

CHILD PROTECTION AND CHILD JUSTICE ADMINISTRATION

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PREAMBLE

First and foremost, I wish to thank the Honourable, The Chief Justice of Nigeria and Chairman Board of Governors, National Judicial Institute, Hon Justice Kayode Ariwoola, GCON, the Administrator of the National Judicial Institute, Hon Justice Salisu Garba Abdullahi, and the Management of National Judicial Institute for the privilege afforded me to serve as a resource person in this National workshop on Child Protection and Child Justice Administration for Family Court Judges and Magistrates, Prosecutors, Social Welfare Officers, Assessors, Family and Gender Unit of the Nigeria Police. I want to specially thank My Lord, The Chief Judge of Cross River State, Hon Justice Akon Ikpeme for releasing me to present this paper at this Workshop. This is a great honour and privilege which I do not take for granted.

INTRODUCTION

Handling legal issues concerning children has become one of the recent things which has pervaded the courts not only in Nigeria but worldwide. The concept of child protection and child justice administration is apt, as it requires the concerted efforts of the stakeholders here gathered to ensure its efficiency. The choice of the theme of this workshop, “*Building effective synergies on child Justice and Child protection*” is instructive, given the task to meet up with Child justice delivery. It is in line with this, that this paper brings to bear what is expected of legal experts as well as non-legal experts, to be on the know, of what it means and takes to handle cases involving children.

The paper which is written not from an astute academic background, though not without academic flare, points out that, the child justice system is a deviation from the formal justice system to specialized policies, strategies, laws, procedures and practices applied to children in conflict with the law and children in contact with the law with emphasis on child protection.

MEANING OF CHILD IN CONFLICT WITH THE LAW OR IN CONTACT WITH THE LAW

A child is defined in Section 277 of the Child Rights Act 2003 as “a person under the age of eighteen years”. Though various states have defined the age of majority and it differs according to states.

Child in conflict with the Law

Child in conflict with the law means a child who has attained the minimum age of criminal responsibility and who is suspected, accused or found liable of a criminal offence.

Child in contact with the law

This refers to child victims/survivors and witnesses.

➤ Child Victims/ Survivors

Child victims/ survivors otherwise called children in contact with the law are children who have been abused, victimized, assaulted or suffer one harm or the other by another, who may be in position of trust or authority with marked age difference or knows the child to be in a vulnerable position and takes advantage of the child.

➤ Child witnesses

Mostly where a child is a victim/survivor or an eyewitness, the child would necessarily become a witness to the case when the case is charged to court. As such, child sensitive safeguarding measures should be employed to familiarize the child with the procedures of Court and Court sitting in order to ensure such good evidence is elicited from the child.

MEANING AND SCOPE OF CHILD PROTECTION

Child protection refers to the prevention, response, support services aimed at protecting children from all forms of abuse (physical, emotional, educational), Neglect (physical, emotional, educational), Exploitation (sexual, labour, trafficking), Harm (physical, emotional, psychological), Violence (physical, emotional, sexual). Section 2 of the Child Rights Act 2003 provides for protection and care of a child, as is necessary for the well-being of the child.

Child protection involves:

- i. Identifying and reporting suspected cases of child abuse and neglect
- ii. Investigating and assessing risks to child safety
- iii. Providing support and services to children and families
- iv. Developing and implementing plans to ensure a child's safety and well-being
- v. Collaborating with communities, organizations, authorities to prevent child harm

MEANING AND SCOPE OF CHILD JUSTICE ADMINISTRATION

"... Now Courts do not administer abstract justice or a "brooding omnipotence in the sky". The law is made to ensure justice. Rules of Court are handmaids of justice. It is only by the orderly administration of law and obedience to the Rules that legal justice can be attained. When a particular decision is against all known rules; against all known principles then it is, certainly, not made in the interest of justice."

See Per OPUTA, J.S.C in WILLOUGHBY V. INTERNATIONAL MERCHANT BANK (NIG.) LTD (1987) LPELR-3495(SC) (Pp. 51 paras. B).

Child justice administration refers to the systems and processes to handle children who are alleged to have committed crime or victim of offences. It involves management of cases involving children from investigation, prosecution, trial and disposition by stakeholders, which include law enforcement, prosecutors, Judges, Magistrates, social workers and other professionals working together to ensure children receive appropriate support.

Child justice administration features as follows:

- It gives due consideration to the child's level of maturity and understanding and the circumstances of the case.
- It is a justice system which is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child.
- It respects the rights of children including the right to due process, to participate in and to understand the proceedings. It regards the right of a child to private and family life, protecting integrity and dignity.

AIMS OF CHILD JUSTICE ADMINISTRATION

- i. Protection: Ensures the safety and well-being of children who are victims of abuse neglect or exploitation.
- ii. Accountability: Holds offenders accountable for their actions and ensures they face appropriate consequences.
- iii. Rehabilitation: Providing support and services to help children who have committed offences to become productive and be reintegrated into the society as useful members.
- iv. Restorative justice: Promotes healing and reparation for victims, offenders and communities through restorative practices.
- v. Best interest of the child: Child friendly justice system that respects and implements children rights at the highest attainable level.
- vi. Prevention: Addresses the root cause of child's offending behaviour or delinquency through community based programs and services.
- vii. Reintegration: Supports children to successfully re-enter their communities after being in custody and care.
- viii. Advocacy: Ensure children's voices are heard and their rights advocated for, throughout the justice process

DISTINCT FEATURES OF CHILD PROTECTION AND CHILD JUSTICE ADMINISTRATION

Child Protection

Child justice administration

<ul style="list-style-type: none"> • focuses on preventing and responding to child abuse, neglect and exploitation • aims at ensuring children safety, wellbeing and development • involves measures to prevent harm, support vulnerable children and families, provide alternative care when necessary • emphasizes a child’s right to protection, care and support • involves social welfare services, child protection units and community based initiatives 	<ul style="list-style-type: none"> • focuses on treatment of children who come into conflict with the law • aims to ensure children’s rights and rehabilitation within the justice system. • involves the processing of cases involving children accused of committing offences. • emphasizes a child’s right to fair treatment, legal representation and rehabilitation. • involves court, legal proceedings and family court, that is the justice system.
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Both child protection and child justice administration are essential for ensuring the rights and well-being of children and they often overlap and intersect in practice.

REGULATIONS THAT GUIDE STAKEHOLDERS IN THE CHILD JUSTICE ADMINISTRATION

In Nigeria, the child justice administration is guided by several regulations and laws that aim to protect the rights and welfare of children in conflict with the law. Some of these regulations include:

- i. The Child Rights Act (2003)/ Child Rights Laws: This provides for the protection and welfare of children, including those in conflict with the law.
- ii. The Constitution of the Federal Republic of Nigeria 1999 (as amended): The Constitution guarantees the rights of children and provides for their protection and welfare.
- iii. The Administration of Criminal Justice Act (2015)/ Administration of Criminal Justice Laws: this provides for the administration of criminal justice including the treatment of children in conflict with the law.
- iv. The National Policy on Child Justice (2017). This Policy provides a framework for the child justice administration in Nigeria including the establishment of child justice courts and training of stakeholders.

- v. The United Nations Convention on the Rights of the Child (1990): Nigeria is a signatory to this convention, which sets out the rights and protection afforded to children worldwide.
- vi. The African Charter on the Rights and Welfare of the Child (1990): Nigeria is also a signatory to this Charter, which provides for the Protection and welfare of children in Africa.
- vii. Prosecution Guidelines on handling cases involving children: The Prosecution guidelines set out the guiding principles, good values, best practices and procedural guidance to provide efficient, effective, accountable, and professional child rights complaints prosecutorial services in Nigeria.
- viii. Standard Operating Procedures: This provides measures for Police in Nigeria regarding child justice administration in matters of arrest and detention, investigation, interrogation, bail and remand, court proceedings, rehabilitation, reintegration, collaboration and referral, monitoring and evaluation.
- ix. Mandatory Reporting Policy is a legal requirement that certain professionals report suspected cases of child abuse, neglect or exploitation to appropriate authorities, such as, Health care providers, Teachers and Educators, Social workers, Counsellors and Therapists, Law enforcement officers and other persons.
- x. Violence Against Persons Prohibition Act 2015/VAPP Laws: This legislation makes criminal, acts of violence on persons.
- xi. National Agency for Prohibition of Trafficking in Persons Act 2015: This legislation makes child trafficking a crime alongside other offences.
- xii. Cybercrime (Prohibition, Prevention and Enforcement) Act 2024: This prohibits the use of public electronic communications network to send a message grossly offensive or indecent or falsely created to stir annoyance, hatred, ill-will, insult, danger, inconvenience, anxiety, with intent to harass, blackmail, bully or threaten another individual.

INTERNATIONAL REGIONAL AND DOMESTIC PRINCIPLES/ STANDARDS IN CHILD JUSTICE ADMINISTRATION

The international principles in child justice system are guided by various United Nations Conventions, Treaties and Guidelines. The Regional Principles and Guidelines complement international standards and adapt them to regional contexts addressing specific challenges and cultural nuances. They aim to promote child sensitive justice systems, protect children's rights and

ensure their well-being, rehabilitation and reintegration of children in conflict with the law. The key principles include:

1. Best interests of the child
2. Child's right to life, survival and development
3. Child centred approach
4. Right to fair trial and legal representation
5. Right to privacy and confidentiality
6. Diversion and alternative measures
7. Rehabilitation and reintegration
8. Restorative justice
9. Non discrimination
10. Child participation and voice
11. Family support and involvement
12. Community based interventions
13. Cultural sensitivity

The primary international instrument is the United Nations Convention on the Right of the Child (UNCRC) which Nigeria ratified on the 19th of April, 1991 without any reservation. The UNCRC contains/elaborates the socio economic, cultural and political rights of children including the standard principles to be applied in respect of children cases. This includes children in conflict with the law, child victim and witnesses (children in contact with the law).

To take effect in Nigeria, the International Treaty should be domesticated as law in the Country and in turn domesticated by the various States in Nigeria by virtue of the dualist state of the Country. Article 12 of the Constitution of Nigeria 2011 states:

“No treaty between the Federation and any other Country shall have the force of law to the extent to which any such Treaty has been enacted into law by the National Assembly.”

The Child Rights Act was domesticated in Nigeria in 2003. As at today, 34 out of the 36 States in Nigeria have adopted the Act as Law.

Notably, in the African Region, is the African Charter on the Rights and Welfare of the Child (ACRWC) ratified by Nigeria on 23rd July, 2001. The ACRWC is the brain child of UNCRC but regards made to the harmful traditional practices peculiar with African culture. The ACRWC adopted a sterner approach to issue of the 'Best interest of the Child'. Not just as 'a primary consideration' enshrined in UNCRC but 'the primary consideration' in matters relating to children.

This has raised the principle of best interest of a child to a non-negotiable standard. The Child Rights Act 2003 (CRA) completely adopted the principle in section 1 of the CRA 2003 which states:

“In every action concerning a child whether undertaken by an individual, public or private body, institution or service, court of law, or administrative or legislative authority **the best interest of the child shall be the paramount consideration.**” (*underlining is mine for emphasis*)

The Child Rights Act 2003 supersedes all other legislations in matters involving a child.

The United Nations Committee on the Right of the Child (CRC Committee).

This is a body of independent experts that monitors the implementation of the UNCRC. They are saddled with these responsibilities:

- i) Review a State’s Compliance with UNCRC on a periodic basis, every 5 years.
- ii) Issue recommendations referred to as General comments on how to interpret and apply the provisions of the UNCRC in practice.

These General Comments are not binding but form part of the law which guides the implementation of binding International obligations.

General Comment No. 10 provides guidance for State in relation to ensuring the rights of children in conflict with the law. Other soft law instruments which provide additional guidance on how to handle cases of children in conflict with the law are:

- ❖ UN Minimum Rules for the Administration of Juvenile justice, also known as the “Beijing Rules”.¹
- ❖ The UN Guidelines on the Prevention of Juvenile Delinquency; also known as the “Riyadh Guidelines”.²
- ❖ The UN Rules for the Protection of Juveniles deprived of liberty also known as the “Havana Rules”.³
- ❖ The UN Guidelines in the Administration of Juvenile justice also known as the “Vienna Guidelines”⁴

¹ United Nations Standard Minimum Rules for the Administration of Juvenile Justice, G.A. res. 40 U.N.GAOR Supp. (No.53) at 207, U.N. Doc A/40/53(1985).

² United Nations Guidelines for the Prevention of Juvenile Delinquency, G. A. res. 45/112, annex, 45 U.N.GAOR Supp. (No.49A) at 201, U.N. Doc A/45/49(1990).

³ United Nations Rules for the Prevention of Juvenile Deprived of their liberty, G. A. res. 45/113, annex, 45 U.N.GAOR Supp. (No.49A) at 205, U.N. Doc A/45/49(1990).

⁴ ECOSOC Resolution 1997/30 (1997)

Children who come into contact the legal system as victims or witnesses are also protected by the UNCRC. Additional guidance provided by soft law standards such as the Guidelines on justice in matter involving child victims witnesses of crime.⁵

The Guidelines for Action on children in the Criminal Justice System⁶, the UN Guidelines for the Alternative care of children. The main focus of International and Regional standard is on rehabilitation.

OVERRIDING PRINCIPLES AND STANDARDS IN CASES INVOLVING CHILDREN

- 1. Best interest of the Child** (Article 3(1) UNCRC / Article 4(1) ACRWC, section 1 CRA 2003). The best interest of the child shall be the primary consideration in all matters affecting children. This aims at protecting the self-respect and dignity of a child. The Child justice system introduces diversion in minor offences rather than trial which makes the process child friendly rather than resort to formal justice system.

Factors to consider when determining the best interest of a child

- i) The child's age, maturity and stage of development, sex, background and other relevant characteristics.
- ii) The child's physical and emotional security and his intellectual, emotional, social and cultural development.
- iii) Any disability that the child may have.
- iv) Any chronic illness from which the child may suffer.
- v) The need to protect the child from any physical or psychological harm.
- vi) Public interest analysis
- vii) Victim's interest especially when he/she is a child
- viii) National security
- ix) Financial recourse constraint.

These could be derived from assessment of a Social worker, the child or the parents and Prosecutors to adopt the professional approach.

- 2. Principle of Non-discrimination** (Article 2 UNCRC / Article 3 ACRWC Section 10 CRA) This recognizes equal treatment of children irrespective of their origin, sex, religion, birth, parentage, political, economic and social background or circumstances. The justice process and support services should be sensitive to the child's age, wishes, understanding, gender, sexual

⁵ ECOSOC Resolution 2005/20 of 22 July 2005

⁶ ECOSOC Resolution 1997/30 of 21 July 1997, UN Declaration of Basic Principles for victims of Crime and Abuse of Power. General Assembly Resolution 40/34 of 29 November 1985

orientation, ethnic, cultural, religious, linguistic and social background, caste, socio economic condition as well as the special needs of the child.

Age should not be a barrier to a child's right to participate fully in the justice process. Every child should be treated as a capable witness, subject to examination and his or her testimony should not be presumed invalid or trust worthy by reason of the child's age alone as long as her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance.

3. Right to life, survival and development

(Article 6 UNCRC/Article 5 ACRWC Part 11 CRA 2003 particularly at section 3 to section 18 CRA 2003).

The law recognizes the child's right to life including children found guilty of serious offences, which prescribes death penalty, children are exempted from such penalty. Deprivation of liberty should be for the shortest possible time, while detention should be as a measure of last resort except where a child is exposed to significant harm or has jumped bail or refused to comply with bail conditions.

Child justice system aims at rehabilitation of a child rather than punitive measure.

4. The Right to be heard

(Article 12 UNCRC/Article 4(2)/Article 7 ACRWC) Fair hearing enhances good justice system. Safeguarding measures are recommendation to create a conducive environment to enable the child express himself without influence of a person in authority or threat. Measures like screening of the child by electronic means, not allowing the child's contact with the abuser in court, should be employed to sustain a child's confidence.

This includes the right to legal assistance or guardian ad litem to help interpret court proceedings to the child and relay his response to the Judicial Officer. Participation of a child in proceeding is paramount. Part 11 (A)(3) of the Prosecution Guidelines states:

From a practical point of view when a child can understand and participate in the court proceedings, he or she is more likely to feel justice has been done and that he or she has been treated fairly, which leads to a more constructive attitude and approach. (Underlining for emphasis)

When children are just bystanders in court proceedings, don't participate, are not heard and have not had any explanation about what is happening, the result is often puzzling to them and regarded as being unfair. In the case of accused children this is likely to lead to resentment, alienation and further offending.

Article 40(1) of the UN Convention on the Rights of the Child ('CRC')

“State parties recognize the right of every child alleged as, accused of, or recognized as having infringed the Penal Law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth which reinforces the child’s respect for the human rights and fundamental freedom of others and which takes into account the child’s age and the desirability of promoting child’s reintegration and the child assuming a constructive role in society”. (underlying mine for emphasis).

Article 7(1) of the African Charter on the Rights and Welfare of the child.

“Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child’s sense of dignity and worth and which reinforces the child’s respect for human rights and fundamental freedom of others.”

In cases involving children in conflict, there is emphasis on rehabilitative approach to child justice rather than punitive measures.

5. Prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

(Article 17 (2) (a) ACRWC, Article 37 (a) UNCRC)

- Cooperation of State parties to ensure implementation of General principle and key standards.
- Article 39 UN Convention on the Rights of the child

“State parties shall take all appropriate measures to promote physical and psychological recovery and social integration of a child victim of: any form of neglect, exploitation or abuse: torture or any form of cruel, inhuman or degrading treatment or punishment, or armed conflict, such recovery and reintegration shall take place in an environment which fosters health, self-respect and dignity of the child”.

6. Principle of Non-deprivation of liberty unlawfully or arbitrarily

No child shall be deprived of his liberty unlawfully or arbitrarily (Article 37(c) UNCRC). Deprivation of liberty shall be imposed on a child as a measure of last resort and shall be limited to the shortest possible period of time (Article 37 (b) UNCRC). Section 215 (1) (C) CRA.

Remanding a child should only be made where considered necessary in instances of:

- a. **Nature of the offence:** Where the offence is a serious offence such as murder, treason, the possibility of refusing bail is high. Though it is not a hard and fast rule,

certain criteria/conditions must be considered to weigh the appropriateness or otherwise of grant of bail.

- b. **Risk involved:** The child being in immediate danger or significant risk to himself or others.
- c. **Persistence in committing serious offence:** The child who has failed to attend court on a criminal charge or other occasions.
- d. **Risk of absconding:** The child was previously granted bail but absconded or refused to comply with bail terms and conditions.

Refusing to grant bail to a child because he is without accommodation or parental care amounts to discrimination and a breach of his right to liberty. Rather Social Welfare Authorities should be contacted to provide accommodation for the child.

The CRC Committee recommended that the child should be brought before the Court not later than 30 days after his pre-trial detention takes effects.

7. Principle of Proportionality

An action taken shall be in proportion to the circumstances of the child, the nature of offence and needs of the Society. ARTICLE 40 (4) UNCRC.

The more serious the offence, the likelihood of prosecution especially in murder cases/homicide/rape. For minor offences like stealing, other measures other than prosecution could be resorted to. In minor offences, Diversion is recommended but should follow due process. However, Apology, Warning, Mediation could be awarded as alternative pronouncement on finding of guilt.

8. Principle of Diversion

There is a presumption that Children in conflict with the law shall be considered for diversion measures. Article 40 (2) (b) (iii) UNCRC. This requires informed consent of the child and where there has been voluntary admission of guilt.

9. Principle of Non-delay

Cases involving children shall be handled expeditiously and without unnecessary delay.

BENEFITS OF REHABILITATIVE SYSTEM OF CHILD JUSTICE ADMINISTRATION ARE:

- ❖ Aims to address the root causes of the child's behaviour and prevent re-offending.
- ❖ Aims to reintegrate the child back into the society.
- ❖ Assures respect for human rights of others.
- ❖ Considers child's age and developmental needs.

- ❖ Seeks to ensure public safety and prevent reoffending

Rehabilitation and public safety go hand in hand

“The traditional objectives of criminal justice such as repression/retribution, must give way to rehabilitative and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety”.⁷

REHABILITATION APPROACH TO CHILD JUSTICE ADMINISTRATION

Part 111 (4) of the Prosecution Guidelines reiterates UN Guidelines on matters involving children.

Key standards for cases involving children to include:

i) Right to be treated with dignity and compassion

A child victim deserves self-respect and humane treatment. This implies applying child sensitive procedures in children cases throughout the Justice System process. This involves taking into consideration a child’s personal needs, age, gender, disability, maturity and respecting a child’s physical, mental and moral integrity⁸.

ii) Right to be informed.

The child offender has the right to be notified promptly and adequately from the period of arrest to the end of trial in the language he understands, the reasons of his arrest, custodial status, charges laid, Court judgment and Orders imposed including availability of support services in terms of health, psychological, social, financial and legal services. This right extends to the parents/guardian or legal representation of the child.⁹

A child victim/survivor as well as his Guardian have the right to be notified of the progress of the case. The required informed consent in diversion cases must be made in writing via form 1, 2, 3 and 4 of the annexes to the Prosecution Guidelines.

Information of the reasons for not laying charges on the child offender or discontinuance of proceeding or alteration of the charge, or diversion of the case should be stated.

This also includes information on when judgment is to be given and the outcome of the trial. See Part III (4) of the Prosecution Guidelines.

iii) Right to effective assistance

⁷ UN Committee on the Rights of the child general comment No. 10 (2007) p. 10

⁸ Article 39 UNCRC; Paragraphs 8 (a) 10-14 of the guidelines on justice in matters involving child victim and witnesses of crime, paragraph 4 of the declaration Basic principles of Justice for victims of crime and abuse of power

⁹ Paragraph 18-20 of the Guidelines on Justice in matters involving child victims and witnesses of crime

The child should be provided with effective legal representation to give legal services free of charge, means of transport to location of court, court setting and procedure and financial assistance. A Guardian ad litem should be appointed to oversee the child's welfare and interpret certain proceedings to him in order to guide him effectively. The services of Social welfare should be available to carry out social assessment of the child's condition, needs and status where necessary and psycho social counselling be offered to the child. Other needs like health, education financial support or accommodation should be provided to enable the child reintegrate into the society¹⁰.

iv) Right to privacy

Cases involving children should be strictly confidential and restrictions should be placed on disclosure of information that may lead to identification of a child victim or witnesses. Information received throughout the process should be protected.¹¹ The Child Rights Act/Law makes provision for protection of children from harmful publication.

v) Right to be protected from hardship during the Justice process

The Child Justice System should be differentiated from the formal Justice System. Throughout the Child Justice System, child sensitive procedures are observed to allow the child participate in the process. These procedures:

- Full explanation of the Court proceedings and what is expected of the child.
- Pre-trial conferencing to ensure relationship between the child and the professional(s).
- Trials to take place as soon as practicable.
- Interview room designed for children.
- Modified court environment adapted to the needs of children.
- Provision of breaks during testimonies.
- Limit the number of interview by video recording statement of child to be replayed in court.
- Child is not cross examined in the sight of the accused.
- Use of child sensitive interviewing/cross examination techniques with the use of appropriate intermediaries to facilitate communication.¹²

The prosecution and defence have the duty to apply child sensitive techniques to protect the child and ensure the best evidence is obtained from the child victim.

- ❖ Plan the hearing to suite the child's needs.
- ❖ Have a rapport with the child
- ❖ Non delay in proceeding

¹⁰ Paragraph 22-25 of the Guidelines on Justice in matters involving child victims and witnesses of crime

¹¹ Paragraph 26-28 of the Guidelines on Justice in matters involving child victims and witnesses of crime

¹² Paragraph 29-31 of the Guidelines on Justice in matters involving child victims and witnesses of crime

vi) Right to safety

The security of child victim/witness is paramount where the child victim/witness is harmed, being harmed or likely to be harmed, the necessary authorities should be contacted to ensure the safety of the child.¹³

Where a child faces harassment, threat/or likelihood of being traumatized, it would be in the best interest of the child to be protected to ensure the child is not exposed to significant harm, regardless of whether the child is in conflict with the law or in contact with the law.

vii) Right to reparation

The Child Justice System is not punitive but aimed at rehabilitation and reintegration of the child offender. The child victim should receive reparation to achieve full redress, reintegration and recovery. Procedures for obtaining redress should be child sensitive and readily accessible.¹⁴

viii) Right to special prevention measures

Mostly to children with special needs or disability, the necessary assistance should be given/afforded to the child. Where a child faces trauma, he should be provided with psycho-socio counselling to restore him to his right frame of mind.

State parties to advise the child or make necessary provision for special strategies to be implored by child victim/witnesses who are vulnerable to recurring victimization or offending.¹⁵

DECISION TO PROSECUTE

There are basic principles/determining factors which should be taken into consideration before deciding to prosecute a child alleged to be in conflict with the law.

BASIC PRINCIPLES/DETERMINING FACTORS IN DECISION TO PROSECUTE

There are basic principles/determining factors which should be taken into consideration before deciding to prosecute a child alleged to be in conflict with the law. These are:

i. Minimum age of criminal responsibility and capacity of the victim.

Minimum age which a child cannot be considered to have criminal responsibility and must not be handled through criminal justice system. This varies according to laws creating offence:

ii. Capacity of a child to commit an offence

¹³ Paragraph 32-34 of the Guidelines on Justice in matters involving child victims and witnesses of crime

¹⁴ Paragraph 35-37 of the Guidelines on Justice in matters involving child victims and witnesses of crime

¹⁵ Paragraph 38-39 of the Guidelines on Justice in matters involving child victims and witnesses of crime

Court can order an evaluation of capacity of the child. Psycho-social behaviour of persons having influence over the child mostly persons in position of authority or trust can influence the child into committing an offence.

To determine whether the child had the capacity would require the services of a Psychiatrist or trained Social worker to decipher if the child understood the difference between right and wrong.

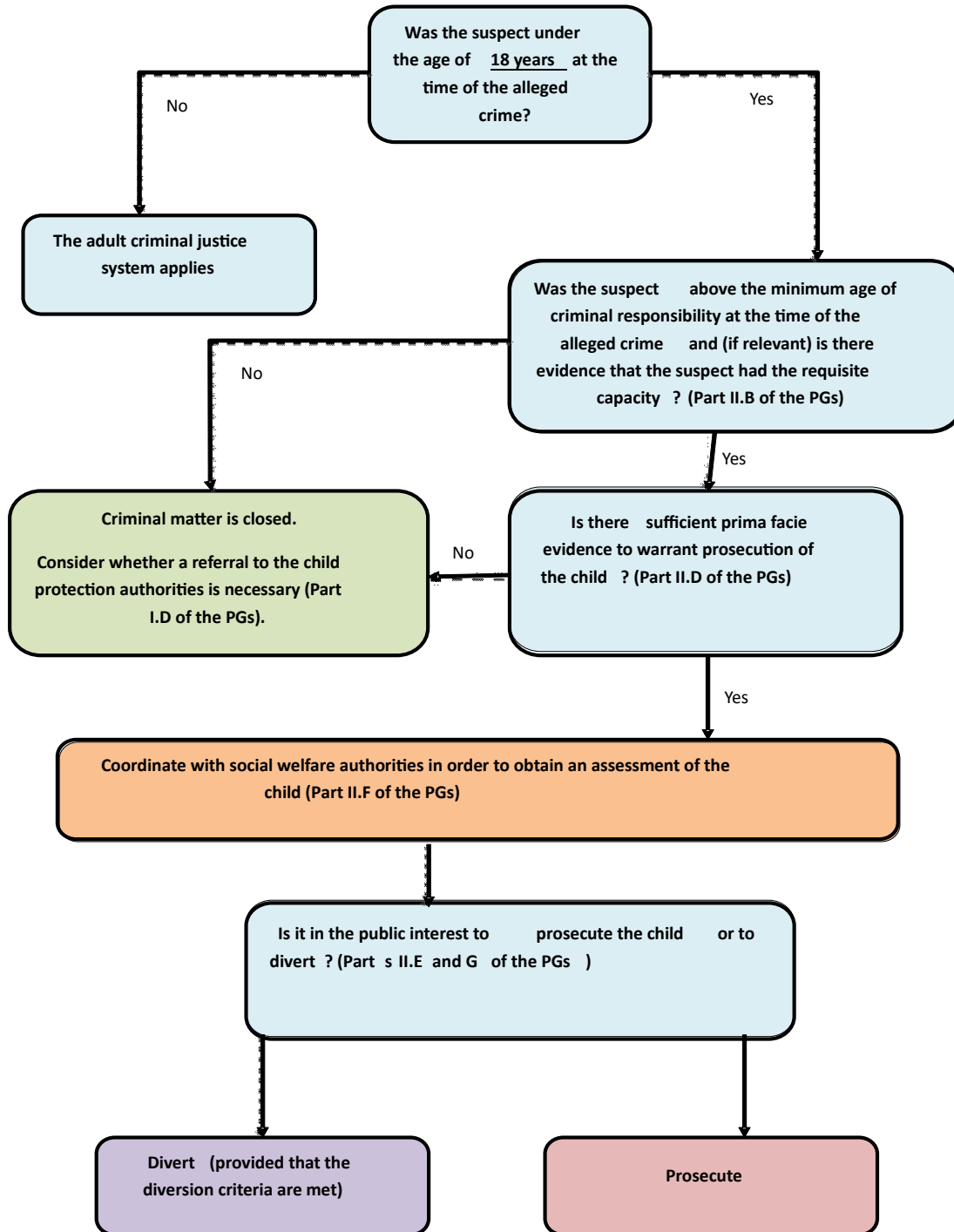


Figure 1: Diagram showing preliminary steps to take in deciding when to prosecute
Source: Facilitators Manual (2018)

iii. **Evidence**

In deciding to prosecute, the prosecution must be satisfied that there is a prima facie evidence and a realistic prospect of conviction against the child in the case.

Any case no matter how sensitive or serious must pass this evidential test. See Part II (D) 3-5 Prosecution Guidelines

The consequence of preferring a charge without sufficient evidence is that the court will dismiss the charge for lack of sufficient evidence. This will amount to waste of time, energy and resources. It is proper that a charge be preferred on completion of investigation and where there is sufficient evidence to sustain it. While considering the evidence, the prosecution should ascertain if the proper process of taking statement or pre-trial investigation was followed.

The law stipulates that in pre-trial investigation, due process must be complied with. This includes the right of the child to be informed of her entitlement to legal and other appropriate assistance. The prosecution must bear in mind the presumption of innocence, in order to ascertain the following:

- a) Whether the child was informed of his rights when apprehended.
- b) Whether the child was offered legal and other appropriate assistance before being questioned and
- c) Whether a parent/guardian or other person supporting the child was present during questioning. Where the procedures were not complied with, the Court may adjudge it to be a breach of the fundamental right of a child thereby rendering the case a nullity on the basis of unfair procedure and unreliable evidence.

iv. **Public Interest Analysis**

The prosecution must ascertain whether it is the interest of the public to prosecute the child. The best interest of the child must be the primary consideration in deciding whether or not it is in the interest of the public to prosecute.

To strike a balance between the best interest of a child and public interest, there are some factors that should be considered as enumerated in Part II (E) (3) of Prosecution Guidelines.

- a) Information regarding the antecedent and family background of the child and other material circumstances.
- b) The age and apparent maturity and mental capacity of the child.
- c) Whether the child is in need of care and protection as set out and defined in Part V of the Child Rights Act 2003 and corresponding sections in the Child Rights Law of various States.
- d) Any factors that may affect the criminal capacity of the child.

- e) The seriousness of the offence.
- f) The length of time between the commission of the offence and the arrest.
- g) Whether the child has offended before, the circumstance of that offence and whether the child was cautioned or was diverted.
- h) Whether a caution or diversion under section 209 of CRA 2003 or equivalent in the Child Rights Law would be appropriate.
- i) Whether prosecution would likely be harmful to the child or would be appropriate having regard to the child or would be inappropriate having regard to such matter as the personality of the child and his or her family circumstances.
- j) Any other relevant information that is available.

Where the child is younger there is less likelihood of prosecution except in serious offence (s), where the child has previous records of such crime, where there is no alternative to prosecution, or where the child has denied the commission of such offence, and which does not permit diversion.

In the best interest of the child where prosecution will have harmful effect on the child, the prosecution should liaise with Police and Social welfare to obtain a social inquiry assessment which will form the basis for decision to prosecute.

It is essential that in all cases concerning children, Prosecutors clearly identify, consider and balance all factors that are relevant to the public interest analysis. Prosecutors should keep a written note of the factors identified but rejected or outweighed by other consideration.

This is useful for demonstrating that the decision to prosecute was taken only after a full review of the case and the background information, including the information contained within any assessment of the child's situation.

DIVERSION

Diversion refers to voluntary measures for dealing with children who have committed a crime outside the formal justice system which involves trial. This is to ensure that the principles of legal safeguard have been complied with in the area of respect to human right.

Diversion prevents criminalization of a child and introduces programs that address the root of the child's offending behaviour aimed at preventing reoffending. This is an alternative to prosecuting for alleged offence. Section 209 of CRA 2003 and equivalent in the Child Rights Law provides for diversion to include Settlement, Supervision, Guidance, Restitution and Compensation of victim.

Article 40 (3) (b) of the United Nations Committee on the Rights of a Child (UNCRC) calls on State parties to use diversion wherever appropriate and desirable, provided human rights and legal safeguards are fully respected.

DIVERSION MEASURES

Diversion should take place at the earliest possible opportunity before the case is charged because once charged, judicial proceedings are regarded as having commenced. Since Diversion focuses on rehabilitating a child who is in conflict with the law by addressing the root cause that drives children to committing crimes in order to prevent them from re-offending.

Article 40(1) of the UN Convention on the Rights of the Child and Article 17(1) of the African Charter on the Rights and Welfare of the child states the underlying purpose of the child justice system as rehabilitation not punishment.

Sec 209 of the Child Rights Act gives power to Police, Prosecutor and Court to divert a child in conflict with the law. It provides inter alia:

“209 (1) The Police, Prosecutor or any other person dealing with a case of the 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 as provided in paragraph (a) of this section.

The Diversion measures as stated in S. 209 (1) (a) are as follows:

- i. Issuing a warning cautioning the child to be of good behaviour, involving the diverting bodies.
- ii. Giving the parent responsibility for ensuring the child’s behaviour – guidance.
- iii. Supervision – this involves engaging the Social Welfare Authorities to seek alternative accommodation for the child, if it is not in the best interest of the child to remain with the parents or guardian.
- iv. Mediation between offender and victim.
- v. Family or community conference.
- vi. Participation in a non-residential rehabilitation programme where the child continues to live in the community and participate in psychosocial support activities to address the root causes of the child’s behaviour.

Note: compensation of victim is not the criteria to be met before a diversion can occur.

PROCEDURE FOR DIVERSION

- It should be at the earliest opportunity before a case is charged or instituted in court.
- Police, Prosecutor, Social welfare to be involved in the process.
- Police, Prosecutor refers the case to social welfare authorities who carry out assessment of the child's family background, the environment and other circumstance which could cause such behaviour.
- Psycho socio assessment and recommendation of possible diversion measure as suggested or recommended by social welfare.
- The diversion is explained to child and parent/guardian for their informed consent in writing.
- Informed consent is sought and obtained by Prosecutors and/ or Police using consent form in Part IV of the Prosecutor's Guidelines of Cross River State.
- Case is suspended and diversion commences.
- Completion of diversion results in final closure of case.

Note: Where a child has been made to go through formal procedure it is no longer diversion but an alternative measure imposed on finding of guilt.

Court Diversion Powers

Court has powers to divert by virtue of section 223 of CRA. The law provides that the Judge or Magistrate has powers to divert a child where the child has admitted to the offence or evidence shows that the child actually committed the offence. The Court has powers to dismiss the charge and discharge the child offender in order to enable him serve ancillary order, such as care order, supervision order, group counselling, community service, pay fine, compensation.

The Court's Order to place a child in Government institution or approved accommodation shall be a measure of last resort section 223(2) CRA.

CRITERIA FOR DIVERSION

Child justice standard for diversion is "when appropriate and desirable". Diversion cannot operate in vacuum. Certain criteria/procedures must be followed before diversion can operate and they are;

1. **The offence must be a non-serious offence.** The offence committed should not carry any penalty above 3 years else it is not suitable for diversion. The Criminal Code and Child Rights Law decides which offences carry 3 years imprisonment.
2. **There must be compelling sufficient evidence to prove that the child has committed the offence.** The evidence must have realistic prospect of him/her being found guilty.

Where there is no compelling evidence, there is no need for diversion as there is no criminal act.

3. **The child freely admits to committing the offence in writing.**

Admission of guilt is paramount, where the child has not admitted and he is diverted it raises the presumption that the child is liable and breaches the fundamental principle of presumption of innocence and right to fair hearing.

- Admission must be free, voluntary and devoid of intimidation, threat or promise of reward.
- Such admission should not be used in subsequent proceeding against the child.

4. **The child/parent provides informed consent to diversion in writing.**

- Consent of the child/parent shows that the diversion is voluntary.
- This would allow the child/parent take active participation in the diversion. The child's consent is sufficient where the parents withhold theirs but parent's consent cannot replace child's consent.
- "Informed" means the child's parent have been educated on diversion, nature, consent, duration and consequences for failure to complete diversion which is charge being instituted in court and the ordeal of a formal trial and if found guilty would lead to conviction.
- Right to legal assistance before consent is given to ensure he understands the appropriateness of diversion.

5. **Public Interest consideration**

Public perception plays an essential role, where other criteria are met. The Police/Prosecutor should evaluate if it is in the public interest or not to prosecute a child offender. There are certain factors that could weigh in one's mind towards determining the public interest consideration and they are:

- i. Seriousness of the offence.
- ii. Degree of harm caused.
- iii. Whether a Court has issued a finding of guilt against the child previously (though repeat offending should not automatically preclude diversion).
- iv. Victim's vulnerability.
- v. Whether the child has failed to respond to diversion.
- vi. Extent of involvement in the offence.
- vii. Whether the crime was committed with an adult and whether the child was taken advantage of, considering marked age difference.
- viii. Extent of remorse.

- ix. Child's mental capacity.
- x. Child's cooperation with the authorities.
- xi. Whether the victim was targeted
- xii. Whether prosecution would have adverse impact on the child's future prospects that would be disproportionate with seriousness of the offence.

DIVERSION IS NOT

- i. Victim's consent not required though view is considered.
- ii. Children without parental care should not be refused diversion because they are homeless else it amounts to discrimination.
- iii. Payment of compensation is not a prerequisite for diversion.
- iv. Cases dismissed for lack of evidence does not require diversion
- v. Cases where a child is under the minimum age of criminal responsibility the child is incapable of committing criminal offence.
- vi. Child protection measure for children with parental care.
- vii. Measures imposed by Court on finding of guilt is not diversion measures but alternative measure.

ROLES AND RESPONSIBILITIES OF DIFFERENT STAKEHOLDERS IN THE CHILD JUSTICE SYSTEM.

There are certain bodies involved in the child justice system and they are:

1. Police

Section 207 CRA provides for a Specialized Police Unit in Police station manned by Police/Prosecutor trained in handling children cases. Section 209 CRA 2003 empowers the Police and the Prosecutor to divert a child from criminal proceeding.

2. Prosecutor

Section 209 CRA gives power to Prosecutors to divert cases, where the Police failed to do so. The Prosecutor should critically analyse the facts contained in the case file and consider if it is appropriate for diversion. Where he is satisfied that it merits diversion, the Prosecutor should issue consent forms to child/ parent seeking their informed consent. There is a specialized prosecution Unit in the Ministry of Justice that handles such cases.

3. Court

Section 211 and section 223(1) of CRA gives the Court powers to divert the child instead of proceeding to trial, where the Court is satisfied that the child committed the offence. The Court shall after due consideration of the criteria, dismiss the charge and discharge the child offender

and make appropriate Order aimed at rehabilitating the child, depending on the socio economic condition of the child.

4. Department of Social Welfare

Upon an invitation by Police or Prosecutor to carry out an assessment of the child's situation and background, the Social worker swings into such investigation and thereafter presents a Social Inquiry Report. In addition to this, they perform the following actions:

- Provide emotional support to the children in which case, another Officer from Social Welfare should accompany the child and counsel him on the need to carry out community based rehabilitation programme.
- Carry out restorative measures like mediation, community and victim meeting.
- Identify suitable diversion measures for the child.

5. Civil Society and Faith Based Organization.

- Community based rehabilitation programs are mostly carried out by Faith Based Organization and Civil Societies, as they have such facilities. Such rehabilitation facilities are located in the community to ensure that children do not travel long distance from their homes to attend.

6. Defence Lawyers

Every child has the right to legal assistance from point of arrest until the completion of criminal proceeding.

- The Defence Lawyer has the right to draw the attention of the relevant bodies to divert where the criteria are met.

Pre-trial disclosure

The Prosecutor has a duty to disclose any material which might reasonably be considered capable of undermining the case for the prosecutor or assisting the child which has not already been disclosed to the court. The duty to disclose applies at all times during the trial. See Part II. L of Prosecution Guidelines.

There are exceptions to refusal to disclose evidence, where it bothers on National security or threat to another person's life.

- In all children's cases, statements and documents from Police file should be provided free of charge.

CASE MANAGEMENT

This is the process of proper handling of cases involving children. This is the manner that Court controls and facilitate the progress and disposal of cases at the trial and appellate stage. In case management, the principle of non-delay is respected.

The CRC Committee recommends final decisions on cases not later than six months after they have been presented. Section 215(3) CRA 2003.

FAMILY COURT

A Family Court is a Court established by the Child Rights Act to preside over cases involving children. This Special Court is fashioned in a manner to accommodate child sensitive practices and facilitate child participation. Children are handled under separate provision which require different treatment.

Why should procedure in the Family Court be different

a. Child's vulnerability

Children are vulnerable and can easily be intimidated, where intimidated they can say anything rather than the truth. These could frustrate the tenets of Justice.

b. Perception of Court Environment

Children find Court proceedings very strange and difficult and may not give full participation. This requires protection of the children from the formal advocacy.

c. International, Regional and Domestic standards

Basic principles of child justice system have been set by International bodies to ensure that the child passes through the justice system unharmed. This recognizes the child's right to dignity and self-respect.

d. Protection of Child from harm

Poor practices in an adversarial justice system can harm a child's welfare, development and future outcome.

e. Need for child sensitive proceedings

Procedures in the Court should be child sensitive to minimise the risk of harming the child. This is in line with the tenets of Child Justice System which aims at rehabilitating children who are in conflict with the law, in order to reintegrate them into the society as a meaningful member of the Society.

f. Need to correct a child

Children should not be held accountable for their actions rather they should be corrected since they are still developing and learning. A child's behaviour could be influenced by his socio-economic condition or environment and could as well be corrected if the condition is reversed.

Procedure in the Family Court

In all proceedings in which a child is involved, the best interest of the child is paramount. The Child Justice System should be child sensitive, respecting the rights of the child including right to dignity, fair hearing and right to legal representation.

Section 214 of the Child Rights Act 2003 states:

- “(1) In the trial of a child under this law, the observance of his right to fair hearing and compliance with due process shall be observed.
- (2) The procedures established by the child justice system under this law shall, in relation to the trial of the child offender, as during the initial contact with the child under section 212 of this law-
- a) Respect the legal status of the child
 - b) Promote the best interest and wellbeing of the child; and
 - c) Avoid harm to the child, having due regard to the situation of the child and the circumstances of the case.”

Here, emphasis is placed on Child Justice System having the basic principles of respect to legal status of the child, promotion of the best interest of the child and wellbeing of the child to avoid harm to the child’s psycho social and physical being. See Part 11 (I) (J) (k) of the Prosecution Guidelines

Similarly, section 215 (1) of the CRA 2003 and corresponding section in the CRL enunciates principles which should guide a court in adjudication of matters relating to children.

Guiding principles in adjudication of matters relating to children

First, here the principle of best interest of the child is reiterated and proceedings to be conducted in an atmosphere of understanding, which allows the child to participate therein and express himself/herself freely.

This is alien to our Justice System which is adversarial, children cases require an informal and child friendly manner of approach S. 215 (1) (a) CRA 2003

Second, the Court’s attitude towards a child in conflict with the law, including Orders made on finding of guilt should not be proportionate to the gravity of offence but to the circumstances that led a child into committing the offence and the needs of the child. S 215 (1) (b) CRA 2003.

Third, there is restriction on the deprivation of liberty of a child and detention should be as a measure of last resort except in serious offence involving violence against another person or the child is persistent in committing serious offence, which poses a risk to his safety or the public safety. Section 215 (1) (c) (d) CRA 2003.

Fourth, the child's right to legal representation is paramount and breach of such right is a fundamental defect which could be a subject of appeal. It is imperative that a child has access to legal representation.

Steps to be taken by prosecutors in Court

There are some strategies that prosecutors should employ to achieve a child sensitive court environment.

1. Use of language

Counsel to use simple terms which a child will understand when questioning the child. The language used must be appropriate rather than confrontational, repetitive or bullying which could confuse or re-traumatize the child. Where such questions are asked, the Court has power to limit such questions and may ask the Counsel to rephrase the question.

Words like "Conviction", "sentence" should be replaced with "a finding of guilt" and "Order made upon a finding of guilt".

2. Court setting

The Court environment and seating arrangement should be child sensitive. The Court seating should be arranged in a round table sitting more like a conference arrangement. The child should not stand or sit in the dock or behind bars.

3. Dressing

The Judge/Magistrate and Lawyers should not robe in wig and gown. It is recommended that there should be no formal dressing.

4. Legal representation

The child should have access to legal representation, parents/guardian or guardian ad litem, this will enable them watch the child and prepare him to participate actively in the court proceeding. Ensuring the child has the right people to support him or her to be comfortable.

5. Social Enquiry Assessment

The Social Workers/Welfare to investigate the child's background and personality. This would enable the Court to appreciate other circumstance and the needs of the child using the wellbeing of the child as the yardstick.

6. Exclusion of persons

Where the presence of certain persons during the court proceedings is likely to have adverse effect on the child, the Court should be notified so that their presence will be dispensed with. Also screening the child away from the adult offender during the trial or child's evidence would be an additional advantage.

7. Duty to attend Court

It is unacceptable for Prosecutors to be absent from court or seek unnecessary adjournment as this could occasion delay in the child's case causing unnecessary hardship and additional cost on the child.

GUIDELINES ON QUESTIONS PERMITTED

Part 11.M of the Prosecution Guidelines.

In asking a child question, certain questions are disallowed because of the negative effect it would have on the child viz a viz his right to effective justice. Questions that should not be asked include:

- i. Leading questions
- ii. Complex compound questions
- iii. Questions with aggressive, confrontational or degrading language
- iv. Repetitive questions
- v. Questions that involve comparative judgment
- vi. Sensitive questions which a child may find difficult to say.

Poor practice	Problems with the questions	Same question asked in a different way
Is it not true that you were not supposed to be in school at that time	Double negative, leading question and confusing structure	Were you supposed/allowed to be at the school at that time ? or where were you supposed to be at that time?
You stole the bike, didn't you?	Aggressive and intimidating tone	Did you steal the bike?
Was it a woman you spoke with, and what age was she, and what did you say?	Multiple questions at the same time	Who did you speak with? Or Thinking about the person you spoke with, was that person a man or a woman? What age was he/she? What did you say?
So you were there at 9pm with your friend Sara?	Multiple closed question at the same time- it is not clear which one to answer	Where were you at 9 pm? Or you were there at 9pm? (as a clarifying question) Were you with anyone? or you were there with your friend Sara (as a clarifying question)
Please explain using the proper terms where he touched you	Forces the child to use language he or she may not be comfortable with	Please explain in words you are comfortable with, what happened or could you show

		me on the doll/ diagram where he touched you (OR, refer to previous testimony where possible)
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Diagram showing good and bad questions to ask a child in Court

Source: Facilitators Manual (2018)

ORDERS MADE UPON FINDING OF GUILT

The Orders a Court should make upon finding of guilt of a child are contained in section 223(1) of CRA as follows: (a) Dismissing the charge (b) Discharging the child offender (c) Placing the child under Care Order, Guidance Order and Supervision Order (d) Committing the child offender by means of a Correction Order to the care of a Guardian, or any other person or to an approved accommodation or institution (e) Ordering the child offender to participate in group counselling (f) Undertake community service (g) Order the parent or guardian of the child offender to pay a fine, damages, compensation or cost, give security of child's good behaviour, enter into recognisance to take proper care or exercise proper control over the child (h) Committing the child offender to custody in place of detention (i) Making a hospital Order or Order prescribing some forms of intermediate treatment (j) Making an order concerning foster care, guardianship, living in community or other educational setting.

Note: The placement of a child in a government approved accommodation or Government institution shall be a disposition of last resort and not to be ordered unless there is no other way of dealing with the child. The Court shall state in writing the reason(s) of making the Order.

The guiding principle is rehabilitating the child and reintegrating him back into the society as a constructive member. The purport of child justice system is not punitive but corrective of the child to become a better person.

Section 215 (1) (b) of CRA 2003 states the criteria which should be applied in determining the Order to be made.

Determinants for Court Orders

The principles the Court should take into consideration before making orders on finding of guilt of are:

i. The Best interest principle

In all matters relating to a child, the best interest of the child is the paramount consideration. It is in the best interest of a child in conflict with the law to be rehabilitated rather than waste away in detention.

ii. Reintegration of a child

Where a child has committed an offence, the Society tags such a child and would not want to relate or associate with the child. The Court exploring the Child Justice System should make an order to rehabilitate the child to enable the child to be reintegrated into the society as a useful member of the society.

iii. Improved relationship

The Justice System should accommodate the principle of maintaining and strengthening the child relationship with his or her family when appropriate.

iv. Addressing the root causes

The Court should impose a measure that is most likely to address the root cause of a child's offending behaviour. Some behaviours are caused by socio-economic conditions of the child which includes poor family background, inability to have food or basic necessities which a child ought to have. The Court should make Orders to provide opportunities to enable the child have the basic necessities.

v. Protective Orders

The Court should impose measures that should best restructure the child in order not to impede the child's educational upbringing. This is to protect the victim and the community.

vi. Psycho Social Development

There is need to take into account factors like child's mental health and afford the necessary psycho social counselling at the appropriate unit.

vii. Other Special Circumstances

The need to take into consideration the peculiar needs of a child offender, the condition of living and difficult circumstances the child faces.

Prohibited Orders

Section 213 (2) of the Child Rights Act 2003 and its equivalent in the CRL prohibits the use of certain words in the child justice system. Words like 'conviction', 'sentence' should be avoided.

Also section 221 (1) of the CRA 2003 prohibits the Court's Orders of imprisonment, corporal punishment or death penalty against the children. This is in line with international standards as capitulated in Article 37 (a) UNCRC and CRC Committee Guidance.

Age in Making Order

At the time of passing an Order on finding a child guilty, the Court must use the age of the child at the commission of the offence and not at the finding of guilt.

Part II (N)(7) of the Prosecution Guidelines states;

"Where an accused is under the age of 18 when he committed an offence but reaches the age of 18 by the time he is convicted of the offence, he must continue to

be treated as though he were a child and the order options and principles contained in Cross River Child Right Law 2009 continue to apply”

Why Apply Child Sensitive Standards

- i. To Protect the child victim/witness
- ii. Ensure the best evidence is obtained from the child
- iii. Universal application of child sensitive procedures to all cases involving children

Factors that weigh in favour of prosecution of cases involving child victim

- a. The Best interest of the child
- b. The Suspect was in position of authority or trust in relation to the child. Suspect could be child’s parent, guardian or persons who the child is answerable to, as such could have exerted much influence on the child which made him commit an offence he would not have. In which case the child is presumed to lack the mensrea and would not be prosecuted.
- c. The child was in a vulnerable position and the suspect took advantage of him. This applies where a child has no accommodation due to his parental background and is housed by the suspect who uses him as an instrument to commit offence, he would not be prosecuted on grounds of his vulnerability rather efforts will be geared towards accommodating the child and rehabilitating him.
- d. There is a marked age difference between the ages or level of understanding of the suspect and victim. Where a 22 year old suspect commits an offence with a 9 year old, there is adjudged to be a marked age difference.
- e. Other children being at risk of harm

Where there is a tendency that the continuous presence of the suspect will constitute serious risk of harm to other children, it is advisable to prosecute the offender.

- f. Previous incidents

Where there are previous recorded incidents against the offender and where there are or have been any other relevant judicial proceeding against the offender.

- g. Criteria for diversion not met

Where the offence is a non- serious offence or the child offender has not admitted to the commission of a non-serious offence, there is no reason for diversion, but rather trial should commence.

Challenges Child Victim and Witnesses Face in Criminal Proceeding

- 1. Fear and anxiety of going to Court.
- 2. Delays in the criminal justice process.
- 3. Lack of knowledge of court procedure and progress of the case.

4. Manner of questioning by Counsels

Where a child is asked the same question repeatedly it could be traumatic for the child.

5. Security risk

The children face risk of being threatened, harassed by perpetrators and family. As such, safe guarding the child becomes an issue.

6. Stigmatization

The Society attaches stigma to children who are victims of sexual assault. This makes the child/parent hesitant over continuing with such cases.

SAFEGUARDING /CHILD PROTECTION

It is in the best interest of the child that the child be protected from risk of harm whether actual or anticipated. The Law recognizes that child victims and witnesses are usually faced with threats and intimidation from suspects and has made provision to ensure the safety of such children.

The Prosecution Counsel's process of questioning the child and the Defence Counsel's cross examination techniques can be very stressful for the child. To guard against this, the Prosecution Guidelines have listed some questions which could be classified as good practices.

The realization of the fact that a child may be subjected to harassment or pressure by the accused family and relatives and this may lead to the child's withdrawal of evidence. The Prosecutor should contact the police and social welfare to make necessary arrangement to ensure the child's welfare and safety.

In cases of domestic violence, Prosecutors should liaise with Police to ensure the child is safe in the household and obtain protection Order from Court against the defendant. If the child continuous stay in the household will re-traumatize the child, possibly arrange for an alternative accommodation through the Social Welfare pending the conclusion of the case.

The attitude of parents whose child is involved varies. Some parents may be reluctant to allow their children pass through the court system, due to the speculations on the pressure of a trial and its effect on children. They may doubt the ability of their children to give evidence during trial and would consider it a traumatic experience for the child. Hence, Prosecutors should take steps to eliminate/alleviate the worry and stress of giving evidence as follows:

- Inform the child/ parent of the progress of the case
- Educate them on the procedure in court and what is expected of them
- Advise them to seek help or explanation where they don't understand
- Help them to familiarize with the court setting before the date for hearing
- Expedite action on the case to ensure speedy trial and determination

- Make referrals to enable the child go through psycho-socio counselling by Social Welfare Authorities.
- Where the child needs medical attention referrals should be carried out to enable the child receive proper and adequate medical services.

It is the duty of the Prosecutor to take into account the need to safeguard the child, particularly when taking action that may have a direct impact on the child's safety.

CHILD PROTECTIVE ORDERS

To ensure the child's safety, well-being and best interests. The specific Orders may vary depending on the subject matter. Measures put in place to ensure the protection of the rights of the child against certain derogatory or inhuman treatment or treatment likely to affect the mental, physical, social or emotional development of the child.

Orders which protect the child and help in enforcing his rights are:-

- Service Order
- Supervision Order
- Counselling Order
- Removal from custody
- Child Assessment Order

-where the Applicant has reasonable cause to suspect that a child is suffering, it is an assessment of the state of health or development to enable one determine whether a child is suffering or likely to suffer significant harm. Section 41 CRA.

- Emergency Protection Order

- An application by the State or appropriate authority granted by the Court to take custody of a child where the applicant has reasonable cause to believe the child is suffering or likely to suffer significant harm in circumstances where actions with respect to the welfare of the child are being frustrated, or the applicant believes the access to the child is required as a matter of urgency, to last for 9 days. Section 42 CRA.

COMPETENCY OF A CHILD TO TESTIFY

A child has the right to participate fully in a trial to give evidence irrespective of the child's age provided certain questions were put to him to ascertain his intelligence and ability to give credible evidence.

- There is no lower age limit for children to testify.
- Child's ability to testify should not be based on child's age and maturity but on assessment of his intelligence and credibility to give understandable and reasonable evidence

- Ability of a child to respond to legal argument or understand complex language should not be the basis for competency
- If giving evidence will have negative long term impact on the child, consideration should be given to the child's best interest and value. The impact on the child must be weighed against his value as a witness and the interest of justice.

PREPARING THE CHILD FOR ATTENDANCE IN COURT

Child victims and witnesses consider court environment as strange and are unfamiliar with the procedure/ proceedings. If they are to give evidence, special preparation should be put in place to assist them familiarize with court to ensure they give quality evidence.

The Prosecution Guidelines, Part 111. F states good practices in dealing with child witnesses and they are:

i. Arrange a pre-trial conference

Prosecutor to invite the child/parent to his office, explain in a language they would understand the case and what he is expected to give as evidence. The child's evidence should flow without being tutored. Ask the child if he has been to court before, if his answer is in the negative, then arrange for a visit to court.

ii. Arrange for a visit to court

The child should be taken to the court room for sighting preferably a week before the trial or his evidence. The child should be briefed on the persons that are expected to be in court for the case, on the date slated for hearing and where each person will sit. The child has to be shown where he will stand or sit to give evidence and that he will be required to take an oath.

iii. Prosecutor should accompany the child

Either the Prosecutor or Social worker to accompany the child to court to familiarize with the court. Where there is no Social worker, the Guardian ad Litem should accompany the child.

- Guardian ad litem are people who are trained to support and assist children in court.

Part 111. E of the Prosecution Guidelines

Either the Prosecutor or the Court suo moto may appoint a Guardian ad litem to safeguard the interest of the child. Section 89 CRA.

The Guardian ad litem's duty is to sit with the child while he gives evidence and to inform the court on any special protective measure that are needed for the child.

CHILD SENSITIVE PRACTISES IN COURT

A child sensitive environment is a conducive environment that is child friendly. To make the court child sensitive means to create an atmosphere that is friendly and conducive to enable the child freely participate in court proceedings.

There are **four main areas** to be considered in creating a child sensitive practice in court and there are:

1. Court Setting

The Court furniture/ arrangement should be in a favourable child sensitive environment as follows:

- There should be a round table seating arrangement
- Lawyers/ Judge should not be robed with wig and gown
- The child should not be placed in the witness box during his evidence nor in the dock during his plea
- Unceremonious entry into the court
- Screening of child from the adult suspect

2. Language

The Counsel should use child sensitive questioning techniques

- Language used should be devoid of Harassment
- Language should be simple and unambiguous
- Language should not further traumatize the child

3. Intermediaries

- Assistance of a psychologist during evidence

4. Special protective measures

The presence of a trained social worker, legal assistance and a guardian ad litem will boost the moral if the child victim/witness or child in conflict with the law.

CONCLUSION

This paper has dealt extensively with the best practices in handling cases relating to children. The Child Justice Administration is a departure from the formal justice system and it encompasses the best principles/key standards laid down by International and Regional Laws and Treatise.

This paper lays great emphasis on the aim of the Child Justice Administration which is geared towards rehabilitation, correction of a child rather than punitive. Research have shown that punishment does not model a child's behaviour rather it is corrosive and reduces the cognitive ability of children. Their brain becomes abnormal due to toxic stress and their psyche damaged.

Preferably, addressing the root causes of a child's offending behaviour prevents re-offending and further makes a child become a useful member of the Society. This is a Clarion call on all persons who are stakeholders in the Child Justice Administration, including but not limited to the Police, Judiciary, Ministry of Justice, Ministry of Social Welfare, Ministry of Women Affairs, Ministry of Education, Ministry of Health, Non-governmental organizations, Child Protection Network, National Human Rights Commission, Civil Societies, Registered institutions to ensure a child's right is protected. More so, a child is treated in a manner that would promote the child's sense of dignity and worth, reinforce the child's respect for human right and fundamental freedom of others, taking into consideration the child's age, aimed at reintegrating the child back into the Society as a constructive member of the Society.

I THANK YOU ALL FOR YOUR KIND ATTENTION.