

Community- Based Paralegal Training Manual

Global Rights

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Preface

When people do not have access to justice, they become more vulnerable to human rights abuses. While it is the duty of governments to promote, protect and fulfill the rights for all citizens, citizens also have a correlating right and a duty to hold governments accountable to the fulfillment of this duty.

In an ideal world, courts of law exist and law enforcement agents as an integral part of government should be enough to suggest that rights will be protected and citizens would have to access justice.

Sadly, we do not live in an ideal world. We live in a world where law enforcement agents, with impunity, violate rights they should protect and enforce. We live in a world in which citizens seeking justice are often left bewildered and intimidated by the technicalities and the language of the courts.

Recently, Global Rights worked with human rights networks in the Kano and Bauchi states of northern Nigeria (KAHRN and BAHRN), building their capacity to monitor and document human rights violations over a two-year period. In the course of the project, the networks chose four thematic areas to monitor:

- Women's rights
- Children's rights
- Judicial and law enforcement lapses
- Rights of disabled persons

These thematic areas were chosen based on human rights violations that were most recurrently, widely and deeply felt in their focal states. As the BAHRN and KAHRN monitors worked to document violations and gather data on abuses, they were often confronted by the powerlessness of victims. While it was right to gather information on the abuses these victims suffered, it did not seem right to leave them helpless. Hence the next stage of our capacity building exercises for these networks: to equip them to administer paralegal assistance to victims of human rights violations in their communities.

The purpose of this paralegal training manual is to provide basic instructions and skills for would-be community-based paralegals in Northern Nigeria to offer legal first aid to victims of human rights violations. We took into consideration that accessing justice goes beyond access to the courts and law enforcement, and concluded that community-based paralegals would be beneficial for individuals seeking answers for various legal issues that the police or courts could answer. The guide seeks to train holistic paralegals to assist indigent persons navigate everyday issues, assist when they are confronted by potential rights abuses from law enforcement agents and seek redress where their rights have been abused.

This manual does not cover every matter imaginable, but provides paralegals with the resources needed to open access to justice for indigent persons who might otherwise have not had access. It provides guidance for assisting clients through potential conflicts in their economic and social relationships that may result in rights violations; will help paralegal navigate through arrest and detention at the police station; and how to work with national and international human rights institutions. Our previous manuals on paralegal skills training provide specialized information on women's rights and accessing the judiciary system, therefore this manual does not attempt to repeat the information contained in them.

Lawyers improve their skills through practice and experience with each challenge they face. Paralegals must do the same. They must develop a quest for obtaining knowledge of the law; of human rights; of the government's role and responsibilities in protecting, promoting and enforcing human rights; and of holding government accountable to these duties.

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Preamble: What are Human Rights?

To understand what human rights are, it is important to first break it down the phrase into its word components:

The dictionary defines *human* as *relating or involving, or characteristics of human beings*; and refers to a *right* as: ***A justified claim or entitlement, or the freedom to do something.***

Human rights therefore refer to the body of rights belonging to every human being irrespective of their race, nationality, ethnicity, gender age, religion or any other status. Each human being is entitled to each of these rights equally and without discrimination.

Are human rights moral rights?

Case 1: A 16 year-old girl is raped repeatedly. Her uncle reports the incidence to the police. The police detain her attacker, but hands the girl over to her community, where she is shot on the orders of the council. She becomes a victim of an honor killing.

Case 2: Uganda – Government forces massacred more than half a million civilians.

Case 3: Cambodia – Between 300,000 and 2 million persons were killed by the Khmer Rouge regime of Pol Pot.

Case 4: Argentina - More than 9,000 persons ‘disappeared’ in the late 1970s.

Case 5: Nigeria: A civil rights activist is picked up from his home and imprisoned at an undisclosed location without formal charge for more than a year.

While we all readily agree that the actions in the examples above are wrong, are they human rights violations because we are morally appalled by them? What makes these human rights violations? As human rights activists, on what basis should we resist them? While there are moral justifications for the observance of human rights, it is essential to note that our basis for resisting their violation is that they are based on both local and international legal principles.

Human rights are based on both local and international legal principles. They are, therefore, an integral part of national and international laws governing the relationship between people and governments.

Human rights in the modern context

The atrocities committed by the Nazi regime during World War II led to international outrage and opened up discussions on how to prevent a reoccurrence and protect individuals from excessive powers of states. The signing of the UN Charter in 1945 marked the beginning of international comprehensive protection for all individuals against various forms of injustices. Such protections now exist regardless of whether the abuse or injustice was committed by a foreign sovereign or the individual's own country and, for the most part, irrespective of the presence of a war.

The International Bill of Rights consists of:

- The Universal Declaration of Human Rights
- The International Covenant on Civil and Political Rights (ICCPR)
- The International Covenant on Economic, Social and Cultural Rights (ESCR)

Other documents creating human rights obligations include but are not limited to:

- International Covenant on the Elimination of all forms of Discrimination Against Women (CEDAW)
- International Covenant on the Elimination of Racial Discrimination (CERD)
- International Covenant on the Rights of the Child
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Slavery Convention *and the* Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
- Regional Human Rights Treaties
- The human rights provisions guaranteed by the national constitution of states

A Summary of the Universal Declaration of Human Rights

1. Everyone is free and should all be treated in the same way.
2. Everyone is equal irrespective of differences in race, sex, religion, language etc.
3. Everyone has the right to life and to live in freedom and safety.
4. No one has the right to treat you as a slave nor should you make anyone your slave.
5. No one has the right to hurt you or to torture you.
6. Everyone has the right to be treated equally by the law.
7. The law is the same for everyone, it should be applied in the same way to all.
8. Everyone has the right to ask for legal help when their rights are not respected.
9. No one has the right to imprison you unjustly or expel you from your own country.
10. Everyone has the right to a fair and public trial.
11. Everyone should be considered innocent until guilt is proved.

12. Everyone has the right to ask for help if someone tries to harm you, but no-one can enter your home, open your letters or bother you or your family without a good reason.
13. Everyone has the right to travel as they wish.
14. Everyone has the right to go to another country and ask for protection if they are being persecuted or are in danger of being persecuted.
15. Everyone has the right to belong to a country.
16. Everyone has the right to marry and have a family.
17. Everyone has the right to own property and possessions.
18. Everyone has the right to practice and observe all aspects of their own religion and change their religion if they want to.
19. Everyone has the right to say what they think and to give and receive information.
20. Everyone has the right to take part in meetings and to join associations in a peaceful way.
21. Everyone has the right to help choose and take part in the government of their country.
22. Everyone has the right to social security and to opportunities to develop their skills.
23. Everyone has the right to work for a fair wage in a safe environment and to join a trade union.

The International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) expands on the civil and political rights and freedoms provided in the Universal Declaration of Human Rights. The ICCPR was adopted by the United Nations General Assembly on December 16, 1966 and entered into force on March 23, 1976. By the end of 2001, the Covenant had been ratified by 147 states including Nigeria.

Article 1: States commit themselves to promote the right to self-determination and to respect that right. It also recognizes the rights of peoples to freely own, trade and dispose of their natural wealth and resources.

Among the rights of individuals guaranteed by the Covenant are:

Article 2: The right to legal recourse when their rights have been violated, even if the violator was acting in an official capacity

Article 3: The right to equality between men and women in the enjoyment of their civil and political rights

Article 4: Limitations may be placed on these rights only if compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society

Article 5: No person, group or government has the right to destroy any of these rights.

Article 6: The right to life and survival

Article 7: The freedom from inhuman or degrading treatment or punishment

Article 8: The freedom from slavery and servitude

Article 9: The right to liberty and security of the person and freedom from arbitrary arrest or detention

Article 10: Everyone deprived of liberty shall be treated with respect

Article 11: The freedom from prison due to debt

Article 12: The right to liberty and freedom of movement

Article 13: An alien lawfully in the territory of a State Party may be expelled only in accordance with law

Article 14: The right to equality before the law; the right to be presumed innocent until proven guilty and to have a fair and public hearing by an impartial tribunal

Article 15: No one shall be held guilty of a criminal offense when the act did not constitute a criminal offense at the time it was committed

Article 16: The right to be recognized as a person before the law

Article 17: The right privacy and its protection by the law

Article 18: The freedom of thought, conscience and religion

Article 19: The freedom of opinion and expression

Article 20: Prohibition of propaganda advocating war or national, racial or religious hatred

Article 21: The right to peaceful assembly

Article 22: The right to freedom of association

Article 23: The right to marry and found a family

Article 24: The rights for children (status as minors, nationality, registration and name)

Article 25: The right to participate in the conduct of public affairs, to vote and to be elected and access to public service

Article 26: The right to equality before the law and equal protection

Article 27: The rights for members of religious, ethnic or linguistic minorities to enjoy their culture, practice their religion, and use their language

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

Article 1: All peoples have the right of self-determination, including the right to determine their political status and freely pursue their economic, social and cultural development.

Article 2: Each State Party undertakes to take steps to the maximum of its available resources to achieve progressively the full realization of the rights in this treaty. Everyone is entitled to the same rights without discrimination of any kind.

Article 3: The States undertake to ensure the equal right of men and women to the enjoyment of all rights in this treaty.

Article 4: Limitations may be placed on these rights only if compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5: No person, group or government has the right to destroy any of these rights.

Article 6: Everyone has the right to work, including the right to gain one's living at work that is freely chosen and accepted.

Article 7: Everyone has the right to just conditions of work; fair wages ensuring a decent living for himself and his family; equal pay for equal work; safe and healthy working conditions; equal opportunity for everyone to be promoted; rest and leisure.

Article 8: Everyone has the right to form and join trade unions, the right to strike.

Article 9: Everyone has the right to social security, including social insurance.

Article 10: Protection and assistance should be accorded to the family. Marriage must be entered into with the free consent of both spouses. Special protection should be provided to mothers. Special measures should be taken on behalf of children, without discrimination. Children and youth should be protected from economic exploitation. Their employment in dangerous or harmful work should be prohibited. There should be age limits below which child labor should be prohibited.

Article 11: Everyone has the right to an adequate standard of living for himself and his family, including adequate food, clothing and housing. Everyone has the right to be free from hunger.

Article 12: Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health.

Article 13: Everyone has the right to education. Primary education should be compulsory and free to all.

Article 14: Those States where compulsory, free primary education is not available to all should work out a plan to provide such education.

Article 15: Everyone has the right to take part in cultural life; enjoy the benefits of scientific progress.

Human Rights under Nigerian Law

Chapter IV of the Nigerian Constitution lists the following as fundamental rights:

- Right to life
- Right to dignity of human persons
- Right to personal liberty

- Right to fair hearing
- Right to compensation for property compulsorily acquired
- Right to private and family life
- Right to freedom of thought, conscience and religion
- Right to freedom of expression
- Right to peaceful assembly and association
- Right to freedom of movement
- Right to freedom from discrimination on the grounds of ethnic group, place of origin, circumstance of birth, sex, religion or political opinion

The above rights are classified under Chapter IV of the Constitution as Fundamental Rights. However, there are other rights under the Fundamental Objectives and Directive Principles of State Policy provided under Chapter II of the Constitution. These include the right to:

- Free and compulsory education
- Adequate health care, gainful employment
- Food, shelter, etc.

The rights listed in Chapter IV of the Constitution are justiciable rights: citizens could go to court to enforce them, if denied. The latter rights are however non-justiciable: these set of rights are not enforceable in the court. They are aspirations attainable if and when the government has the resources to fulfill them.

Introduction

When people are unable to access justice, they are more likely to be denied their rights and more easily become victims of abuse. Enforcing one's rights often demands access to legal aid, which is difficult to obtain in most part of the country, particularly in the north and in rural areas. There are very few lawyers in proportion to the population size and the number of issues that people are confronted with and for which justice is sought. Their services are often expensive and unaffordable to poor people. Government-funded legal aid programs are overstretched in each state and only available in the state capital or in city centers. The obvious implication of this situation is that the vast majority of poor people who live in the rural areas cannot benefit from legal aid.

Without the assistance of lawyers, most people do not know how to access the justice system or protect their rights. They often feel intimidated by the police and procedures at the police station, and are unsure of what to do when they get to a court. While an advantage, being literate does not ensure that people will know their rights and how to go about protecting them. It is often worse when people are illiterate, mostly the poor or members of a marginalized group (e.g. women and children). Most times, they are not even sure they have a right in the first place.

For these reasons, it is important that there are individuals who have requisite expertise within communities, who are readily accessible to the community, and who are capable of providing guidance on how to access justice, but who are not necessarily lawyers or law enforcement agents. These are the community-based paralegals.

Who is a paralegal?

A paralegal is a person who provides legal first aid to persons in need of justice. A paralegal is not a lawyer. S/he neither assumes the status of a lawyer nor practices as one, but only provides basic advice and assistance to parties in taking first and immediate steps to access justice.

What do paralegals do?

Paralegals do the following:

- Educate people about their legal rights and how to enforce them

- Provide basic advice and counseling to individuals and groups on how to resolve their problems
- Provide guidance on how to institute a legal matter in court or how to respond to one
- Make referrals to appropriate persons, lawyers and offices to assist parties with their challenges
- Assist parties to write complaints, petitions, agreements and affidavits to resolve their problems
- Act as mediators or conciliators to assist parties in amicably resolving their problems
- Accompany parties to court to offer moral support, assist and direct them as regards language of the court and court procedures.

Paralegals often work with lawyers - especially *pro bono lawyers* (lawyers who provide free legal services) - to assist indigent persons to access justice. Lawyers also provide occasional guidance to paralegals on how best to approach a complex issue.

Almost anyone can be a paralegal. They just need to have certain qualities and meet some minimum requirements.

Qualities of a Good Paralegal

- A good paralegal must have a good knowledge of laws and their enforcement procedures.
- A good paralegal must be a person of good character that is respected within her/his community.
- A good paralegal must be committed to providing support to persons seeking justice.
- A good paralegal must have excellent communication skills.
- A good paralegal must be compassionate.
- A good paralegal must be a good listener.
- A good paralegal must be a person of integrity, who is able to keep issues divulged to her/him confidential.

So what do I do as a paralegal when approached with a problem?

When clients approach you as a paralegal, they want their problems solved and not necessarily litigated. As a matter of fact, most cases do not need to end up in court. Litigation can be a long and laborious process. Litigation should not be avoided, however, when necessary to enforce rights and access justice.

Increasing your knowledge of the law and experience over time will improve your ability to handle cases. If you are unsure about what the law or procedure is related to a specific issue,

you should confirm that you have accurate information by consulting with people who have greater legal knowledge. As a paralegal, you often need to think out of the box, view the matter from a legal standpoint, and think of escalating approaches to their resolution. For instance:

1. You might want to first speak directly to the parties involved and negotiate a just solution to the problem. For example, Laraba, who is a yearly tenant with four months' rent paid in advance, has been given an eviction notice by her landlord to vacate her home at the end of the month. You could call a meeting between her and her landlord to try to resolve the matter through **negotiation**. When negotiation does not solve the problem, you could assist Laraba to lodge a complaint at the Area court or rent tribunal in her neighborhood to stop her landlord from evicting her.
2. Mr. Adamu was arrested and detained by the police in place of his son who was alleged to have been involved in a hit-and-run accident. You could approach the officer behind the counter at the police station and attempt to **request** his release. Where this does not yield any result, you could write a **letter of petition** to the National Human Rights Commission or to the Human Rights Desk at the Police Division. Where this does not produce the desired result, or if circumstances dictate, you may need to petition a court to have Mr. Adamu brought before a judge and released if there were no legal charges against him.
3. You might want to **mediate** between parties, especially where they have an existing relationship they want to preserve. For example, Musa is a goods supplier to the biggest hotel in Damaturu. However, for six months, the hotel failed to pay him for some goods supplied, claiming that some of the colors did not fit their requirements. Despite Musa's request, the hotel did not return the defective goods to him. You could, in this case, first **write a letter of demand** on Musa's behalf. Where this fails, mediation could be attempted. If mediation fails, you could then assist Musa in filing a suit against the hotel in court.
4. You might want to **counsel** clients on the various options available to them in accessing justice and allow them to decide what they need to do.
5. You might want to **refer** clients to a *pro-bono* lawyer or an institution, like the National Human Rights Commission, to ensure that their legal rights are enforced by a government authority.

Essential skills for paralegal work

Interviewing skills

You need excellent interviewing skills in order to become an effective paralegal. This will allow an accurate picture of your client's problems and the facts surrounding them. When interviewing a client, it is important to make the client feel comfortable so they can openly talk

with you. A client who comes to you needs help, therefore, it is important to make sure they do not feel intimidated. Furthermore, it is integral to ensure that they understand your role as a paralegal and theirs as a client.

The following ideas will assist you when conducting interviews:

- Be respectful courteous to your interviewee
- Ensure that the atmosphere is conducive and that your interviewee is at ease
- Explain the importance and purpose of the interview session to your interviewee
- Encourage the interviewee to tell the story in their own words
- Remain calm and attentive throughout the course of the interview
- Practice active listening to ensure the interviewee feels heard and that what they have to say is important
- Avoid appearing judgmental, disbelieving or disapproving of the interviewee's conduct
- Follow up their statement with specific questions
- Ask open ended questions and avoid using leading questions
- Try to summarize back to the interviewee what you think (s)he stated to ensure accuracy of facts

Exercises

1. What are the physical signs of 'active listening'?
2. Break into groups of threes and take turns to practice active listening. One person observes, one person acts as the client and last person acts as the paralegal.
3. Write down three open-ended questions and three leading questions and share with the group.

Counselling and mediation skills

As a paralegal, you must be able to provide counseling and sometimes mediate matters brought before you. Most of the cases you will encounter as paralegal will never get to court, given the length of time it takes to resolve matters in court and the adversarial nature of litigation. Most parties want quick, timely, cost-effective and amiable resolution of their matters. Therefore, the majority of your clients will approach you to provide counseling and perhaps mediate their matters.

Client referral

As a paralegal, you may not be able to handle each case from the beginning to the end all by yourself. Often, you will need to refer your clients to agencies or persons who would be able to offer expert solutions to their challenges. Often, you will need to make referrals to lawyers, the Human Rights Commission, human rights organizations, government officials/offices, appropriate authorities, etc. You, therefore, need to familiarize yourself with the services and the procedures for accessing their services. You will need to keep their contact details and when possible, maintain some form of relationship with these persons/organizations to facilitate ease of approach when a referral is deemed necessary. You may also need to write referral letters to these persons/agencies and you should ensure that you follow up on the actions of the agency.

Letter writing

Paralegals will often need to write complaint letters and petitions to facilitate clients' cases. You will need to develop good writing skills in order to be effective in your role.

When writing letters, the paralegal must bear in mind the following principles:

- Letters must be kept as simple and as brief as possible
- Letters must be correctly addressed to the person to whom it is written
- There must be a clear indication of the capacity in which they are written
- There must be a clear indication of what is required from the recipient
- Letters must be dated
- Letters must be signed at the end by the paralegal, though in certain instances, the party/parties may also need to sign. Therefore determination of the proper signatory will be done on a case-by-case basis.
- Copies of letters must be to stakeholders and relevant parties to keep them officially informed
- Letters should include in its contents a request for a response from the person receiving the letter
- Letters should be delivered quickly and as much as possible; proof of delivery (e.g. – receiver's signature) should be obtained.

Record-keeping, reporting and documentation

You must be able to take and keep accurate records of clients' cases. They must be able to articulate who the party is, parties' issues, dates and times of meetings, advice given, steps taken, referral (if any), as well as monitor and document the entire process of the case for

future reference. Records kept should be brief and easy to read. Sample forms that may be adapted are provided at the end of this manual.

Another very important part of record keeping is **documenting evidence** in support of a victim's case. Documentation is not just about keeping a record of their statements. It could also involve, for instance, taking pictures of injuries sustained, and keeping copies of correspondence, etc.

Sometimes victims have no support from their community or the government and require your assistance in dealing with their circumstances. When they approach you with a problem involving the violation of their rights and desire to see justice done, your first duty should be to interview them to get their full story. Understanding their full story will assist you in deciding the best course of action for their problem.

Civil or criminal cases

Determining whether a case is criminal or civil will depend on whether the act constituting the injustice complained about is defined as a crime in the laws in Nigeria. For instance, all injustices emanating from acts addressed in the Penal Code, Criminal Code or any other criminal law legislation, are criminal issues. Cases instituted to redress such injustice would be criminal cases. If an injustice results from acts that are outside the scope of criminal law, it involves civil law issues. Cases instituted to redress such injustice are civil cases. However, there are certain instances where the line between criminal cases and civil issues are thin. If you are uncertain, consult a lawyer or a legal aid officer.

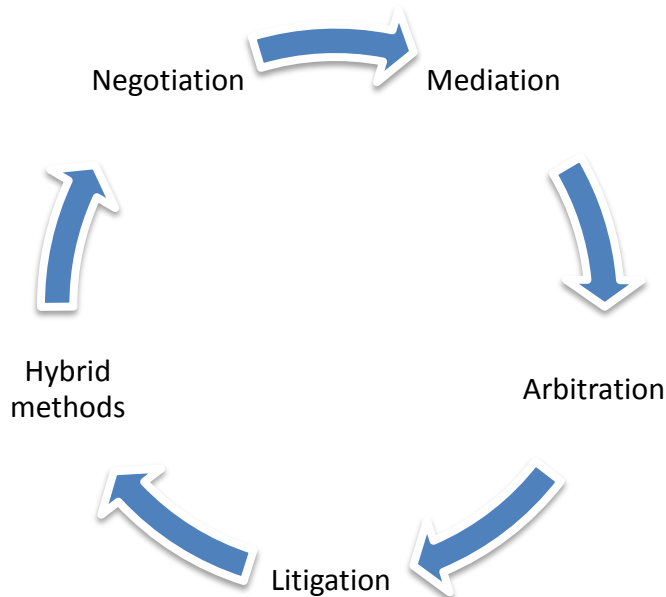
Approach to handling civil cases

Cases involving contracts, landlord and tenant issues, employee-employer relationships, land disputes, neighbor nuisance, and personal issues, such as divorce, child custody, inheritance, amongst others, will more often than not constitute civil cases.

Your approach should be to use litigation as a last resort and instead adopt an escalating approach to resolving the issue, i.e., try the least conflictual approaches first and resort to more contentious approaches only if others fail. First, encourage the parties to discuss their problem. When they are unable to resolve them, then you may step in to help them mediate. If mediation proves ineffective, an instituted authority may be approached to provide non-binding arbitration. Sometimes the village head, or even the arbitration department at the Multi-Door Courthouse of your state, can fulfill this role. If all attempts at amicable resolution prove futile, litigation may be the final option. In which case, the services of a lawyer would be required. Groups such as FIDA (International Federation of Women Lawyers), the NBA (Nigerian Bar Association) pro-bono committee and law firms who offer free legal services or services at a subsidized rate could fulfill this role.

Litigation is not a bad or ineffective method of obtaining justice. The problem with litigation, however, is that due to its adversarial nature, it involves complex language and procedure and usually requires the huge expense of hiring lawyers. As a result, this method of dispute resolution is not realistically available to persons without considerable financial means and due to a vast backlog of cases within the court system, it often takes a long time to get a final decision from the court.

Escalating dispute resolution wheel



Negotiation

Negotiation is an information-sharing process in which parties attempt to work out differences through an agreement, which defines their future relations/behaviors. It is a process where parties attempt to find a middle ground and make concessions with a view to resolving issues.

Conditions for successful negotiation

- The issues to be resolved must be clear
- The goals of the parties must be compatible
- Parties need to agree to be able to meet their goals
- Parties are reluctant to take the legal option
- Parties are capable of influencing each other in a beneficial manner

Assisted Negotiation

Assisting your client negotiate an agreement is a task you may often find yourself attempting to undertake. Mediation is when you facilitate the process of negotiation without being vested with the responsibility for reaching a particular outcome. In other words, mediation may also be referred to as assisted negotiation.

Mediation in Summary

A number of the disputes that clients will bring to you will be matters that can be resolved through mediation. What then is mediation? Mediation is a voluntary process in which two or more parties involved in a dispute negotiate, with the assistance of an impartial party (in this case, the paralegal), to generate their own solutions in settling their dispute. Unlike most dispute resolution mechanisms that involve a winner and a loser, mediation is about finding a solution that works for both or all parties involved.

An effective mediator is expected to help parties focus on the future – on where the parties want to be, not where they are now or where they were in the past. With good negotiation skills, a mediator may be able to assist the parties to focus on their best interests.

To mediate or not to mediate

The table below set out examples of when mediation is appropriate and when it is inappropriate.

WHEN TO MEDIATE	WHEN NOT TO MEDIATE
If it is important to maintain relationship	When the fundamental rights of a party will be violated
When clients cannot afford the time and cost of litigation	When the parties are not willing to collaboratively negotiate a solution to their dispute
When it is in the best interest of the parties (or of a party) to keep the facts of the case confidential	When a crime has been committed, for example, rape, murder, etc.
	When the life of a party is in danger
	When the matter is purely a matter of interpreting the law

Exercise

Write down three types of cases that you most likely should mediate.

Write down three types of cases that should NOT mediate.

Skills essential for mediation

- A mediator must have excellent communication skills.
- A mediator must have excellent human relation skills.
- A mediator needs to have a basic understanding of the way people think.

Mediation's rule of thumb

- Always remember that it is not a process of determining legal right or wrong, but of identifying common grounds and underlying interests with a view to generating a mutually acceptable settlement.
- Your responsibility in mediation is not to offer a solution to the parties' dispute(s) but to facilitate communication between them to enhance their negotiation and increase chances of reaching amicable and mutually acceptable solutions.
- Remember to be respectful of the parties and to treat them with equality, devoting equal attention to each of them.
- You must be and remain impartial and neutral throughout the course of the negotiation.
- Actively listen to determine what the parties *really* want. Sometimes parties, for fear of losing, stick to hardline or entrenched positions. They do this at the expense of identifying and focusing on their underlying interests and motivations, which holds the key to serving both parties better in terms of reaching a mutually gratifying outcome. It is therefore important to listen to both parties with equal attention, giving both an equal amount of time to state their side of the story and their concerns to be able to identify beyond the veneer of entrenched positions the parties underlying interests
- If you caucus (hold a private meeting) with one side to explore issues, you should do the same with the other party.
- Take a break when necessary. For instance, when parties have come to a deadlock; to allow parties to regain their composure or prevent a faceoff; or to allow for you or the parties reflect on what has been said.

The cycle of mediation

While mediation is a flexible process, it has definite stages in its progression. These stages are not cast in stone and parties undergoing mediation may find themselves alternating from one phase to the next.

Phases of mediation



Preparation

During the preparation phase, you as the mediator prepare for the mediation by taking steps to ensure that the parties have agreed to mediate. Where possible, the written consent of parties to participate in mediation proceedings should be obtained. Ensure that issues integral to the success of the mediation have been settled and communicated to the parties. Examples of such issues are date and venue of mediation session, persons that should attend the mediation session, ascertainment and collation of relevant documents, and determining whether there is a need for a co-mediator.

Opening

At the mediation, welcome the parties warmly and let each person introduce her/himself and in what capacity they are present at the meeting.

Introduce yourself (and when present, your co-mediator). Explain your role as mediator to the parties. For instance *“My name is Amina Mohammed and I am a mediator.”* This should be followed by an explanation of the dynamics of the mediation process. An example of the foregoing is set out below:

“I am not a judge or an arbitrator. However, my duty is to facilitate communication between both of you so you can reach a mutually agreeable solution to your dispute. To start, I will like for us to agree on some ground rules that will guide this process. Thereafter, we will commence the mediation with each party making a statement or their presentation of the matter. I may

decide to have private meetings with each of you or a joint meeting to explore how best this dispute may be resolved. Subsequently, we will review the terms we have been able to agree on and reduce it into writing. Is this acceptable to you?"

Establish ground rules

Disputes can bring out disturbing emotional reactions which can escalate, rather than reduce, breakdown in communication between parties. In order to avoid this and ensure that the mediation is conducted in a conducive and amiable environment, it is important to establish some ground rules at the start of the mediation. The ground rules may vary from case to case, however, common ones include: the prohibition of interruptions, name-calling, insults, etc.

Establish confidentiality:

Assure the parties that the proceeds of the mediation, with exception of the parties' permission, will remain confidential and cannot be used against them in a court of law. Parties must also actively declare their willingness to adhere to the principle of confidentiality. This will allow parties to talk more freely about their matter without fear that their disclosures might be used against them.

Establish parties' authority to settle

Your efforts at mediation will be ineffective if the parties present do not have the authority to settle. This is particularly important where one or more of the parties at the mediation are appearing in a representative capacity, whether on behalf of the government, a corporation, an authority, a group, or a person. For instance, if a bank was to send an office assistant to represent them in a debt recovery case, it is unlikely it would give full and complete authority to him to settle. Even if the representative were a bank manager, the same principle holds. Confirmation by the mediator of authority to settle of all parties is an integral prerequisite to a successful mediation proceeding.

Story-telling

Invite the parties to present their side of their story and give them equal time to do so. Listen actively to each party and encourage them to tell their story in their own words. Ask open-ended questions to encourage them to clarify ambiguities and provide more information (e.g. avoid interrupting).

At the end of each party's presentation, thank them. Summarize their statements and ask if that is an accurate representation of what they intended to communicate. Ask if there are any additions they wish to add to their statement. This will enable you get an accurate picture of the story from their perspective.

Repeat the same sequence for each party's presentation.

Understanding the problem

This stage allows for the exploration of possible options for dispute resolution. Continually bear in mind that parties' real interests and needs could radically differ to their stance or entrenched positions. Therefore, it would be wise to identify and consider what their real underlying interests and needs are. To meet these needs, encourage them to generate and examine creative options for a mutually acceptable settlement of their dispute. Having a caucus with each party in the dispute will be extremely helpful at this stage, as it will allow for deeper exploration of issues, as well as identifying potential compromises towards amicable resolution of the dispute.

Solution exploration

Group together similar ideas offered by the parties. The terms of settlement for each dispute should be created by the parties. Evaluate and clarify each idea weighing their advantages and disadvantages, and where necessary, encourage them to negotiate modifications to the ideas proffered to suit their peculiar need.

Ensure that their solutions are clear and comprehensive taking into account all aspects of their dispute. In addition, the solutions must be practical and workable. The acronym **R.E.A.L** captures and helps you keep in view the criteria to deploy in evaluating their solutions.

Realistic

Effective

Acceptable

Lasting

Resolution

Once the parties have come to a definite conclusion, reduce their terms of settlement into writing to be signed by the parties, to which it becomes a binding agreement evidencing the parties' amicable resolution of their dispute.

In the event that not all of the issues in a dispute are resolved, it does not make the mediation proceeding unsuccessful. In such circumstances, areas of agreement can be put into the terms of a written settlement referred to above and signed by parties, while areas on which no agreement was reached may, by mutual agreement of the parties be submitted to arbitration, litigation or any other dispute resolution mechanism. In that event, the mediation process would have crystallized issues and narrowed the scope of dispute to submit to other dispute resolution mechanisms other than mediation.

Navigating Criminal Cases

Often when clients approach you about a case with criminal elements, they are desperate and are unable to help themselves or the person on whose behalf they are seeking help. This is when they are most in danger of suffering further injustice. Immediate legal 'first aid' steps that you can take as a paralegal are:

1. When the client is in danger, immediately work on ensuring their safety. For instance:
 - When a person is being kept in an unknown location by the police, apply to the court or seek assistance from the Human Rights Commission to have the individual immediately produced at a court appearance or otherwise provide information about the person's whereabouts.
 - Seek immediate police intervention and protection for persons that may become victims of mob lynching.
 - Remove a victim of domestic violence or child labor from the home to a shelter until she/he is safe.
 - Keep a rape victim away from the environment in which she has been abused and is still in danger of being abused.
 - Victims of police torture should also be kept away from circumstances in which they could suffer reprisal attacks.
2. Explain to the victim what their rights are in the case and the best options for dealing with their problem.
3. When a report needs to be made at the police station, accompany the victim to the station and explain the report procedure to them. At the station, allow the victim to state the matter in his/her own words. Make sure s/he covers everything relevant to the case. The police will then write a first information report (FIR) and conduct an investigation into the matter. Often the FIR is taken to a magistrate to obtain a warrant to search or arrest. If the police determine that - from the evidence presented - the accusation is unfounded, they will close the case. If, however, the police consider that the evidence is sufficient that the charges should go forward, the police will file a case against the offender at the court that has jurisdiction over the matter.
4. Follow up with the matter at the police station and keep track of it until it gets to court. Sometimes the police will refuse to prosecute without investigating, especially in domestic violence cases. In such instances, refuse to back down and ask to speak to an officer of higher cadre. If unsuccessful, you can also file a complaint at the area court or approach the Ministry of Justice.

Statute-barred cases:

Generally, it is never too late to seek redress for rights violations. However, it is important to recognize the following exceptions:

- A complaint against a public officer, who, in their official capacity violates a person's rights, must be filed within three months of the alleged offence.
- Unlawful carnal knowledge of a girl under 13 years must be filed within two (2) months of its commission. Also, carnal knowledge of girls between 13 and 16 years old and persons of unsound mind must be brought before the law within 2 months of the commission of the offence.

A high percentage of rights violations are perpetuated by law enforcement officers, especially the police. Frequently when people, attempt to report violations by members of law enforcement to the police, their attempts are rebuffed. In this instance, your best strategy would be to approach an independent organization, such as the Human Rights Commission, to file a petition. The Network on Police Reform in Nigeria (NOPRIN) is a network of non-governmental organizations that champions the cause of victims of police rights abuse.

The Police Service Commission also deals with issues of officers' indiscipline. On the Police Service Commission's website, you will find the Police Public Complaint form and the Servicom Redress Complaint Form. These forms are also available directly at the Commission. You could also send your complaint by email on the commission's website.

Dealing with Specific Issues

Rape and other sexual offences, types of sexual offences and redress available under the law

Rape: Rape is defined in Section 282 of the Penal Code as:

"A man is said to commit rape who ... has sexual intercourse with a woman in any of the following circumstances

(a) against her will;

(b) without her consent;

(c) with her consent, when her consent has been obtained by putting her in fear of death or hurt;

(d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;

(e) with or without her consent, when she is under fourteen years of age or of unsound mind.”

The Penal Code, which is applicable to Northern Nigeria, punishes the crime of rape with 14 years' imprisonment. However, under the Shari'ah Penal law of Kano State, rape is punishable by death when the perpetrator is married. However, when the perpetrator is not married, rape is punishable by 100 cane lashes and a maximum sentence of life imprisonment.

Please note that even if the woman does not physically struggle with her attacker, it is still considered rape as long as she did not consent to sex with him. Sometimes women are unable to struggle with their abusers because they become afraid of being hurt or killed.

Procedure for dealing with rape/ sexual defilement victims

- Recover as much evidence as possible. This includes encouraging the victim not to wash up until being examined by a doctor so the hospital can collect semen samples as evidence. This also includes not to washing off cuts/abrasions before a doctor can write a report.
- Immediately visit the hospital to obtain a medical report and receive preventive treatment.
- Report the matter to the police as soon as possible.
- The police will take down the statement of the victim and may ask questions.
- Ensure the victim has some support and is not left alone with the police who might not be gender sensitive.
- The police will then investigate the matter and may arrest the offender/suspect and charge him to court.
- Keep in mind that bail is not usually available for this offence.

Gross Indecency

The law also seeks to protect children from physical/sexual assaults that do not include physical penetration of the child by the offender such as would be necessary to prosecute the crime of rape. Such acts would fall within the scope of the crime of gross indecency. It is not unusual to find this offence being committed by people such as teachers, parents and other authority figures.

Section 285 states that whoever commits an act of gross indecency upon a person without his consent or by the use of force or threats and compels a person to join him in the commission of such act, shall be punished with imprisonment for a term, which may extend to seven years. Consent given by a person below the age of 16 years to such an act when done by his teacher, guardian or any other person entrusted with his care or education shall not be deemed to be

consent within the meaning of this section.

Rights of victims

The first and most important right of a victim of sexual violence is to seek justice. Therefore, ALL cases of sexual violence should be reported to the police, with an insistence by those reporting that the police submit all founded cases to a competent court of law. The mistaken assumption that criminal proceedings to punish perpetrators of sexual violence will expose a victim to additional embarrassment and dishonor has often prevented reporting and prosecution. However, we must in the interest of ensuring the protection of other potential victims and obtaining justice for the victim, ensure the matter is prosecuted.

Charge of Adultery

Under Shari'ah law, unlawful sexual intercourse, such as premarital sex and adultery, are criminal offenses. Unlawful sexual intercourse (*zinâ*) is punishable by death through stoning if the offender is married or has ever been married. In other cases, the penalty is one hundred lashes. However, there are very strict rules for proving adultery, and when any of the elements are missing a woman cannot be charged for adultery or premarital sex. However, to secure a conviction, there must have been four witnesses who directly observed the sexual activity at the same time, a freely-given confession by the person involved in the act, or pregnancy outside of marriage. It is important to note that under Shari'ah law, the weight of the evidence of female witnesses is only half of that of men. This law on adultery that relates to the offence of *zina*, has been criticized as targeting women, since women are more vulnerable to this form of abuse.

Handling cases involving children

A number of cases that will come to you will be child abuse or child-related cases. This includes child labor/ trafficking, child sex abuse cases and juvenile crimes, such as theft and manslaughter.

The state government has a duty to protect the rights of children and protect them from abuses that they are inherently vulnerable to. Every state has a welfare department and a youth development ministry. Develop a relationship with these government agencies in order to effectively aid juvenile clients that need assistance.

Another important government agency that assists child victims is the National Agency for Prohibition of Traffic in Persons (NAPTIP). NAPTIP coordinates victim assistance services for victims of trafficking and child labor.

Child marriage cases should be reported to FIDA and the state department of social welfare. While most northern states do not have specific laws against child marriage, organizations like

FIDA and the states' department of welfare can protect children from non-consensual marriages.

Interviewing children

Interviewing children, especially abused children, is more complex than interviewing adults. Sometimes, they only have an idea that something bad has happened to them. It is a task that requires a lot of patience and sensitivity.

Tips on interviewing children

- Ask open-ended questions and allow the child to tell the story in his/her own words.
- Where possible, ask for the child to act out or demonstrate the abuse they suffered.
- Explain to them what may be required of them at the police station or at the welfare office so they do not become intimidated by the entire procedure.
- Do not interview children in the presence of the alleged offender or they may become intimidated and conceal the truth.
- Assure them that they will be protected and will not be punished for revealing the truth.

Torture, Inhuman and Degrading Treatment

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment included a definition of acts that constitutes 'torture' under Article 1 as:

"...torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

From the above definition, torture is:

- The infliction of severe mental or physical pain or suffering;
- With the consent or complacency of the state authorities;
- Often for the purpose of gaining information, punishment or intimidation.

Section 34 (1) (a) of the Nigerian Constitution provides that:

“Every individual is entitled to respect for the dignity of his person, and accordingly, no person shall be subject to torture or to inhuman or degrading treatment.”

There is no exception to this fundamental right, and as such, it must be respected by all, including the police and other law enforcement agencies. When torture, inhuman or degrading treatment occurs, it must not be overlooked but dealt with immediately. Torture is a very common method used by the Nigerian Police force to elicit information from alleged offenders. This is obviously a breach of the Constitution and must be treated as a crime.

Common forms of torture

Common forms of torture used by the police and other law enforcement agents include:

- Flogging with horsewhips
- Slapping and kicking with hands and boots
- Beating with batons, planks of wood, cable wire, iron rod and machetes
- Suspending suspects from the ceiling or a pole
- Depriving detainees of food, water, or medical treatment
- Sleep deprivation
- Shooting a suspect in the foot
- Rubbing chemicals and/or hot chili pepper on the eyes and genitals of suspects
- Driving nails into suspects’ hands or heads
- Shoving pins into the genitals
- Hanging suspects upside down
- Application of live electric current on the genitals
- Threatening to cause bodily harm to, or harm persons or property alleged offenders care about
- Threatening a suspect with death and then shooting him with powder cartridges
- Water boarding

EVERY incidence of torture MUST be reported to the Human Rights Commission, the Police Service Commission or NOPRIN. The best way to reduce the incidence of torture is to ensure it is exposed and officers involved are punished.

Interviewing victims of torture, inhuman and degrading treatment:

- Do not attempt to interview them in the presence of the alleged abuser otherwise they might feel too intimidated to admit that they were tortured.
- Obtain details on the following:
 - Date and time of arrest

- Circumstance of arrest
 - Whether they had any idea why they were arrested
 - Their condition and treatment after their arrest
 - Whether they were allowed to receive visitors or access to legal aid
 - Time and place of torture
 - Whether there was anyone present during the torture
 - Whether there was anyone who participated in the torture and the details of their roles in the torture
 - Form and duration of torture
 - All physical marks/injuries sustained (if possible take photos and obtain a medical report)
 - All threats, mock inflictions and psychological torture
- Sometimes, the victim may not actually have been arrested. For example, two police men trying to jump a fuel queue during a fuel scarcity, begin to whip other motorists on the queue to get ahead, or slapped a bus driver who refused to give them a bribe. Your questions, of course, should be adjusted to fit the circumstances. All information obtained in the course of this interview should be included in the petition protesting the torture.

Extra-judicial killings

An extra-judicial killing may be defined as the killing of a person by government agents devoid of the sanction of any judicial proceeding or due process of the law.

Section 33(1) of the Constitution of Nigeria, which recognizes and guarantees the right to life as a fundamental human right of every human being, provides as follows:

“Every person has a right to life, and no one shall be deprived intentionally of his life, save in the execution of a sentence of a court in respect of a criminal offence of which he has been found guilty.”

From the foregoing, it is clear that no human being may be killed except in execution of a court sentence for a crime for which a person has been found guilty. The law, however, recognizes certain other exceptions:

- Accidental death arising from the use of proportionate force for the defense of any person from unlawful violence or property;
- Accidental death arising from the use of proportionate force to effect a lawful arrest or to prevent the escape of a person in lawful custody;
- The police can lawfully kill a person in the process of suppressing a riot, revolt, or violent protest.

The instances listed above are not considered extra-judicial killing, because they are circumstances recognized by law. Any other form of human killing that does not fall within lawfully recognized exceptions may be termed unlawful killing.

An extra-judicial killing may be defined as the killing of a person by government agents devoid of the due process of the law. Extra-judicial killings are not limited to direct killings by law enforcement agents, where citizens (e.g. vigilante groups) kill people and the government is complicit. For example, if a mob lynches a crime suspect while law enforcement agents look on without attempting to arrest the situation.

Dealing with extra-judicial killings:

- Immediately document all available evidence of the killing. For instance, if you have access to the body, take photographs, interview witnesses, etc. The police in such cases could also conceal facts during investigation in their bid to cover up the crime.
- Contact and inform the family members of the victim and encourage them to seek redress for the injustice. Their right to an effective remedy includes:
 - a. Access to the factual information concerning the extra-judicial killing;
 - b. Access to justice to prosecute the person(s) involved; and
 - c. Reparation for the harm suffered.

Most people are afraid to seek legal redress because they fear reprisals. The best response to threats of reprisals is to ensure that the extra-judicial killing and subsequent threat(s) are brought to public knowledge as soon as possible. This would deter the authority's intent on covering up the crime from harming the family and other persons seeking justice.

- Directly report the incident to relevant authorities, such as the Human Rights Commission, the Police Service Commission, or Office of the Public Defender at the relevant state Ministry of Justice, for investigation and necessary action. The human rights network in a state and other non-governmental human rights organizations, such as NOPRIN, will be useful in ensuring that justice is done.

- Develop a working relationship with the media. There is a tendency for the police to cover up extra-judicial killings by their officers. They tend to fabricate stories to absolve themselves of wrongdoing, when a suspect may in fact have been unlawfully killed at the point of arrest or while in their custody. The media in such circumstance becomes a vital tool and medium for seeking or demanding that justice in respect of the unlawful killing and violation of the right of the victim. It is very important therefore, to develop a relationship with the media to expose attempts to cover up, as well as to canvass for the prosecution of cases relating to extra-judicial killings, torture and cruel and degrading treatment by government agents.
- Follow up on cases of extra-judicial killings and keep all stakeholders informed on progress made till the guilty officers are punished and the case comes to a logical end.

There are two ways by which an alleged offender may be required to appear in court of law:

- By summons
- By arrest

Summons

Summons mandates a person to appear before a court to answer a complaint brought against them. It is always in writing and contains the following details:

- A statement of the complaint against the defendant;
- An order to appear before the court at a certain time and place after 48 hours of the service of the summons; and
- Signature of the magistrate.

Arrests/Detention

Arrest and detention are situations under which a person is deprived of their liberty in order to aid a criminal investigation, to prevent a crime from being committed, or to prevent a further offence from being committed. The arrested person is held at a police station or jail, pending arraignment or bail. The right to personal liberty as guaranteed by the Nigerian constitution is to be enjoyed by every citizen of Nigeria, except in the circumstances permitted by law. It is therefore a violation of a person's rights when a person is arrested in circumstances outside those provided for under the law. For instance, a person cannot be arrested for their inability to pay a debt they owe or for failing to fulfill a contractual term.

Circumstances when a person can lose the right to personal liberty:

- If there is need to bring them before a court for a crime prescribed by law that they have committed
- If they are found guilty and sentenced to imprisonment
- If they are suffering from a contagious disease and need to be quarantined
- If they are children or persons under 18 years so as to care for them and educate them
- If they are alcoholic or drug addicts
- If they are illegal immigrants

When the police cannot arrest:

The police cannot lawfully arrest a person in the following circumstances:

- When the alleged offense is not an offense recognized by a written law in Nigeria
- If the person to be arrested is a child below 7 years of age
- If the person to be arrested is in the chambers of the National or State Houses of Assembly while the house is sitting

- Without a warrant if the arrest is outside the scene of a crime or long after the commission of a crime
- If the person to be arrested is a sitting president or governor and is therefore protected by an immunity law
- When the person to be arrested is not the person who has committed a crime but is only being arrested to create duress for the culprit to turn himself/herself in

There are two ways by which a person may be arrested:

- Arrest without warrant
- Arrest with warrant

Arrest without warrant

This is the most common form of arrest and is a process often abused by the police and other law enforcement agents. The law permits three categories of persons to arrest without a warrant:

- Police officers (other law enforcement agents fall within this category)
- Judicial officers
- Private persons

The power to arrest by the police:

As a general rule, a police officer must have a warrant of arrest prior to arresting any person suspected of committing a crime. However, a police officer can lawfully arrest without obtaining a warrant of arrest where a) (s)he witnesses the commission of a crime, or b) another person who witnessed the commission of the crime is willing to accompany the police officer to the police station and provide evidence to prosecute the charge. . In almost all other cases, the law mandates that a police officer must first obtain a warrant before arresting a person for a specified crime. Consequently, it would amount to an unlawful arrest for the police to enter into the house of a suspect and to seize him without first showing the suspect the warrant for his arrest.

When a police officer knows that a person is planning to commit an offense, he might arrest the person without warrant, to prevent the commission of the offense, if the offence cannot be otherwise prevented.

Arrest warrant

There are specific offences under the law that requires a warrant before an arrest can be effected. However, warrants can be issued even for offences that do not require a warrant. Warrants are issued by magistrates and judges upon receiving a complaint on oath that a person is alleged to have committed an offense.

Sample Warrant of Arrest

Judicial (Nr) Form 4

Sections 56, 57, 174, C.P.C
Kashi Na 56, 57, 174, C.P.C

NORTHERN NIGERIA
Jihar Arewa ta Nijeriya

In the Court of

A Kotun

Case No...../ 19.....
Lambar Sharia

BetweenComplainant
Tsakanin Maikara

And
Da

.....Defendant
Wanda aka yi

kara

WARRANT OF ARREST OF PERSON ACCUSED
Warantin Kama Mai Laifi

To.....[name and designation of person to execute warrant]
(Suna da lakabin (sarautan) wanda zai zarladda abinda ke cikin waranti):

WHEREAS..... of stands charged with the offence of.....
Tunda ya ke na an same shi da laifin

You are hereby directed to arrest the said and to produce him before me.
An umurceka ka wannan mutum ka zo da gaba gareni

Dated this..... Day of 20.....
An rubuta ran Watan

.....
Signature or seal
Sa Hannu ko Halimi

Judicial Arrest

Judicial officers, magistrates and judges can order the arrest of a person who commits an offence in their presence. This usually occurs when the person commits perjury (lying under oath) or jumps bail.

Arrest by private party

A private individual also has the power to enact an arrest if s/he witnesses the commission of a crime. The person arrested must however be handed over to the police within 24 hours.

Glossary of key terms pertaining to arrest/detention

1	Arrest	The act of apprehending a person for the alleged commission of an offence.
2	Detainee	Any person deprived of personal liberty as a result of administrative detention, pre-trial detention or conviction, etc. The term detainee primarily refers to persons held during the pre-trial periods and not usually to persons held after conviction.
3	Detention	This refers to pre-trial, administrative and sometimes, post-conviction deprivation of liberty or any other condition in which a detainee is deprived of liberty.
4	Prison	This is incarceration which occurs subsequent to conviction.
5	Prisoner	Any person deprived of his/her personal liberty as a result of conviction for an offence.
6	Warrant of arrest	A written authority given by a court to a police officer or any other person to arrest an offender.
7	Surety	A person who guarantees that the bailed will not break the terms of his bail.
8	Bond	A bond is a property or monetary guarantee deployed to ensure that a bailed person does not jump bail.
9	Jump bail	This means to breach the terms of a bail, usually by absconding.

Nigeria's constitutional provisions on arrest and detention

Applicable sections of the Nigerian Constitution, 1999:

35. (1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law.

Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.

(3) Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention.

(4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of -

(a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

(b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

(5) In subsection (4) of this section, the expression "a reasonable time" means -

(a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers, a period of one day; and

(b) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.

(6) Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, "the appropriate authority or person" means an authority or person specified by law.

36. (1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

(2) Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law -

(a) provides for an opportunity for the persons whose rights and obligations may be affected

to make representations to the administering authority before that authority makes the decision affecting that person; and

(b) contains no provision making the determination of the administering authority final and conclusive.

(3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.

(4) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal:

Provided that -

(a) a court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defense, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;

(b) if in any proceedings before a court or such a tribunal, a Minister of the Government of the Federation or a commissioner of the government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.

(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty;

Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

(6) Every person who is charged with a criminal offence shall be entitled to -

(a) be informed promptly in the language that he understands and in detail of the nature of the offence;

(b) be given adequate time and facilities for the preparation of his defense;

(c) defend himself in person or by legal practitioners of his own choice;

(d) examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and

(e) have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed

(9) No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.

(10) No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.

(11) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(12) Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

What the police must do upon an arrest

- The Nigerian Constitution requires that any person arrested must at the point of arrest be informed of the charges being brought against them in a language that they understand.
- The police must, within 24 hours of their arrest, give the person a written notice of the reason for their arrest. The notice must be in a language that they understand.
- The police must maintain a register of persons in detention at the station. This register should contain details such as name, sex, age, time of arrest and nature of offence.

- The arrested person must be arraigned before a competent court within the shortest possible time, not exceeding one day from the time of arrest. However, where there is no court of competent jurisdiction within 40 km of the place of the crime, the police are not permitted to detain a suspect beyond the maximum period of 48 hours (2 days).
- Accordingly, except for offences that may punishable by the death penalty or life imprisonment, other specified crimes and exceptional cases, a detained person is entitled to police bail

A paralegal's guide to the police station

Police Hierarchy

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graph TD
    COP[Commissioner of Police] --> DPO[Divisional Police officer]
    DPO --> DCO[Divisional Crime officer]
    DPO --> DTO[Divisional Traffic Officer]
    DPO --> ASO[Administrative/Station Officer]
    DCO --> IO[Investigation officer]
    DTO --> CRO[Charge Room Officer]
  
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Police Station Front Desk: The Front Desk Counter at the police station would be your first port of call at any police station in Nigeria. It is usually manned by a Counter Relations Officer, usually of the rank of Inspector or Sergeant and supported by other junior ranking officers. These officers are responsible for receiving and recording reports, registering new detainees, receiving enquiries from and providing information to members of the public.

Do not be intimidated when approaching police officers. As law enforcement agents, their duty is to protect citizens and ensure the maintenance of law of law and order. Be courteous and direct. State clearly your purpose for visiting the station and what you would like to see done.

If the Counter Relations Officer fails to cooperate, harasses you, or demands a bribe, ask to see a higher officer and if you do not get access to them, please approach the Nigeria Police Service Commission to report officers' indiscipline. You may also approach the court to request for access to a detainee or for a detainee to be immediately arraigned.

One of the privileges afforded detainees is the right to be visited and interviewed by lawyers, family members and friends. This right must also be respected by the police.

Bail

Bail may be defined as a temporary release from detention after arrest, pending the completion of investigation and/or trial. To secure bail, the suspect and her/his sureties would have to enter into an undertaking to appear at a specified time and place to answer a criminal charge. Since the law presumes that a person is innocent until proven guilty, bail is an important mechanism for protecting suspects from wrongful detention pending investigations or trial in court.

Bail can either be a police bail or a court bail. A police bail is granted in circumstances where a suspect is released without being charged on the condition that the suspect must return to the police station at specified times. Court bail is granted in compliance with an order of court pending further investigation or while the case continues.

The procedure for applying and securing bail varies, depending on the type of bail, and the court to which application for bail is made. It may be granted with or without bond. It is also important to bear in mind that BAIL IS FREE. Furthermore, although a person may be granted bail on personal recognizance, a surety or sureties are commonly required. Where there is a requirement for sureties, BOTH MEN AND WOMEN CAN STAND AS SURETIES for a suspect.

Not all crimes are bailable at the police station pending trial. For example, an allegation of murder or other capital offences is not bailable. Generally, except in respect of capital offences, most other offences are bailable. Nevertheless, there are instances when the police may refuse to grant bail in spite of the fact that suspects are alleged to have committed a bailable offence¹. Examples of such instances are:

- Where the detainee has no known address or his address is doubtful
- If they have reasons to believe that the suspect might jump bail
- If they have reasons to believe that the suspect might interfere with investigations
- If they have reasons to believe that the suspect might go on to commit another crime if released

Once a suspect that has been granted bail by the police, they are brought before a competent court and the bail granted by the police expires. The defendant will then have to apply to the court for a court bail. However, a judge can grant bail for offenses that are not bailable at the police station.

The usual factors the court would look at in deciding to grant a bail are similar to those of the police:

- If there is a likelihood that the accused person will jump bail

¹ Please see appendix for list of bailable offences.

- If the accused person is likely to interfere with investigations if released on bail
- If the accused person has a bad criminal record
- The accused person may also be detained and refused bail for his/her own safety

Jumping bail

Where an accused person jumps bail, the judge or magistrate may issue a warrant of arrest for the accused person to be brought before the court. Where this occurs, the surety will lose the bond used to guarantee the appearance of the accused in court to answer charges brought against him. Please note that the surety cannot be arrested for a suspect jumping bail.

The rights of a person under arrest

Even when under arrest, an accused person is still entitled to certain rights and liberties. These include:

- The right to know the charges (accusations) brought against them at the point of their arrest, in a language they understand. This right enables the accused person to prepare their defense in good time.
- The right to inform or have the authorities notify their family or friends that they have been arrested or detained and the place where they are being kept in custody.
- The right to be bailed if they committed a bailable offense (As indicated above, bail is free).
- The right to remain silent and avoid answering questions that may incriminate them
- The right to be treated with respect and dignity, and not be tortured or suffer cruel, inhuman or degrading treatment or punishment.
- The right to receive visits from family members, friends, doctor and their lawyer within reasonable hours (Usually between 6:30am and 6:30pm daily).
- The right to medical care or to be examined by a doctor of their choice.
- The right to be brought before a court of competent jurisdiction within a maximum period of two months starting from the day of their arrest.
- The right to be arraigned in court unfettered.

Arrest and detention: unlawful conditions

As earlier noted, a police officer can arrest a person without a warrant in the circumstances where the crime was committed in the presence of the officer, or where s/he reasonably suspects a person to have committed a criminal offence.

Some unlawful conditions often associated with arrests and detentions are:

- Arrests without a warrant. The police cannot lawfully arrest a person who was not seen committing an offence in the presence of the arresting officer or a witness without first producing a warrant. Arrest without a warrant is also unlawful when the law explicitly provides that with respect to a specified crime arrest must be made with a warrant.
- Arrests made without informing the arrestee of the reasons for their arrest and detention.
- Refusal to grant bail when the offense is bailable, except under the conditions stated earlier above.
- Continued detention without trial. Investigations of crimes must be taken seriously by the police and should be promptly carried out in every case to avoid prolonged detention of suspects.
- Forcing a suspect to make or give a statement after an arrest. A person arrested and detained has the right to remain silent. This is to avoid a situation where he/she will give statements that may incriminate him/her. The use of torture and intimidation to extract confessional statement from suspects is wrong and should be exposed when it occurs.
- Refusing to let lawyers, paralegals or family interview detainees in private. The police cannot legally insist on being within an earshot of the interview.
- Confining an arrested person to a place not legally or officially recognized. Any person deprived of liberty must be taken or held in an officially recognized place of detention i.e. a police station.

What to do when your client has been arrested and detained:

- Visit the police station or detention center and request to see the person arrested or detained. This should be done without fear of harassment or intimidation. However, it is important to be courteous at all times. Your aim at this point is to record accurate information that will help you decide on the appropriate action to take. Information to be recorded should include:
 - His or her identity;
 - The reason for the arrest;
 - The time of arrest and place of custody;
 - The identity of the law enforcement officials concerned;
 - Precise information concerning the place of detention or custody;
 - The time of the arrested person's first appearance before a judicial or other authority, including details of the judicial or other authorities informed of the arrest and detention.

- Guide the detainee in making his statement. Inform the detainee that they have a right to remain silent or to refuse to give a statement to the police. Under no circumstance should the police harass, torture, or use any other form of duress to elicit a statement or a confession from a detainee. Freedom from torture, cruelty and degrading treatment are fundamental rights, which must be respected by all.

However, where the detainee has chosen to make a statement, you can help to ensure that the information disclosed in the statement are accurate and given without duress. Statements made at police stations by arrested persons will be used as evidence in the court of law should the police decide to prosecute the matter.

When the detainee is represented by a lawyer, advise them not to make a statement until their lawyer arrives. When they do not have any legal representation, review their statement with them to ensure it is accurate. They should avoid repetition and irrelevant stories to avoid contradictions or doubt.

In order to assist any person detained with their statements, it is imperative to know how to write statements. As a paralegal you could give this some practice in order to properly and competently guide a client when you are confronted with an actual scenario.

- Contact family members of the person arrested. Although detainees have a right to contact their families and lawyers, the police often refuse to honor this right. They may even claim that they do not have the resources to help the detainee notify his family or lawyer of their arrest and detention. Your assistance in notifying them will therefore be invaluable.
- Assist in applying for bail where the alleged offence is bailable. Any person has the right to apply for a police bail and admit anybody arrested and detained to bail. Bail applications can be made to the Divisional Police Officer or any officer in charge of a police station or unit. Remember that bail is free.
- Make referrals to lawyers, when necessary. Most cases will need the intervention of a lawyer. Where a detainee cannot afford a lawyer, you may need to refer them to the Legal Aid Council or assist them in getting a *pro bono* lawyer to represent them and assist in their defense. It is therefore beneficial to meet with and develop a working relationship with the Pro Bono Committee of the Nigeria Bar Association in your state, the Legal Aid Council, FIDA, law firms offering pro bono services, human rights NGOs and other bodies willing to assist in securing or providing free legal aid to indigent detainees.
- Developing a relationship with journalists is essential. Human rights abuses thrive when abuse is concealed. Pass on information of abuses to the press. Law enforcement agencies are eager to project a good public relations image in the eyes of the society.

They would therefore be less likely to abuse rights and keep to the letter of the law when the press gets involved in a matter.

Remedies available to victims of unlawful arrest and detention

Section 46 of the Constitution of the Federal Republic of Nigeria allows for persons whose rights have been violated or in danger of being violated of applying to a High Court for a remedy. There are various orders of the court that may be sought, with compensation being just one of them. Possible applications that may be filed with a view to obtaining judicial remedies for human rights violations are discussed below.

- A. ***Summons for bail:*** The court would normally grant the remedy of bail to any person arrested and detained by the police or other authority, indefinitely or for a period longer than legally allowed by law, especially if the alleged crime is bailable. This remedy is available to any person arrested and detained indefinitely or for a period longer than required by the police or other authority for a bailable offense. You can assist a detainee to apply for a summons for bail. The application must be made by filing a motion supported by an affidavit to a judge of a court within the area where the person is being detained, or where the alleged offence was committed. Copies of the application will be filed in the court and served on the police unit or authority where the detainee is being held. The hearing for application will be held on the date stated in the application.
- B. ***Writ of Habeas Corpus:*** This court order is issued to compel an individual or government official (especially law enforcement agents) who have restrained or detained a person to physically produce such detainee at a designated time and place (usually before the court) in order to allow a judicial determination of the lawfulness of detention as well as whether detention should continue or the person released.
- C. ***Mandamus:*** It is an order from a higher court, directed to some person, public authority, public body or public official or lower court, requiring them to perform a specified duty which such lower court or authority is lawfully bound to carry out. Its effect is to remedy a defect of justice and restore the benefits of a right which an applicant is entitled to. The grant of a mandamus is at the discretion of the court.
- D. ***Writ of Certiorari:*** This is a court order issued by a higher court to obtain records on a case from a lower court so that the case can be reviewed to determine its legality.

This application may be made for a number of reasons. For example, it may be made in cases where an accused person perceives that there was some bias or fraud on the part of the trial judge or the prosecutor. The application is to be made to a court which is of higher jurisdiction than the one where the person applying is standing trial. Therefore,

if the accused person is standing trial before a Magistrate court, his writ of certiorari will be made to the High court.

Exercise

Case I

Jummai, a student of the Bayero University Kano, was walking home after lectures one evening when she saw that a mob had formed around Ngozi, a Year 1 student of the same university. She discovered that the school security personnel had arrested her for 'indecent dressing' because she wore a knee-length, sleeveless dress. Two days later, she found out that Ngozi was still being detained by the school security personnel at their office. What can Jummai do about this case?

Case II

Nnamdi was visiting with his friend Mohammed at Mohammed's home when the police carried out a raid and arrested everyone in the building. He was then detained at the police station close to Mohammed's house. Nnamdi's brother heard about the raid and ran to you for assistance. They cannot afford a lawyer. What would you do as a paralegal?

A paralegal cannot work in isolation. The paralegal's skill set for providing "legal first aid" is insufficient to ensure in all cases and circumstances that adequate assistance is provided to individuals and justice is accessed. There is a need to partner with a network of other paralegals, lawyers and human rights institutions in order to be an effective paralegal. Below are some of the human rights organizations essential to your work as a community based paralegal.

Relevant Human Rights Institutions/Organizations and Laws

National Human Rights Institutions and legal aid organizations generally are independent bodies established by government principally for the promotion and protection of human rights. They each have specific mandates. One of the most important functions they perform is to receive and investigate complaints from the public including individuals or groups on alleged human rights abuses.

Below is a list of some organizations and what they do. It might help to visit their offices in your state as soon as possible and develop a working relationship with them before you are confronted with a crisis.

The National Human Rights Commission

The National Human Rights Commission is an independent body vested with the power and responsibility for the promotion, protection, and enforcement of human rights in Nigeria. The Commission investigates complaints of human rights violations and ensures that violations are properly redressed.

Thematic areas of the Commission's work include:

- Women and gender
- Children
- Torture
- Extra-judicial, summary and arbitrary executions
- Independence of the judiciary and access to justice
- Police, prison and other detention centers
- Corruption and good governance
- Freedom of expression and the press
- Education
- Health
- Labor
- Food and shelter
- Communal conflict and other related violence
- Law Reforms & Law Review

The Commission has offices across the six (6) geopolitical zones of the country. To access the National Human Rights Commission about a violation, go to the Commission and speak with a human rights officer, or write a petition addressed to the Human Rights Commissioner. The commission also receives petitions through emails and through an online form on their website. <http://www.nigeriarights.gov.ng/>. However, the National Human Rights Commission cannot accept anonymous petitions.

The Legal Aid Council of Nigeria

The Legal Aid Council offers free legal advice and free legal assistance to indigent Nigerians. The procedure at the Council is easy. Simply fill a form at their office requesting for legal aid, and a lawyer will be assigned to your case.

The Legal Aid Council offers legal aid to both defendants in criminal cases and parties seeking the redress in civil cases, especially where their rights have been infringed or are in danger of being infringed.

The Legal Aid Council has branch offices in every state capital of the federation, while its headquarters is in Abuja.

International Federation of Women Lawyers (FIDA)

FIDA is a non-governmental organization whose membership is made up of female lawyers. They provide free legal services to women and children including the promotion of their socio-economic well-being. Their objective is to promote the welfare of women and children, highlight harmful effects of particular laws and practices with a view to eradicating them. FIDA has chapters in all states of the federation.

Contact the FIDA chapter office in your state to establish a working relationship with them especially for defending the rights of women.

Nigerian Bar Association, Human Rights Committee/ Pro bono Committee

The Nigerian Bar Association is an umbrella body of all lawyers admitted to practice law in Nigeria. The association promotes human rights by offering *pro bono* services to indigent persons whose rights have been violated or are in danger of being violated.

The Association can enhance your work by offering you and your clients free legal advice, making appearances on your client's behalf in court, writing petitions and representing your clients without a charge.

Network on Police Reform in Nigeria

The Network on Police Reform in Nigeria is a network of human rights organizations committed to promoting police accountability and respect for human rights in Nigeria. This network is able to provide essential support for issues of human rights violations by the police.