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**Case Studies on Detention of Suspects, Handling of Juvenile Cases and Interrogation of Suspects**

*As Part of the Training Module for a*

**Train-the-Trainers Seminar on Police Work and Human Rights**

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*On the request of the*

**Federal Department of Foreign Affairs (FDFA)**

**Berne, Switzerland.**

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1. Detention of Suspects

Mr. Bassey Udoh a jobless youth residing in a low income densely populated street in Tango State was arrested by a group of patrol police officers at about 9pm on Friday 5th February 2010. During the arrest, the police also picked up a group of men along with Mr Udoh and two young ladies. On reaching the station, Mr Udoh gathered from the conversations from some police officers at the station that House number 27 on the street witnessed an armed robbery attack the previous night. Also, a neighbour living in the same house with Mr Udoh registered a compliant at the police station that very morning regarding a burglary incident in his room. He (i.e. the neighbour) was not sure the exact time the burglary occurred but reported that his 14 inch black and white television was missing. When asked by the police who he was suspecting to have committed the burglary he indicated that he did not have any one in mind but that Mr Udoh who stays in the adjacent room was a jobless youth.

On the strength of the above information, the police raided the vicinity and arrest Mr Udoh as he was on his way back to his residence on that faithful day. They also arrested 5 other men and 2 ladies with the view that between these suspects they will receive some information regarding who / which people committed the burglary and the arm robbery attacks that took place on the street.

Mr Udoh was asked to make a statement and after which he was encouraged to phone any person who could come and bail him from the police with a sum of N5,000 (five thousand naira). On hearing this, he protested about this pointing to a sticker on the wall that clearly states ‘Bail is Free’ and another stating ‘Police is your Friend’. On hearing Mr Udoh’s remark, the Investigating Police Officer (IPO) was visibly angry with Mr Udoh. He told him that they were only trying to help him so that he will not sleep at the station that night and that since he seems not to appreciate their kind gesture, he was going to remain in the Police Station until Monday when they will charge him formerly to court. Mr Udoh was shocked to hear this and very dismayed when he realised that 3 of the men arrested along with him had left the station after paying 3,500 (three thousand and five hundred) naira each which were paid by their relatives on arriving the station.

At about 11pm, Udoh and the 2 men were lock up in one of the cells with two other occupants one of which seemed obviously mentally ill. The two ladies were asked to sleep behind the police station counter. At about 12 midnight, the officer on duty woke up one of the ladies (by the name Juliet) and told her that if she cooperates with him by accepting his sexual overtures, he will help facilitate her release by morning. She declined. The officer then woke the second lady (By the name Busola) and took her away from the counter. They both returned 45 minutes later. By 9am the next day (i.e. on Saturday 6th February 2010), as Busola was leaving the police station, the senior brother of one of the other men came to the station with a lawyer. The lawyer was told that he had 20 minutes to speak with the suspect and that the suspect was being charged for armed robbery. The lawyer indicated that he intended to take the suspect on bail and that if the police was not going to grant the suspect bail, they should take the matter to court. A quarrel ensued between the officer on duty and the lawyer on the rights of the suspects and on what evidence the police have to charge his client/the suspect for armed robbery. The officer informed the lawyer that he has to wait for the arrival of the IPO before speaking to the suspect. The lawyer waited with the senior brother of the suspect for 2 hours without seeing the IPO. They requested to be allowed to buy some food from a nearby food vendor for the suspect to take his breakfast having heard that the suspect had not eaten since his arrest at 9pm the previous day. This request was declined. The Officer on duty said that authorisation for this has to be given by the Divisional Police Officer (DPO) through the IPO explaining that this is the current practice following an attempt to poison the food of one of the police suspects in the cell three months ago at one Police Station in the Metropolis. The lawyer on hearing this stormed out of the station promising to report the matter to the Human Rights Committee of the Nigerian Bar Association, the National Human Rights Commission and the Commissioner of Police in the State.

On Monday, 7th February 2010, when the DPO arrived the station and called for an update, he was informed that there were 4 cases of Armed Robbery (3 men and 1 lady) which the IPO was preparing to take to court. The DPO called for the suspects, when Mr Udoh was brought before the DPO he recanted the incident of Friday night and how he and 7 others (5 men and 2 women) were arrested and that some had been released. The DPO called for the Register and found out that there was no such entry in the register indicating that 8 persons were arrested by the Police Patrol on 5/2/2010. The DPO did not believe Mr Udoh’s story.

Also, in the police station at this time was one Mrs Oparaugo aged 70 who was arrested because her son a known bandit had escaped police custody one month ago in questionable circumstance having heard from his IPO that an additional charge of kidnaping and murder of one politician was going to be made on his case. Mrs Oparaugo was told that she will be detained in police custody until her son on the run shows up and that by next week if her son does not give up himself, she will be charged to court for ‘Conspiracy, Kidnapping and Murder’.

 As at September 2011, Mr Udoh was still in prison awaiting trial on the charge of Armed Robbery with one of the men and one lady (Juliet) (arrested with him) as case mates. The case had only come up for hearing in court once. The other casemate was released as soon as the IPO learnt of the intention of the lawyer to write to the Human Rights Committee of the Nigeria Bar Association, the National Human Rights Commission and the Police Commissioner.

**Issues Highlighted in the Case Study:**

1. Procedure for Police Arrest and Raiding
2. Police Detention Procedure (including issues such as segregation of suspects, feeding of suspects, sexual violence, detention of female suspects, detention of mentally ill persons, hostage taking, etc.)
3. Procedure and nature of Police Bail
4. Ingredient for Instituting a Police Charge
5. Access to Legal Representation and the duty, responsibilities and rights of lawyers
6. Rights of Suspects (e.g. right to be informed of reason for arrest)
7. Duty and Responsibilities of the Investigating Police Officers
8. Internal and external oversight and monitoring mechanisms for arrest and detention of suspects.
9. Principles for joining of casemates
10. Issue of Bribery and Corruption in the arrest, detention and release of suspects and how to prevent and investigate this.
11. Effect of Stereotype on arrest and administration of justice e.g high rate of arrest of jobless youths.
12. Effect of poverty on arrest and administration of justice e.g. why are many raids carried out in low income and densely populated communities
13. Effects and utility of weekend raids and their impart on effective oversight of the o police activities.
14. Over-dependence on suspects as the main / only source for evidence.
15. Enhancing Police Image and the impact of attitudes and performance of individual police offices on this.
16. Inadequate facilities for detention of women in police stations

**Exercises Case Study 1 -Questions:**

Answer the following questions:

1. Tracing the process of arrest, detention and release as in practice in Nigeria identify key issues highlighted in the case studies stating the following:
2. Legal and Administrative Framework/Provisions guiding these
3. Challenges affecting the full functioning of these processes
4. Recommended Solutions for addressing these.
5. In your views describe how the following issues should be managed in the police station as regards detention of suspects. Give reasons for your views:
6. Suspects with Mental Disabilities
7. Feeding of suspects
8. Handling of Female Suspects
9. Addressing complains of gender violence
10. Access to Legal Representation
11. What would be your recommended oversight and monitoring mechanism to ensure the following:
12. Reduction of duration of Pre Trial Detention Period
13. Compliance with section 35 (5) of the 1999 Constitution of the Federal Republic of Nigeria.
14. Prevention of cases of Arbitrary Arrest, Detention and Release
15. Proper documentation of ALL cases arrested, booked and detained by the police
16. Zero tolerance with respect to bribery and corruption
17. Proper compliance with international minimum standards with respect to conditions of detention.

**Key References and Issues to Note:**

**Rights of Suspects:**

**Section 35 (1) of the Constitution of the Federal Republic of Nigeria 1999 states as follows:**

Every person shall be entitled to his personal liberty and no one shall be deprived of such liberty except in the cases and in accordance with a procedure permitted by law:

1. In execution of the sentence or order of a court in respect of a criminal offence in which he has been found guilty
2. By reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation upon him by law
3. For the purpose of bringing him before a court in execution of the order of court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;
4. In the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare
5. In the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or
6. For the purpose of preventing the lawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period prescribed for the offence.

35(3) Any person who is arrested or detained shall be informed of in writing within twenty four hours (and in a language he understands) of the facts and grounds for his arrest or detention.

35(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 tried with a period of –

1. 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

See also section 35(5) and 36(6) of the 1999 Constitution of the Federal Republic of Nigeria.

Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment

Principle 10 states that:

‘Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptedly informed of any charges against him’.

Principle 12:

1. There shall be duly recorded:

a.. The reasons for the arrest;

1. The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearsnce before a judicial or other authority;
2. The identity of the law enforcement officials concerned;
3. Precise information concerning the place of custody;
4. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law

Principle 13:

‘A person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights’.

**Right of Detainee to access a lawyer:**

A detainee’s right to access a lawyer of his/her choosing is firmly established under international law. This safeguard protects basic due process rights enshrined in international law as established in:

**Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (Adopted by the UN General Assembly Resolution 43/173 of 9 December 1988):**

Principle 18:

1. ‘A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel’.
2. ‘A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel’.
3. ‘The right of a detained oer imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order’.
4. ‘Interviews between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime’.

Principle 33(1):

*‘A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers’*.

International law stipulates that any person deprived of their liberty, with or without having been charged of a criminal offence, **should have prompt and unrestricted access to a lawyer**. A detainee’s right to access a lawyer should be provided for in national law and any restrictions on this right should be exceptional and subject to judicial review

The United Nations Special Rapporteur on Torture has stated that national legislation should provide that detainees are given access within 24 hours of detention.

(UN Special Rapporteur on the question of Torture and other cruel, inhuman or degrading Treatment or Punishment *A/56/156, 3 July 2001 at paragraph 39)*

This also applies even when persons are under ‘administrative detention’ which is a detention without charge or trial, authorised by administrative order.

* Communication No. 560/1993, CCPR/C/59/560/1993
* Hammel v. Madagascar, Communication No 155/1983, CCPR/C/29/D/155/1983 at para 18.2 and 20
* Torres v. Finland, Communication No. 291/1988, CCPR/C/38/D/291/1988
* Vuolanne v. Finland, Communication No 265/1987/ CCPR/C/35/D/265/1987

Detainees have a right to full and unrestricted access to a lawyer of their own choice. As recognised by the UN Basic Principles on the Role of Lawyers (Basic Principles on the Role of Lawyers), national authorities are obliged to ensure effective and equal access to lawyers for all persons within their territory. The Basic Principles on Lawyers also stipulates that governments should ensure that all persons are immediately informed of their right to a lawyer of their own choice upon detention and have prompt access to a lawyer. Furthermore, Principle 8 stipulates that governments should ensure that lawyers are able to perform their professional functions without improper interference and can consult with their clients freely without delay, interception or censorship and in full confidentiality.

*(Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).*

The UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (UN Body of the Principles on Detention) also stipulates the right to consult and communicate, without delay or censorship and in full confidentiality, with legal counsel (save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensible by judicial or other authority in order to maintain security and good order.

*(Adopted by the UN General Assembly Resolution 43/173 of 9 December 1988).*

The UN Special Rapporteur on Torture stresses that access to a lawyer should be prompt and that the lawyer should be independent from the State apparatus. However, in exceptional cases where it is contended by national authorities that prompt contact with a particular lawyer might raise genuine security concerns and where restriction of such contact is judicially approved, the detainee should be permitted to meet with an independent lawyer, such as one recommended by a bar association.

Also, the Basic Principles on Lawyers specify that government should guarantee that ‘*Persons who exercise the function of a lawyer without having formal status of lawyer’* benefit from the same legal protections as lawyers. In this regard, members of human rights organisations that are representing the interests of a detainee should have access, independent of their qualification as lawyers.

**On Conditions of Detention:**

Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment

Principle 1:

‘All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person’

*See also:*

United Nations Standard Minimum Rules for the Treatment of Prisoners

Article 82(1):

‘Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible

Article 68:

As far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners’.

*See also:*

Open Society Justice Initiative (2011),The Socioeconomic Impact of Pre-trial Detention, Open Society Foundation: New York

2. Handling of Children in Conflict with the Law (and Juvenile Cases)

Peter Samuel is now aged 12. His mother died when he was 2 years and his father took another wife who maltreated Peter so much that she will send him away to hawk oranges instead of going to school. Many nights Peter will come home without having enough food kept for him to feed on. He started to rely on waking up in the middle of the night to help himself to some food from the step mother’s pot. He also learnt to save himself from strokes of cane by denying that he took any food instead blaming his little step sisters for this. At age 6 he met some group of boys who were prepared to pay him three times the worth of his oranges if he will go with them to steal from the pockets of unsuspecting passengers at the bus stop. Peter found this so lucrative that he soon graduated by following the boys to break into the houses of some people around the neighbourhood. At age 8 he was caught stealing from his teacher’s purse and was expelled from school. More so, since his academic record was nothing to write home about and he has received two previous suspensions.

By age 10, Peter ran away from home and began to sleep in motor parks and market stalls. This was freedom from the terror from his step mother and the lack of care from his drunkard father. During the day, he served as a truck pusher and at night he joined the gang to rob from one neighbourhood to another. Finally, the hands of law caught him and his gang on 14th of April 2011 when a team of Police Patrol team ran onto them. In the shootout that followed two of the members of the gang were killed. Peter sustained a wound on his left leg. He was moved into Armed Robbery Cell along with the remaining members of his gang. In the cell were 10 other suspects including a 14 year old boy (Ebeche Obi) who was weeping all night and who was said to have been arrested because he stolen bicycle which his father gave to him having bought the bicycle through a mobile seller. Two weeks after this incidence, Peter along with all the inhabitants of his cell were taken to the magistrate court and on the order of the magistrate they were all moved to the prison being that there was no young offenders institution in the State. Peter was surprised that in his detention warrant his age was declared as 20 years while that of Ebeche Obi was indicated as 21 years.

He has been in prison for 2 years and throughout his period was kept in the same cell with his gang members and the others that were transferred from the police cell. He participated in no recreational or educational activities. He has also learnt how to open a car and a bank safe without its key. He plans to graduate to bank robbery on discharge. No contact was made to reach his father nor step mother nor other step siblings. The same was his experience at the police cell. He has no lawyer since the time he was arrested.

**Issues Highlighted in the Case Study:**

1. The issue of delinquency and its prevention
2. Detention of Young Offenders with adult criminals
3. Falsification of Age of Juvenile in Detention Warrants
4. Treatment of Children/Young Persons in conflict with the law (Juvenile) in police custody and the need to establish special Units for the handing of these category of persons.
5. The role of Young Offenders Institutions
6. Rights of Young Offenders/Juveniles in Detention and Prison Custody
7. The role of family contact in the management of young offenders
8. The dangers of ‘criminal contamination’ while in custody

**Exercises Case Study 2 -Questions:**

Answer the following questions:

1. What does the law say with respect to treatment and handling of young persons in conflict with the law/juvenile cases include also the provision of the Child Rights Act.
2. In practice, are these observed, indicate the ones that are observed/complied with and those that are not observed/complied with?
3. What are the reasons for non-compliance of those that are not compiled with?
4. State the solutions/recommended steps to addresses the existing gaps?

**Key References and Issues to Note:**

*On the Definition of Juvenile:*

**United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Adopted by the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders held at Milan Italy from 26 August to 6 September 1985 and endorsed by General Assembly resolution 40/32 of 29 November 1985 and 40/146 of 13 December 1985.**

*Rule 11* states that:

1. A juvenile is every person under the age of 18. The age limit below which should not be permitted to deprive a child of his or her liberty should be determined by law.

This is consistent with Article 2 of the African Charter on the Rights and Welfare of the Child. See also article 35(1)(d) of the 1999 Constitution of the Federal Republic of Nigeria.

**United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) Adopted by the United Nations General Resolution 40/33 of 29 November 1985.**

Rule 1.2:

‘Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible’.

Rule10. 1 upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

Rule 12.1 states that:

In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

Rule 13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

Rule 13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as a close supervision, intensive care or placement with a family or in an educational setting or home.

On Separation of Juveniles from Adult Offenders:

Rules 13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults. (This was also affirmed in Article 85(2) of the UN Standard Minimum Rule for the Treatment of Prisoners), where it was stated thus:

‘Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions’.

*On Care and Assistance (social, educational, vocational, Psychological, medical and physical) to juveniles:*

Rule 13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance – social, educational, vocational, psychological, medical and physical – that they may require in view of their age, sex and personality.

Rule 15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

*On Recreation:*

Rule 47 of the **United Nations Rules for the Protection of Juveniles Deprived of their Liberty**

‘Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installation and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education therapy should be offered, under medical supervision, to juveniles needing it.

Rule18a. Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communication.

(b). Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education, or training should not cause the continuation of the detention report.

(c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

Other References:

African Charter on the Rights and Welfare of the Child

Society and the Child: Proceedings and Papers of the Symposium held at Enugu on May 7, 1986, FIDA: Anambra/Enugu

Juvenile Delinquency: A Practical Guide on The Role of Parents, FIDA: Enugu

3. Interrogation of Suspects

Adamu Sanni was found dead in his cell on 12th May 2010. He had undergone a gruesome interrogation by his IPO. It was reported that his IPO tortured him all throughout the day. When the Investigating Panel asked the IPO to explained what led to Adamu Sanni’s death, he simply said that he need to get Mr. Sanni to confess that he was the one that committed the crime and that with the use of such ‘interrogation technique’ the suspects will never tell the truth. The IPO further explained that there was no vehicle to visit the scene of crime because the one duty vehicle at the station broke down three months prior to this time. There was also no facility to take forensic evidence as this could not be easily analysed.

When taken to the court, the defence lawyer for the deceased (Mr. Adamu Sanni) casemate cited the case of Mr. Sanni as extra-judicial killing which came about through torture and that on the strength of this evidence he was requesting that the evidence so procured should be excluded from the proceedings. The judge called for a trial within trial and thereafter ruled that there was evidence that the confession was made under duress and that all the evidence was collected through torture. With this, there was not much the prosecution could go on with and the case was struck out due to lack of evidence.

Mr. Adamu Sanni’s uncle accosted one of Sanni’s friends who he heard gave information against Sanni to the police and this led to Sanni and his casemate’s arrest. When asked how he knew who gave information to the police, he said that he was reliably informed of this by one of the Police Officers.

In the same Police Station, another suspect alleged that the confessional statement signed by him was not made by him as the IPO in charge of his case personally wrote the statement (despite the fact that he is literate) and merely asked him to sign. He stated that he obliged because he did not want to end up like Mr. Adamu Sanni. This incidence was reported to a journalist from one of the national dailies – Daily Blast and a full paged story on this was featured in the paper. The story was titled ‘Interrogation of Suspect – A Call to death’. This further damaged the Police-Community relationship in the state.

**Issues Highlighted in the Case Study:**

1. The use of torture in interrogation
2. The impact of lack of forensic facilities on quality of policing
3. Exclusion of evidence obtained by duress
4. Impact of quality of interrogation on outcome of cases
5. Impact of quality of interrogation on police-community relations
6. Extra-judicial killings
7. Investigation of Extra-judicial killings, torture, cruel, inhuman and degrading treatment and punishment
8. Protection of Police witnesses and sources of information (issue of confidentiality and security of witnesses and police informants).

**Exercises Case Study 3 -Questions:**

Answer the following questions:

1. What is the position of the Nigeria Law and International and regional human rights principles in relation to torture, cruel, inhuman and degrading treatment and punishment during the course of interrogation?
2. Describe the process of interrogation highlighting the acceptable interrogation techniques?
3. What are the factors that hamper effective interrogation processes in the police stations?
4. List the effects/Impacts of poor interrogation by the police on the quality of justice delivery?
5. Describe recommended steps that need to be taken to enhance the quality of police interrogation of suspects, including strategies to enhance the use of communication and persuasions, increase the knowledge of the IPOs on the subject matter of the investigation and the case under investigation; the importance of visiting of the scene of the crime etc.
6. When can a suspect request for the services of a lawyer and how relevant is this to the interrogation process?

**Key References and Issues to Note:**

Article 1 of the United Nations Convention Against Torture, Cruel, Inhuman and Degrading Treatment and Punishment:

*‘….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 t 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 sanction’*.

Principle 6 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment

‘No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhumane or degrading treatment or punishment’.

Principles on the Effective Prevention and InvestigaTION OF Extra-Legal, Arbitrary and Summary Executions:

Article 2 states:

‘In order to prevent extralegal, arbitrary and summary executions., Governments shall ensure strict control including a clear chain of command, over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorised by law to use force and firearms.’

*On /Inspection/Oversight:*

Article 7 states:

‘Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody as well as to all their records’.

*On Investigation:*

Article 9 states:

‘There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice, which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide’.

See also Articles 10-20 of the same Instrument.

See also generally the following:

United Nations Convention Against Torture, Cruel, Inhuman and Degrading Treatment and Punishment.

The Optional Protocol to the UN Convention Against Torture, Cruel, Inhuman and Degrading Treatment and Punishment

Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Execution

Code of Conduct for Law Enforcement Officials

Basic Principles in the Use of Force and Firearms by Law Enforcement Officials

The African Charter

The Robben Island Guidelines for the Prohibition of Torture, Cruel, Inhuman and Degrading Treatment or Punishment.

OSJI and NOPRIN (2010), Criminal Force: Torture, Abuse, and Extrajudicial Killings by the Nigeria Police Force, OSI: New York