should wait with the child until a SCPU Officer is available. While the child is waiting, he or she should be provided with refreshments, including drinks and, if necessary, and depending on the length of time which the child is required to wait, food and clothing.

E.10 RIGHT TO LEGAL REPRESENTATION OR OTHER APPROPRIATE ASSISTANCE

All children in conflict with the law have a right, under international, and regional and national standards, to legal representation or other appropriate assistance when being interviewed by Police Officers. In circumstances where the child cannot afford the services of a lawyer he/she may be assisted in preparing his/her defence by a family member or other appropriate supportive adult. Section 155 of the Child Rights Act provides that ‘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.’”

Police Stations should hold a list of legal aid providers who they can call when a child is arrested. SCPUs should be encouraged, as part of their duties, to develop a list and mechanisms for referral to support services, which should include legal aid providers and, where they exist, child supporters. Police Officers should be made aware of this list and information so that they are able to provide children with legal or other appropriate assistance as soon as possible.

E.11 CHILDREN WITH DISABILITIES OR SPECIAL NEEDS

When a child with disabilities or special needs is arrested, the arresting Officer should notify a Social Welfare Officer or other appropriate relevant statutory agency in advance (if possible) or as soon as possible after the arrest, to help ensure that the Police Officer and his or her colleagues are able to provide any special protections or accommodations as necessary to the child. It is the responsibility of the Officer in charge to provide necessary services, special protections, or accommodation to the child. This would be relevant, for example, where it is necessary to procure an interpreter if the child is deaf. All Police Stations should hold contact details, in a database list, providing information about services providers that Police Officers can contact as required.

E.12 CHILDREN IN CONFLICT WITH THE LAW WHO ARE PARENTS THEMSELVES

It is possible that a child in conflict with the law who is arrested by the Police will also be a parent. In such circumstances, there are a number of possible courses of action:

- a. The arrested child/parent may choose to **leave the child/baby with the other parent**. Where this is the case, the Police Officer should notify the local Social Welfare Officer, and should indicate whether he/she is concerned that the child/baby is at risk of harm or significant harm (i.e. subject to a child protection referral under Section 50 of the Child’s Rights Act 2003);

- b. The child/parent may request to **leave the child/baby with another responsible adult**, perhaps a family member, who will look after the child/baby while the child/parent attends the Police station. Where this is the case, the Police Officer should notify the local Social Welfare Officer or other relevant agencies, and should indicate whether he/she is concerned that the child/baby is at risk of harm or significant harm (i.e. subject to a child protection referral under Section 50 of the Child's Rights Act 2003);
- c. The child/parent may have no suitable person to leave the child with and may **choose to bring the child with him/her to the Police Station**. In this case, if the Police Officer has reason to believe that this would place the child/baby at risk of harm or significant harm, the Police Officer must make a child protection referral to a Social Welfare Officer. It should be noted that it will not necessarily be the case that the child/baby will be at risk of harm or significant harm by staying. For example, the Police Station may have a suitable location for the child/parent and child/baby to be interviewed and for the case to be processed away from the public and adults in conflict with the law; and
- d. The child/parent may have **no suitable person to leave the child with** and may request that the younger child is looked after by the relevant statutory agency.

If the parent/child is to be held in police custody, the Police Officer should consult with the Social Welfare Officer to determine whether it would be appropriate to keep the child/parent and child/ baby in custody together. It is anticipated that this would normally be the case, especially if they are breastfeeding.

In practice, the child in conflict with the law should only be held on remand if he/she is accused of a serious offence. This may make it more likely that the child/baby will be subject to (temporary) child protection proceedings. In these cases, the Social Welfare Officer may choose to remove the child/baby to a 'place of safety' and initiate proceedings under an 'interim care order' in order to set out a plan to care for the child/baby.

SECTION F – BAIL AND REMAND

F.1 GRANTING POLICE BAIL

In almost all circumstances, when a child is arrested, the officer in charge of Police station to which the child is brought after arrest (or which the child has attended in order to be arrested) **must** release the child immediately, on a recognisance entered into by the child's parents, guardians or relatives without sureties. Detention on remand should be as a last resort only and alternatives must be sought.

F.1.1 GRANTING POLICE BAIL FOR CHILDREN WITHOUT PARENTS, WHOSE PARENTS CANNOT BE FOUND, OR WHOSE PARENTS DO NOT ATTEND THE POLICE STATION

The Police should not refuse to give a child bail on the basis that the child does not have parents, the parents cannot be found or the parents refuse to attend the Police Station. In these cases, the Officer in charge or SCPU should refer the child to the Social Welfare Department, by a covering letter and a referral form to find accommodation for the child in line with their duties.

F.1.2 INTERAGENCY WORKING FOR CHILDREN WITHOUT PARENTS, WHOSE PARENTS CANNOT BE FOUND, OR WHOSE PARENTS DO NOT ATTEND THE POLICE STATION

Police Officers must make themselves aware of community support services and of the contact details for relevant statutory agency, and should develop relationships with relevant organisations and individuals in order to support the referral of children under Section F.1.1.

F.1.3 DIFFICULTIES IN LOCATING ALTERNATIVE CARE

In some cases, the Social Welfare Department may find it difficult to find alternative care for a child who is in conflict with the law but who is without parental care (see F.1.2). Such children should not be held in a Police Station because of the absence of alternative care. All possible steps must be taken to find alternative care.

F.2 DECIDING TO HOLD A CHILD IN POLICE CUSTODY - TIME LIMITATIONS (24 HOURS)

If the Officer in charge decides to hold a child in Police Custody, the Officer should bring the child before the Court **within 24 hours of the arrest**, to determine whether custody should continue and whether the child should be held on remand (not in Police custody). If this is not possible, the Police Officer must release the child, unless the provisions of Section F.2.1 apply.

F.2.1 A CHILD WHO IS ARRESTED FOR A NON-BAILABLE OFFENCE ON A FRIDAY OR A PUBLIC HOLIDAY

If a child is arrested for a non-bailable offence after the end of business on a Friday or a public holiday, the child may be detained and brought before the Court on the following Monday morning or the following working day. If this is the case, the Officer must make a child protection referral to the Social Welfare Department to support an appropriate placement (as soon as practicable).

Police Officers must make themselves aware of community services and the contact details for relevant statutory agencies and should develop relationships with relevant organisations and

people in order to support the referral of children under Section F.2.1. For further information, see Section L.

F.3 CONDITIONS IN POLICE CUSTODY

A child who is kept in police custody must be given adequate water, food, clothing, bedding and access to toilet facilities. The Officer in charge is responsible for ensuring these facilities are available and provided. It may be necessary for the Officer in charge to liaise with local community-based services in order to ensure provision of all services, depending upon available resources. For further information, see Section L.

F.4.1 SEPARATION OF CHILDREN AND ADULTS

All efforts must be made to separate children and adults in police custody, unless the adult is a relative or friend of the child and it is not deemed in the best interests of the child to separate them.

The determination that it would not be in the best interests of the child to separate the child from the adult relative should be made with the support of the Social Welfare Department and other relevant information. For example, it may be that the child is particularly young and dependent upon the adult, and that there is no history of abuse, and no risk to the child from other adults in custody, in which case it could be considered against the best interests of the child to separate the child and adult.

If separation of children and adults cannot be guaranteed, a Police Officer must be assigned to monitor the situation for the child, ensuring that the child is protected from harm at all times. Children and adults shall never share overnight accommodation, unless the adult is a relative or friend of the child and it is not deemed in the best interests of the child to separate them.

F.4.2 SEPARATION OF FEMALES

All efforts must also be made to separate females from males in Police custody, unless it is deemed to be against the best interests of the child to separate them.

SECTION G – INVESTIGATION AND DOCUMENTATION

G.1 VISITING A CRIME SCENE

G.1.1 LISTING THE NECESSARY EQUIPMENT

Upon receiving a report about the commission of a crime, the responsible Police Officer should make a list of the equipment and transport that will be required to visit the crime scene. The nature and extent of the offence alleged/ committed shall determine the kind of equipment and personnel required, which may include, for example, a statement sheet, notebooks, camera, cordon tape, a rape kit, evidence bags or containers and other relevant equipment that will enable collection of evidence, and an un-broken chain of custody.

G.1.2 TECHNICAL PERSONNEL TO PROCESS THE SCENE

Scenes of crime activities require a number of technical personnel, including: scenes of crime officer, sketching personnel, a photographer, a fingerprint expert, a ballistics expert, and others. It is essential that children (and other victims, witnesses and community members) are removed from the scene of the crime before this processing begins. The scene of the crime should be 'secured' as soon as possible.

G.1.3 THE GOLDEN RULES AT THE SCENE

All investigations and activities at the scene of crime must respect the requirements of the law of evidence, chain of custody and basic human rights (of both the suspect and any victim/survivor and witnesses).

S—Safety and survival of anything threatened.

C—Cordon/seal off, to preserve the scene.

E—Evidence – preserve the scene/exhibit.

N—Name log - list to keep record of witness' names/addresses, etc.

E—Evaluate-make a summary of the scene.

Proper crime scene management allows the Police to understand the general nature of the crime committed and who could have been involved. Reliable and admissible evidence is collected to link the suspect to the crime and can be used in future investigations.

Any mistake made at the crime scene will curtail the successful investigation of the crime. Any clues or physical evidence damaged or destroyed are lost forever.

G.1.4 ACTIVITIES ON ARRIVAL AT THE CRIME SCENE

The following is checklist of activities to be carried out immediately on arrival at the crime scene:

- a. Determine the location and condition of the alleged victim, the suspect, and witnesses;

- b. Determine the exact time when the crime was committed to the best of your ability/ witnesses' knowledge;
- c. Determine whether weapon (s) were involved and make sure that they no longer pose a threat to anyone/ confiscate them;
- d. Provide or arrange assistance, medical assistance or first aid to anyone injured;
- e. Separate the alleged victim, suspect and witness(es);
- f. List down the names of all witnesses;
- g. Conduct preliminary interviews (separately);
- h. Document alleged victims, suspects, and the suspect's condition and demeanour;
- i. Document (photograph, if possible) torn clothing, broken objects, signs of struggle/assault, injuries;
- j. Document observations in respect of the use of alcohol or drugs;
- k. Assess the need for medical attention and call for medical support if requested;
- l. Locate and assess the condition of any children at the scene;
- m. Gather any other information or engage in any other activity that may be necessary; and
- n. Share/collaborate with other stakeholders, including Social Welfare Department, local leaders and others, in a manner that protects the best interests and confidentiality of the child at all times.

G.1.5 OPEN A CASE FILE

Open a file in which items such as victim and witness statements and those of the suspect shall be kept for future reference. The case file is important for recording the investigative steps to be taken and the overall progress of the case. Standard Case File Rules must be followed. The file shall be kept safely and securely within the Police Station. It is good practice for each State Command to have database of children going through the Police.

G.2 THE HANDLING OF EXHIBITS

Any document or object can be an exhibit. An exhibit simply means something that is produced as evidence (usually in Court). An exhibit may be found at a crime scene, or elsewhere by a Police Officer, or may be handed in to the Police Station by an interested party. Exhibits could be in good condition, or in poor condition. Police Officers must make sure to take care with fragile exhibits to preserve their evidentiary value. Exhibits should be preserved and stored according to existing protocols. Particulars of exhibits must be recorded in the Exhibits Register and an Exhibit Label should be attached to them.

Any exhibit that the Police/Prosecutor or other witness wishes to introduce in Court must be accounted for from the time it was collected to the time it is produced in Court. This is called the 'chain of custody'. It is essential that it is possible to prove that the exhibit was held continuously and stored safely without interference by unauthorised persons.

SECTION H – INTERVIEWING SKILLS FOR CHILD SUSPECTS

H.1 CHILD TO BE INTERVIEWED BY TRAINED OFFICERS

All children should be interviewed only by those who have been properly trained. Some Police Officers, particularly those from Specialised Children's Police Units, will have been specifically trained in this field. There should be a presumption that SCPU Officers will interview children involved in criminal cases.

H.2 THE GUIDING PRINCIPLES OF JUVENILE JUSTICE MUST GOVERN THE BEHAVIOUR OF THE INVESTIGATOR WHEN INTERVIEWING OR INTERACTING WITH A CHILD SUSPECT

Interactions between Police Officers and a child suspect must follow the guiding principles of juvenile justice as set out in Section B of these SOPs.

H.3 PROHIBITED CONDUCT WHEN INTERVIEWING OR INTERACTING WITH A CHILD SUSPECT

When interviewing child offenders, Police Officers must follow the principles set out in Section B of these SOPs. In addition, the following conduct is *prohibited* when interviewing child suspects:

- a. Issuing threats;
- b. Making promises of any kind, including illegal and unenforceable promises;
- c. Using force or threats of force;
- d. Exhibiting weapons, especially firearms;
- e. Misrepresenting the law;
- f. Quoting probable punishments in order to influence cooperation of the suspect;
- g. Imprisoning the suspect falsely in order to break him or her down;
- h. Using demeaning language; and
- i. Treating the suspect as being guilty.

H.4 REQUIRED CONDUCT WHEN INTERVIEWING OR INTERACTING WITH A CHILD SUSPECT

In addition to the prohibited conduct listed above in H.4, the following is *required* conduct:

- a. Allow the child to have 10-15 minute breaks as and when necessary and no less frequently than every 45 minutes;

- b. Do not interview the child without a parent, guardian, legal representative or other appropriate assistance, or an official from the Social Welfare Department;
- c. Ensure the child has access to refreshments and toilet breaks as necessary;
- d. Stop the interview if the child is becoming distressed or appears ill and call for appropriate medical assistance;
- e. Take all possible measures to protect privacy;
- f. Seek to interview the child outside of school-times, so that the child is able to continue to attend school; and
- g. Avoid wearing uniforms and carrying weapons.

H.5 GUIDING PRINCIPLES FOR A SUCCESSFUL SUSPECT INTERVIEW

The following are a set of guiding principles for an investigator in order to conduct a successful interview of the suspect. When interviewing a child suspect:

- a. Calm the child if he/she is very angry, anxious or violent;
- b. Use simple language that the child will understand;
- c. Use clear questioning techniques: avoid complex questions;
- d. Use non-judgmental language when interviewing the suspect;
- e. Get the child's side of the story;
- f. Avoid telling the child what you discussed with the victim or other witnesses;
- g. Avoid revealing the person who called the police;
- h. Tell the suspect the kind of offence committed;
- i. Avoid using force in the course of interview. This is illegal and likely to induce a false confession;
- j. Try to compare the child's previous statements with what he or she says at interview;
- k. Try to find out whether the child has been influenced by an adult; and
- l. Try to find out whether the child is at risk of or suffering harm (are they a child protection concern).

H.6 EFFECTIVE INTERVIEWING

The following are some steps that can lead to success in interviewing a child in conflict with the law.

H.6.1 SETTING THE STAGE

H.6.1.1 APPROPRIATE LOCATION

Select an appropriate location. If possible, ensure that the room in which you are interviewing the child is set away from the rest of the Police Station so that the child is protected from what may be going on in other areas of the Station (for example, adult offenders talking, or any violence). Make sure that the room space is child-friendly.

H.6.1.2 PRESENCE OF PARENTS, GUARDIANS OR CARERS AND A LEGAL REPRESENTATIVE

No interview should go ahead without the child's parents, guardians, carers or a legal representative present. Police Officers should be mindful of the dynamic between the child and any adults who are present and should be prepared to stop the interview and recommend that the adult leaves (notifying the Social Welfare Department if this is the case) if it is felt this is in line with the best interests of the child.

H.6.2 CARRYING OUT THE INTERVIEW

H.6.2.1 SELF INTRODUCTION

Introduce yourself giving your first and last name (not just Inspector...). Explain that you are trained in handling cases involving children and your objective is to find out information about the alleged offence.

H.6.2.2 PHYSICAL TECHNIQUE

- a. Maintain eye contact;
- b. Sit down with the child suspect in a relaxed manner. Do not stand over him/her. If possible, don't be in uniform; and
- c. Avoid touching the child suspect.

H.6.2.3 LISTEN TO THE CHILD SUSPECT'S NARRATIVE

The child's narrative is the most vital part of the interview. To begin the interview, ask the child to tell you what happened to her/him in her/ his own words and at her/ his own pace.

- a. Use open-ended prompts:
 1. "And then what happened?"
 2. "Tell me more about that."
- b. Allow the child to control how fast the interview proceeds;
- c. Avoid leading questions; and
- d. Avoid interruptions.

Then, go back and clarify points or gather additional details using open-ended follow-up questions.

At the end of the interview:

- a. Thank the child;
- b. Ask the child if he/she has any additional information he or she would like to add;
- c. Explain future procedures; and
- d. Ask the child whether he or she has any questions.

H.7 PRIVACY

It is imperative to protect the child's right to privacy during the investigation and interrogation stage of the criminal process. This is important because the child has a right to be considered innocent until proven guilty, and because involvement with police processes can often lead a child to be stigmatised in his or her community, which can make future rehabilitation and reintegration more difficult.

There are a number of ways that privacy can be protected during investigation and interrogation, in particular:

- a. Avoid interviewing a child who attends school during school hours as this will mean that the child has to miss school and it is likely that other children at the school and other members of the community will work out why, which will affect the child's privacy; and
- b. To the extent possible, try to interview the child away from the main Charge Room Office. As far as possible, ensure that the child does not have to mingle with others on the way to and from interviews (this will also help to protect the safety of the child).

H.8 SAFETY OF THE CHILD

It is always important to remember that a child in conflict with the law is also a child in need of care and protection. For this reason, it is essential to protect the child's safety at all times during the criminal justice process. If a Police Officer has concerns over the child's safety at any point, he or she must notify the Officer in charge of Police Station, who may choose to pass this information to a Social Welfare Officer, noting that the Social Welfare Officer should already have received notification of the arrest and interview under Section F.

SECTION I – DIVERSION

I.1 WHAT IS DIVERSION?

‘Diversion’ is a term that describes a process when a child who is accused of a criminal offence has his or her case dealt with without going through full criminal proceedings or a trial.

International, regional and national standards require States to develop options for diversion, as long as these measures ensure the protection of human rights and that legal safeguards are upheld in the implementation of any diversion measures or procedures.⁵

The practice of diversion has numerous benefits for the child (and his or her parents, guardian and family) and for the community. By implementing diversion practices rather than bringing the child into the formal justice system, the child is not removed from his or her family and community, and there is a greater opportunity to address the underlying causes of the child’s offending behaviour. This leads to reduced recidivism and better rehabilitation and reintegration of the child into his or her family and the community.

Diversion has been recognised internationally to have positive outcomes for children and for society, for the reasons above, and because it helps to avoid stigmatisation, supports the rehabilitation and reintegration of the child and because it is more cost-effective than initiating and completing criminal proceedings.⁶ Diversion is preferable to formal criminal procedures because the prosecution of cases can focus on punishing the child, while diversion focuses upon addressing the child’s offending behaviour.

Children who face prosecution and full criminal proceedings are brought into a system that can lead to stigmatisation in the community, and that can harm the child’s self-esteem, dignity and welfare. This can lead to poorer outcomes and future behaviour by the child, who may be more likely to go on to reoffend (i.e. to commit further offences). Children within formal justice systems are more susceptible to child rights violations, including excessive or inappropriate deprivation of liberty, exposure to violence and abuse either at the hands of Police Officers or other (adult or child) participants in the criminal justice system, or legal challenges such as difficulties in obtaining support or representation.

The Police play a crucial role in implementing diversion. Diversion as a community measure is not new in Nigeria, but community based rehabilitation projects are being established as part of overarching child justice reform. The following sub-sections explain the options available, and the role of the Police in deciding between these options, supporting their implementation and following-up on their completion.

I.1.1 RAISING AWARENESS WITHIN THE COMMUNITY OF DIVERSION

Many community members will not be aware of the possibility of diversion, and may not understand that children who are ‘diverted’ are held accountable for their offences. It will be important, therefore, for Police Officers to raise awareness in the community about diversion

⁵ Article 40(3)(b), CRC; *see also* Rules 6 and 11 of the Beijing Rules.

⁶ UN Committee on the Rights of the Child, General Comment No 10 (2007), Para. 25.

programmes in general, while avoiding drawing attention to individual children or specific projects (which could infringe the child's privacy rights, and, therefore, harm to the child).

Awareness raising can also help facilitate understanding and acceptance of children in conflict with the law and can ensure that Police Officers are not perceived to be acting outside of the law, ignoring crimes, taking bribes, or otherwise acting in a corrupt manner by 'letting children go'. See also the information from Section L on community working.

I.1.2 THE DISTINCTION BETWEEN NON-CUSTODIAL DISPOSALS AND POLICE DIVERSION

The distinction between non-custodial disposal and diversion is an important one. A non-custodial disposal is a sentencing measure that is applied by a Court after a finding of guilt in a hearing. Police diversion is different because it stops the child from entering into these formal criminal proceedings and occurs prior to a formal finding of guilt.

I.2 THE DIVERSION PROCEDURE

The diversion procedure itself should follow the steps below. These steps are discussed in greater detail in this Section.

Step 1: Determination as to whether the case is appropriate for diversion.

Step 2: Determination of the most appropriate measure:

- a. It is advisable to consult with a Social Welfare Officer or, if there is no Social Welfare Officer available, the relevant statutory agency, and, potentially, the child and his or her parents/guardians in making this decision).
- b. It is also important to make preliminary enquiries to ensure that the selected measure is possible (i.e. ensure that a mediator is available, or that a referral to a Community Rehabilitation Project will be accepted where one exists).

Step 3: Ensuring all criteria for diversion are met.

Step 4: Explanation of the selected diversion measure and the consequences of compliance / non-compliance with the measure to the child.

Step 5: Obtaining the admission of the offence from the child and consent of the child and his/her parents, guardian or Social Welfare Officer.

Step 6: Recording the diversion measure using the form in Appendix III.

Step 7: Following up the diversion measure.

I.3 WHICH CASES ARE SUITABLE FOR DIVERSION?

Although diversion should be considered in all cases, not all cases are suitable for diversion. A child should not be subject to a diversion measure because of anti-social behaviour which does not amount to a crime. In such cases, the Police may choose to engage in preventative

measures, or a Social Welfare Officer may elect to refer the child for services separately. Diversion is not appropriate in the most serious cases. (See Section 209 CRA, which is included in Appendix I).

I.3.1 DIVERSION IN SEXUAL OFFENCES CASES

Where a child is alleged to have committed a sexual offence, it can be difficult for Police Officers to make a decision as to whether diversion is appropriate. The approach to these cases will depend upon the nature of the sexual offence. For example, there is a difference between ‘factually consensual’ sex, sex used in the context of violence and/or control, sex where there is an inherently exploitative relationship (which may involve domestic violence or a large age gap), and paedophilia perpetrated by children.

Although the circumstances will differ in each case, it is likely that diversion is more likely to be appropriate for children who have engaged in ‘factually consensual sex’ than for children who have engaged in a violent sexual offence. However, any decision relating to diversion must be made in consideration of all the circumstances of the case, and by considering which diversion options may be available for referral. For example, a child who has engaged in sex in the context of violence and/or control *may* be able to be rehabilitated with sufficient support, through a diversion programme, whereas a simple warning or fine would not be a suitable form of diversion as it would have limited rehabilitative impact. However, in more serious cases, and where there is more than 5 years’ age difference between the alleged perpetrator and the victim, diversion is not an appropriate measure. This determination will be made on a case by case basis

I.4 WHAT ARE THE OPTIONS FOR DIVERSION?

Throughout Nigeria, there are a number of different options for diversion, ranging from a simple apology to referral to a specialised diversion project. Although the language of ‘diversion’ may be new, diversion measures themselves are not: several measures from the list below, including making an apology, providing reparation to the victim or community, mediation and family group conferencing are not new concepts within communities. This means that it should be possible for Police Officers to find and implement a diversion measure for all children in conflict with the law where the circumstances of the case and child are suitable for diversion.

Police Officers are able to divert a child through any of the following:

- a. An oral or written apology;
- b. Referral to a community rehabilitation programme;
- c. Referral of the child to counselling or therapy;
- d. Restitution of a specified object to a specified victim(s);
- e. Payment of reasonable compensation to reflect the loss;

- f. Limited service or benefit to the community;
- g. Referral of the child to family group conferencing or to victim offender mediation if available; and
- h. Police mediation.

I.5 DETERMINING THE MOST APPROPRIATE DIVERSION MEASURES

In making the decision about which measure is most appropriate, Officers may wish to gather further information from the child's Social Welfare Officer or the relevant statutory agency, in order to understand the nature of the child's offending and the child's background.

In deciding which measure to apply, the Police should consider:

- a. Which diversion measures are realistically **available** for this child – it is important that any diversion measure is achievable for the child (for example, restitution is not likely to be appropriate if the child is not able to afford it);
- b. Which diversion measure seems most **proportional or relevant** to the offence – for example, if the child has committed a very minor crime such as a petty theft, it would not be appropriate to apply a diversion measure of 100 hours of community service;
- c. **Why has the child offended?** I.e. is there any reason for the offending that could be addressed through a particular diversion measure – for example, counselling to address offending that can be linked to behavioural difficulties or a particular trauma);
- d. Has the **victim** requested any of the diversion measures (such as a letter of apology or restitution) - noting that the child's best interests are the primary consideration, beyond and above the victims' interests and wishes;
- e. Is this the first offence or **has the child offended before?** If it is not the first offence, more intensive, targeted diversion measure may be appropriate; and
- f. **What does the child think** may help him or her? It may be appropriate to speak to the child about the possible options and to find out what the child thinks would be most useful. This is not always going to be the best approach but if the child is open to discussions and self-aware, this could be a useful way of tailoring the diversion measure to the child for best results.

Police Officers should keep in mind that children and their families should only be asked to compensate victims financially where they have the resources to do so. This is important not

just because of the financial implications but also because this could lead to resentment, problems and arguments within the family, which could have a negative impact on the child.

Although it may take some time to determine the most appropriate diversion measure for the child, children should not continue to be detained while this decision is being made (See Section F on Bail and Remand).

I.5.1 WHERE THE CHILD IS WITHOUT PARENTAL CARE

The fact that a child is without parental care or is homeless should not mean that the child cannot be diverted. In such cases, the Police Officer should make a referral to the Social Welfare Department for consideration of appropriate accommodation during the implementation and completion of the diversion measure.

I.6 CRITERIA FOR DIVERSION

The following criteria must be met whenever a diversion measure is used:

- a. **Admission:** the child must make a clear and reliable admission to all elements of the offences. This provision is extremely important and is reiterated throughout this section. There should be *compelling* evidence that the child actually committed the alleged offence and that he or she has admitted responsibility freely, and with knowledge of the consequences of this. It is important to note that it is not enough that the Police Officer *suspects* that the child has committed an offence;
- b. **Evidence:** the evidence must be clear enough that there would be a realistic prospect of conviction upon prosecution;
- c. **Consent:** the child must consent to the diversion measure freely, voluntarily and in writing. If practicable, the parent or guardian, or a Social Welfare Officer if the child is without parental care or if the child is in the care of the relevant statutory agency, should also consent to the diversion measure. Before giving consent, in order to ensure that this consent is given freely and voluntarily, and with full understanding of all consequences, the child in conflict with the law must be given the opportunity to seek legal or other appropriate assistance, so that he or she can discuss the appropriateness and desirability of the diversion offered. Consent should be recorded using the Consent Form attached to these SOPs;
- d. **Understanding:** the child and his or her parents/ guardian/carer/ representative must understand the diversionary measure, including the potential consequences of failure to comply with the measure; and
- e. **Restriction of use of confession:** a child's admission in the process of agreeing to a diversion measure may never be used as evidence of guilt in criminal proceedings.

I.7 EXPLAINING THE DIVERSION MEASURE

Once the Officer in charge has decided which diversion measure is most appropriate, the Officer should discuss the selected diversion measure with the child, in the presence of legal or other appropriate assistance, or in the presence of the child's parents, guardians or carers (or Social Welfare Officer if the child is without family care).

When explaining the diversion measure, the Police Officer should be clear about what the child's obligations are and should ask the child and his or her parents/guardians/carers or the Social Welfare Officers to sign the consent form.

In explaining the diversion measure, it is important that the Police Officer explains to the child the consequences of any failure to comply with the obligations set out in the measure. Such consequences could include prosecution and the child and his or her parents/guardians or carers must be aware of this.

The child may have questions about the diversion measure and it is important that the Police Officer explains it clearly, and explains clearly that in agreeing to diversion the child is accepting his or her guilt for all elements of the offence. Any specific information about the diversion measure must be noted down clearly including relevant times, contact information, locations, etc.

At the point of any referral to a diversion measure, or any decision to refer, the Social Welfare Department (or relevant statutory agency if the Social Welfare Department/Officer is not available) should be made aware of this decision so that they can support in implementation and follow up.

I.8 FOLLOW UP TO DIVERSION

When a child has been diverted, the Officer in charge is responsible for following up to ensure that the diversion measure has been completed. The time-frame for this will depend upon the diversion measure implemented. If the child's diversion has been referred to an external agency, the Police Officer should arrange to receive updates from the service to ensure that the child has carried out his or her responsibilities in line with the diversion measure applied.

If a child fails to follow the conditions of his diversion agreement, the child's case may be referred to the prosecutor for prosecution, or an alternative diversion measure may be applied. The Police Officer in Charge shall decide between these options based on the reasons for the failure to meet conditions, and based on the child's circumstances and the background to the case. For example, it may be that the child has not been able to complete the conditions of his or her diversion for a good reason (perhaps he/she did not receive support from his or her parents, or perhaps the victim did not facilitate restitution), in which case, another diversion mechanism would be preferable to prosecution. The decision to prosecution should always be taken as a last resort.

I.9 WITHDRAWING AND REINSTATING A CHARGE

If a decision is made to divert the child and to withdraw the charge, or not to lay a charge in the first place, the charge can be laid or reinstated later if the child fails to comply with the diversion measure. However, it is important to note that, once the child has completed the diversion measure, no further criminal proceedings can be brought or initiated in relation to facts on which the charge or potential charge was based and the charge cannot be introduced or reinstated.

SECTION J – NEXT STEPS BEYOND THE POLICE INVESTIGATION

J.1 REFERRING CASES FOR PROSECUTION

There is a presumption that a child in conflict with the law will be diverted, in accordance with Section I. A case should only be forwarded for prosecution if the case is not appropriate for diversion and the case cannot be dropped.

If it is felt that sufficient evidence exists to lodge a charge against the child, that the case cannot be dropped, and that no diversionary measure is appropriate, the Police should refer the case file to the Prosecution for a decision about whether or not to prosecute the child in Court.

The exact referral procedure will depend upon whether the State Attorneys or Police Prosecutors are responsible for pursuing prosecutions in that area. It should be noted that when a case is brought to the Court for a first hearing, there must be sufficient evidence to support a charge; otherwise the case will be dismissed.

J.2 POLICE INVOLVEMENT IN COURT PROCEEDINGS

Once a case goes to Court for a trial, the Police may be requested to provide evidence in Court, in line with standard Police practices. Police Officers appearing in Court in relation to a child's case should ideally not wear uniform. In addition, when testifying, Police Officers should try to use simple language that the child will understand, avoiding technical jargon where possible. An interpreter should be made available in cases where the child does not understand the language or legal jargon.

SECTION K – CHILD PROTECTION CONCERNS

K.1 CHILD EXPLOITATION AND CHILD PROTECTION CONCERNS

Children may come into contact with the law through the general (i.e. non-labour specific) exploitation of others, for example if adults use children to buy drugs or to engage in other criminal transactions or if an adult persuades a child to participate in a crime through force or fear. It is a decision for the prosecutor whether to prosecute such children, but, in general, if these issues arise, concerns should be discussed with the Social Welfare Department.

In any circumstance where a Police Officer is concerned or has a reasonable **suspicion** that a child is facing any of the situations set out below, is otherwise at risk of harm or is suffering harm, the Police Officer shall immediately make a referral to the Social Welfare Officer (or relevant statutory agency if a Social Welfare Officer is not available), whether or not they are children in conflict with the law (who are automatically referred as children in need of care and protection).

The Police Officer and his/her colleagues shall be prepared to cooperate in any investigation or follow-up relating to this referral, which may include supporting the Social Welfare Officer (or other representative of the relevant statutory agency where there is no Social Welfare Officer) to engage in child protection proceedings.

In all circumstances, children shall be treated with dignity and respect and with their protection and best interests as the central concern. However, where an offence is committed jointly with an adult, the police should make an assessment and make a decision based on the circumstances of the case on whether to investigate and refer the child for prosecution.

K.2 CHILD LABOUR

Whenever a child is brought in to a Police Station by someone who claims to be an employer, Police Officers should be aware of the possibility of child labour exploitation and should be prepared to make a referral to the Social Welfare Department if they have reasonable grounds to suspect that a child is engaged in child labour or child exploitation. Such children should be considered victims of criminal offences and in need of care and protection.

K.3 CHILD LABOUR EXPLOITATION

The Child's Rights Act 2003 states:

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.

An individual who engages a child in exploitative labour is considered to have committed a criminal offence. Police Officers should be aware of this offence and should be prepared to identify children who may be victims of this offence.

K.4 CHILD SEXUAL EXPLOITATION

It is extremely important that all Police Officers are made aware of the particular vulnerabilities of children who are victims of sexual exploitation, including child sex workers, and that any abuse of power by Police Officers, including any violence, abuse or exploitation against such children is prohibited and punished accordingly. To protect children who are victims of sexual exploitation, wherever it is suspected that a child may be the victim of sexual exploitation, he or she should be referred to the Social Welfare Officer (or relevant statutory authority if there is no local Social Welfare Officer), that a referral is considered for local support services, and that additional care is taken to ensure that the child is protected from further victimisation at all times.

SECTION L – INTER AGENCY AND COMMUNITY COLLABORATION

L.1 POLICE FORMATIONS TO COLLABORATE WITH RELEVANT AGENCIES AND LOCAL COMMUNITY LEADERSHIP

All Police Stations shall identify and work with, among others, the relevant statutory authority leadership, FBOs, schools, NGOs, community policing committees, health facilities, gender-based violence and abuse grassroots associations to identify, prevent, respond to, mitigate, document and share information about children in need of care and protection and children in conflict with the law through referral and counter-referral.

L.2 POLICE FORMATIONS TO MAINTAIN UPDATED LIST/DIRECTORY OF ALL COMMUNITY GROUPS.

All Officers in charge shall keep an updated list of all groups (irrespective of legal status) which offer diversion and prevention services, or other relevant activities, for children and their families. This list or directory shall help the Police Formation to know who to refer, where to refer, to what expert to direct children who are at risk of offending, what time to refer and the expected quality of service. A list of important telephone numbers can be kept at the back of this document in the format set out in Appendix VI.

Police Formations should also keep a record of the outcomes of any referrals.

L.3 THE LIST /DIRECTORY OF COMMUNITY GROUPS TO CONTAIN SUFFICIENT DETAILS

The list shall indicate physical location of each agency, telephone numbers, post box numbers, electronic mails, core activities, contact person, nature of service, targets of service budgets (if known), hours of services, (e.g. 24 hours, including weekend and public holidays or weekdays or excluding nights), etc.

L.3.1 COPIES OF DIRECTORY TO BE MADE AVAILABLE TO SOCIAL WELFARE OFFICERS AND OTHER COMMUNITY OFFICERS

To promote coordination, Officers in Charge of Police stations shall provide Social Welfare Officers and other relevant community officers with a copy of the directory and regularly provide updates.

L.4 OFFICER IN CHARGE OF STATION TO SUBMIT DETAILED MONTHLY REPORT

Monthly report shall be sent to the DPO by the Officer in Charge and copied to Police Headquarters (see Appendix IV). Monthly reports shall provide sufficient details in order to appraise the headquarters of the existing situation at each station.

It should be borne in mind that the information contained in the monthly report must be kept confidential. Care should therefore be taken at all times; to ascertain that the exchange of reports; in conformity with this sub paragraph, is done without compromising children's confidentiality.

APPENDIX I – EXTRACTS FROM THE CRA

50.—(1) A child development officer, a Police Officer or any other person authorised by the Minister

may bring a child before the court if he has reasonable grounds for believing that the child—

- (a) is an orphan or is deserted by his relatives; or
- (b) has been neglected or ill-treated or battered by the person having the care and custody of the child; or
- (c) has a parent or guardian who does not exercise proper guidance and control over the child; or
- (d) if found destitute, has both parents or his surviving parent, undergoing imprisonment or mentally disordered or otherwise severely incapacitated; or
- (e) is under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have the care of the child; or
- (f) is the daughter of a father who has been convicted of the offence of defilement or indecent treatment of any of his daughters; or
- (g) is found wandering or has no home or settled place of abode, is on the street or other public place, or has no visible means of subsistence ; or
- (h) is found begging or receiving alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise or is found in any street, premises or place for the purpose of so beginning or receiving alms; or
- (i) accompanies any person when that person is begging or receiving alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise ; or
- (j) frequents the company of a reputed thief or common or reputed prostitute; or
- (k) is lodging or residing in a house or the part of a house used by a prostitute for the purpose of prostitution, or is otherwise living in circumstances calculated to cause, encourage or favour the seduction or prostitution of the child; or
- (l) is a child in relation to whom an offence against morality has been committed or attempted; or
- (m) is otherwise exposed to moral or physical danger; or
- (n) is otherwise in need of care, protection or control; or
- (o) is beyond the control of his parents or guardians.

PART XX—CHILD JUSTICE ADMINISTRATION

GENERAL

204. No child shall 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 and processes set out in this Act.

205.—(1) The right of the child to privacy specified in Section 8 of this Act shall be respected at all stages of child justice administration in order to avoid harm being caused to the child by undue publicity or by the process of labelling.

(2) Accordingly, no information that may lead to the identification of a child offender shall be published.

(3) Records of a child offender shall—

(a) be kept strictly confidential and closed to third parties;

(b) made accessible only to persons directly concerned with the disposition of the case at hand or other duly authorised persons ; and

(c) not be used in adult proceedings in subsequent cases involving the same child offender.

206.—(1) Professional education, in service training, refresher courses and other appropriate mode of instructions shall be utilised to establish and maintain the necessary professional competence of all persons, including Judges, Magistrates, officers of the Specialised Children Police Unit, supervisors and child development officers, dealing with child offenders.

(2) Every Judge, Magistrate and other judicial officer, appointed to the Court shall be trained in sociology and behavioural sciences to ensure effective administration of the child justice system.

(3) Persons employed in the child justice system shall reflect the diversity of children who come into contact with the child justice system and efforts shall be made by those concerned with the appointment of those persons to ensure the fair representation of women and minorities in the appointment.

(4) Subject to Subsection (2) of this section, political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and promotion of persons employed in the child justice system shall be avoided in order to achieve impartiality in the administration of the child justice system.

207.—(1) There shall be established, in the Nigeria Police Force, a specialised unit of the Force, to be known as the Specialised Children Police Unit (in this Act referred to as the “Unit”) which shall consist of police officers who—

- (a) frequently or exclusively deal with children; or
- (b) are primarily engaged in the prevention of child offences.

(2) The Unit shall be charged with the following functions, that is—

- (a) the prevention and control of child offences;
- (b) the apprehension of child offenders;
- (c) the investigation of child offences; and
- (d) such other functions as may be referred to the Unit by this Act or by regulations made under this Act or by any other enactment.

(3) Members of the Unit shall be continually trained and instructed specially for the functions conferred on the Unit under Subsection (2) of this section.

208.—(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.

209.—(1) The police, prosecutor or any other person dealing with a case involving a child offender shall—

- (a) Have the power to dispose of the case without resorting to formal trial by using other means of settlement, including supervision, guidance, restitution and compensation of victims ; and
- (b) encourage the parties involved in the case to settle the case, as provided in paragraph (a) of this section.

(2) The police, prosecutor or other person referred to in Subsection (1) of this section may exercise the power conferred under that Subsection if the offence involved is of a non-serious nature and—

- (a) there is need for reconciliation; or
- (b) the family, the school or other institution involved has reacted or is likely to react in an appropriate or constructive manner; or
- (c) where, in any other circumstance, the police, prosecutor or other person deems it necessary or appropriate in the interest of the child offender and parties involved to exercise the power.

(3) Police investigation and adjudication before the court shall be used only as measures of last resort.

210. The legal status and fundamental rights of the child, set out in Part II of this Act, and in particular—

- (a) the presumption of innocence;
- (b) the right to be notified of the charges;
- (c) the right to remain silent;
- (d) the right to the presence of a parent or guardian;
- (e) the right to legal representation and free legal aid shall be respected in the administration of the child justice system set out in this Act.

INVESTIGATION

211.—(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) contracts 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.

212.—(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 a 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.

213.—(1) A child who is accused of having committed an act such as is contemplated in Section 209 of this Act shall be tried in the Court.

(2) The terms “conviction” and “sentence” shall not be used in relation to a child dealt with in the Court and any reference in any enactment or other law to a person convicted, a conviction or a sentence shall, in the case of a child, be construed as including a reference to a person found guilty of an offence, or to a finding of guilt or to an order made upon such a finding, as the case may be.

APPENDIX II – EXTRACTS FROM THE CYPA

The Children and Young Persons Act 1943 contains provisions for ‘juveniles in need of care and protection.’ It allows ‘any local government council, any Police Officer, or any authorised officer’ to bring a child or young person before a juvenile court, where the child is:

- (a) Orphaned or has been deserted by their relatives;
- (b) Has been neglected or ill-treated by the person in their care or custody;
- (c) Has a parent or guardian who does not exercise proper guardianship;
- (d) Is found destitute, and whose parent/s are in prison;
- (e) Who is under the care of a parent / guardian who is unfit to care for the child, due to ‘criminal or drunken habits’;
- (f) Is the daughter of a father who has been convicted of a sexual offence in relation to his daughters;
- (g) Is found to be wandering the street with no abode or means of subsistence;
- (h) Is found begging or ‘receiving alms’;
- (i) Accompanies a person who is begging / ‘receiving alms’;
- (j) Frequents the company of ‘any reputed thief or common or reputed prostitute’;
- (k) Is residing in a house with a prostitute;
- (l) Has had an offence of violence committed against him/her;
- (m) Would be a slave (but for the provisions of the law);
- (n) Is otherwise exposed to moral danger;
- (o) Their welfare is endangered by a parental dispute; or
- (p) Has been found touting or working on a commercial vehicle.

APPENDIX III – IMPORTANT COMMUNITY REFERRAL NUMBERS

Name of organisation	Telephone/contact	Physical address	Services offered

