

Children in Conflict with Law

Seven Stages
from Apprehension to Release



Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-governmental, non-profit organisation headquartered in New Delhi, with offices in London, United Kingdom, and Accra, Ghana. Since 1987, it has worked for the practical realization of human rights through strategic advocacy and engagement as well as mobilization around these issues in Commonwealth countries. CHRI's specialisation in the areas of Access to Justice (ATJ) and Access to Information (ATI) are widely known. The ATJ programme has focussed on Police and Prison Reforms, to reduce arbitrariness and ensure transparency while holding duty bearers to account. CHRI looks at policy interventions, including legal remedies, building civil society coalitions and engaging with stakeholders. The ATI looks at Right to Information (RTI) and Freedom of Information laws across geographies, provides specialised advice, sheds light on challenging issues, processes for widespread use of transparency laws and develops capacity. CHRI reviews pressures on freedom of expression and media rights while a focus on Small States seeks to bring civil society voices to bear on the UN Human Rights Council and the Commonwealth Secretariat. A growing area of work is SDG 8.7 where advocacy, research and mobilization is built on tackling Contemporary Forms of Slavery and human trafficking through the Commonwealth 8.7 Network.

CHRI has special consultative status with the UN Economic and Social Council and is accredited to the Commonwealth Secretariat. Recognised for its expertise by governments, oversight bodies and civil society, it is registered as a society in India, a limited charity in London and an NGO in Ghana. Although the Commonwealth, an association of 54 nations, provided member countries the basis of shared common laws, there was little specific focus on human rights issues in member countries. Thus, in 1987, several Commonwealth professional associations founded CHRI.

Through its research, reports, advocacy, engagement, mobilisation and periodic investigations, CHRI draws attention to the progress and setbacks on rights issues. It addresses the Commonwealth Secretariat, the United Nations Human Rights Council members, media and civil society. It works on and collaborates around public education programmes, policy dialogues, comparative research, advocacy and networking on the issues of Access to Information and Access to Justice.

CHRI seeks to promote adherence to the Universal Declaration of Human Rights, the Commonwealth Harare Principles and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights.

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Seven stages: From Apprehension to Release

Stage 1
Apprehension



Stage 2
First Production



Stage 3
Preparation of Social Investigation Report (SIR)
by the Probation Officer



Stage 4
Inquiry by the JJB



Stage 5
Orders by the JJB



Stage 6
Appeal



Stage 7
Release of the child



Children in Conflict with Law

Understanding the process

The stages of the processes for children in conflict with law can be broadly categorised on the basis of type of offence allegedly committed by a child as mandated by the Juvenile Justice (Care and Protection) Act, 2015:

a) petty offence b) serious offence c) heinous offence

Petty offences are offences for which the maximum punishment is imprisonment up to three years.

Serious offences are offences for which the punishment is imprisonment between three to seven years. An offence for which maximum sentence is more than seven years but minimum sentence is not provided or minimum sentence is less than seven years shall be treated as serious offences too.

Heinous offences are offences for which the punishment is seven years or more. An offence with a maximum sentence of more than seven years but where a minimum sentence is not provided or minimum sentence provided is less than seven years shall not be considered to be a heinous offence.

Note: For purposes of this publication, the Act or JJ Act means the Juvenile Justice (Care and Protection of Children) Act, 2015. And the Rules or Model Rules means the Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

STAGE 1

APPREHENSION

A child shall only be **apprehended** by the police if a heinous offence is allegedly committed by the child or it is in best interest of the child. [Rule 8 (1) of Model Rules, 2016]



Upon apprehension by police, any child who has allegedly committed an offence shall be released on bail by the police (Sec 12 (1) of JJ Act, 2015) with or without surety except when it is in the best interest of child to keep him/her in detention. Such child shall be placed under the charge of the Special Juvenile Police Unit (SJPU) or designated Child Welfare Police Officer (CWPO). [Section 10 of JJ Act, 2015]

In all other cases involving petty and serious offences, **apprehending the child is not necessary** in best interest of child. The police or Special Juvenile Police Unit (SJPU) or Child Welfare Police Officer (CWPO) shall forward the information regarding the nature of offence along with Social Background Report (SBR) of the child to the Juvenile Justice Board (JJB) and inform the parent/guardian about when the child is to be produced before the JJB. [Rule 8 (1) of JJ Rules]



FIR: No FIR is to be registered by the police for cases of petty offences. For serious offences, the Special Juvenile Police Unit or Child Welfare Police Officer shall record it in the general diary and no FIR is to be registered. Only in heinous offences can the police register FIRs.



STAGE 2

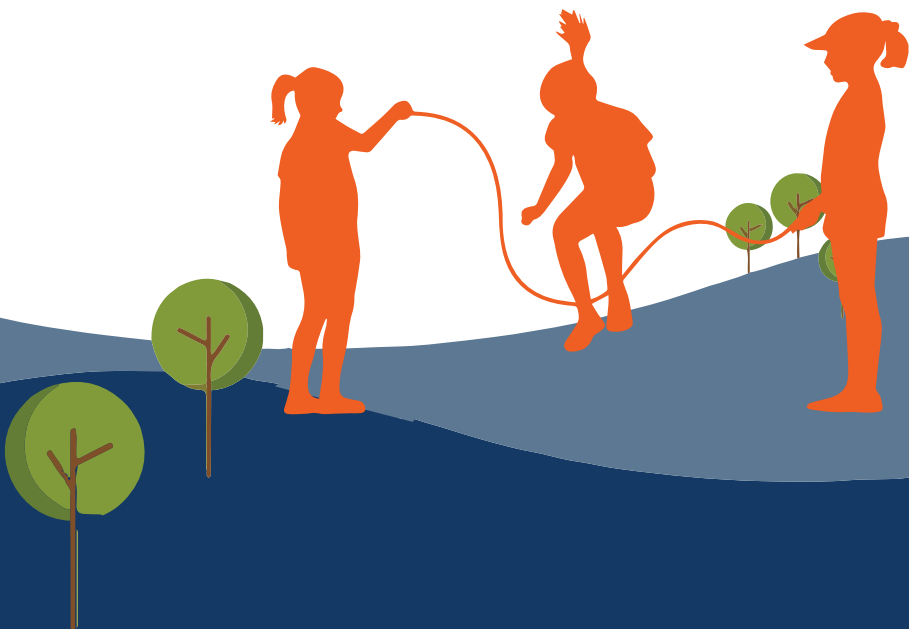
FIRST PRODUCTION

Without any loss of time but within 24 hrs i.e. immediately after apprehension of the child, the person under whose charge the child is placed, must produce the child before the JJB [u/s 10 of JJ Act, 2015].

The apprehending authority may submit the Daily Diary (DD) entry or FIR (only in case of heinous offences) along with Social Background report explaining the reason for apprehending the child [Rule 9 (1) of Model Rules, 2016].



In case the JJB is not sitting, the child alleged to be in conflict with law shall be produced before a single member of the JJB u/s 7 (2) of the JJ act, 2015.



The board can pass necessary orders including:

a) An order of bail or discharge: Every apprehended child alleged to have committed a bailable or non-bailable offence and is apprehended by the police or brought before the JJB, shall be released on bail with or without surety or placed under supervision of a probation officer or under the care of any fit person.

Bail should be refused only if:

- the child's release is likely to bring the child into association with any known criminal, or
- the child's release would expose the child to a moral, physical or psychological danger, or
- the child's release would defeat the ends of justice.

b) An order giving the custody of the child to the state or a fit person

- sending the child to an Observation Home,
- or a place of safety,
- or a fit facility or a fit person. [Rule 9 (2) of the Model Rules, 2016].

A "fit person" is any person, prepared to own the responsibility of a child, for the specific purpose, and such person is identified after inquiry made in this behalf and recognised as fit for the said purpose, by the CWC or, as the case may be, the JJB, to receive and take care of the child.



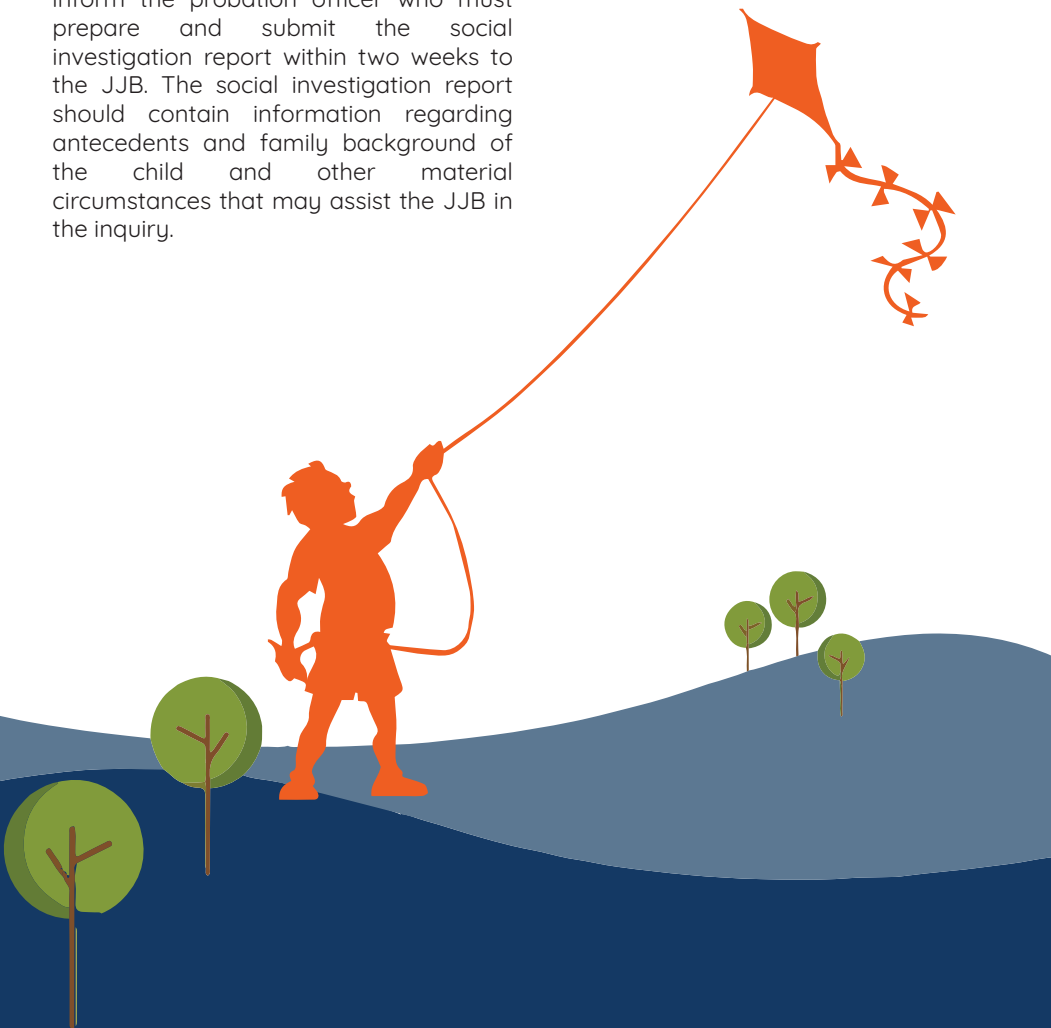
A child alleged to be in conflict with law shall not be placed in police lock-up or lodged in Jail under any circumstances [u/s 10 of JJ Act, 2015].



STAGE 3

PREPARATION OF THE SOCIAL INVESTIGATION REPORT (SIR) BY THE PROBATION OFFICER

The SJPU or CWPO under whose charge the child is brought should immediately inform the probation officer who must prepare and submit the social investigation report within two weeks to the JJB. The social investigation report should contain information regarding antecedents and family background of the child and other material circumstances that may assist the JJB in the inquiry.



STAGE 4

INQUIRY BY THE JJB

On production of a child before the JJB for allegedly committing an offence, the JJB will hold an inquiry in accordance with the JJ Act.

The inquiry of the JJB should be completed in four months from the date of first production, extending only by maximum of two months with reasons recorded in writing [u/s 13 of the JJ Act, 2015]. The proceedings stand terminated if the inquiry for petty offences remains inconclusive after extended period [u/s 14 (4) of the JJ Act, 2015].

In cases of **petty or serious offences**, the case is disposed of by the JJB through summary proceedings- procedure for this is as prescribed under the Code of Criminal Procedure (CrPC), 1973.

In cases of **serious offences**, the JJB conducts an inquiry following the procedure of **trials in summons cases** (as laid down in CrPC, 1973).

In case of **heinous offences**, a **preliminary assessment** is conducted by the JJB, which must be completed within a period of 3 months [u/s 14(4) of the JJ Act, 2015].

The **heinous offences** are further categorised by age of child – below 16 years and above 18 years. For children below 16 years, a trial similar to serious offences is followed by the JJB.

For children above 16 years, based on preliminary assessment, the JJB decides whether to conduct a trial by the JJB itself or if the case should be transferred to the Children's Court for a child to be tried as an adult. **The board may or may not transfer the case to the children's court.**

An appeal against the decision of the JJB to transfer a case to the Children's Court to be tried as an adult can be filed before the Court of Sessions.



CHILDREN'S COURT: FUNCTIONING & POWERS

A **children's court** is defined as a special court designated under Protection of Child Rights Act (PCRA), 2005 or under the Protection of Children from Sexual Offences (POCSO) Act, 2012. Wherever such courts are not designated, court of sessions having jurisdiction will try offences under the Act.

Proceedings in a Children's Court

a) The children's court on receiving a case from JJB may decide

- to hold a trial in a child-friendly manner or

- that there is no need to try the child as an adult. [u/s 19 (1) (ii) of the JJ Act, 2015] If the Court concludes that there is no need for trial as an adult, it may:

conduct an inquiry as if it were functioning as a JJB and pass appropriate orders as mentioned above. The inquiry shall follow the procedure for trial in summons.

b) If a child is found to have committed an offence after trial, he/she is sent to a place of safety till the age of 21 years.

Once the child attains the age of 21 years and is yet to complete the term of stay, the court can:

- release the child after making an evaluation. This evaluation is to be done by the court after interacting with the child to see whether the child has undergone reformatory changes. The court shall also take into account the periodic reports shared by the Probation Officer, Child Welfare Officer or Social Worker or Case Worker.

- decide that the child may complete the remainder of his term in a prison.

Rehabilitation: The dispositional order passed by the Children's Court must include an individual care plan for the child prepared by Probation Officer or Child Welfare Officer or recognised voluntary organisation, on the basis of interaction with the child and his/her family.



As per Section 21 of the JJ Act, 2015, no child shall be sentenced to death or life imprisonment without the possibility of release.



Note: If an appeal has been filed in Children's Court against an order of JJB to try the case as an adult then Children's Court shall first decide the appeal.

STAGE 5

ORDERS BY THE JJB

a) Did not commit an offence

The JJB may find that the child has not committed an offence and thus pass an order to that effect. The JJB can then order release of the child if he/she is in the state's custody or confined in an observation home. All bail bonds/sureties also stand discharged thereafter.

If the JJB finds that the child is in need of care and protection it may refer him/her to the Child Welfare Committee (CWC).

b) Committed an offence

If upon inquiry (called trial by the JJB in some states) a petty offence, serious offence or heinous crimes by a child below 16 yrs, is found to have been committed, then the following orders can be given:

- The child may be allowed to go home after advice and warning and with counselling to the child and his/her parents,
- The child may be asked to participate in group counselling or similar activities,
- The child may be awarded community service under supervision of an organisation or institution or a specified person,
- The child or parent/guardian could be directed to pay fine,
- The child may be released on probation of good conduct and be placed under care of a parent/guardian with a bond, with or without surety, for any period not exceeding 3 years,
- The child may be released on probation of good conduct and placed with a fit facility for care and supervision for any period not exceeding 3 years,
- The child may be sent to a special home for any period not exceeding 3 years. If due to a child's behaviour it is not in his/her best interest or any other child at the special home then the child could be sent to a place of safety.



In cases where a heinous offence has been allegedly committed by a child aged above 16 years, and where after the preliminary assessment the JJB decides to transfer such case to a Children's Court, further proceedings takes place at the Children's Court.

A **Special Home** is any institution established by a state government or by a voluntary or registered (u/s 48 of JJ Act, 2015) non-governmental organisation (NGO), for housing and providing rehabilitative services to children who are found to be in conflict with law. The children are sent to such institution through an order by the JJB.

A **Place of Safety** is any place or institution, which is not a police lockup or jail, and attached to an observation home or a special home. The in-charge of such place should be willing to receive children alleged or found to be in conflict with law. The child can only be sent to such place by an order of the JJB or Children's Court, both during the inquiry and ongoing rehabilitation after having been found guilty.

An **Observation Home** is a home established and maintained in every district or group of districts by a state government itself or through a voluntary or registered NGO. The observation homes are for temporary reception, care and rehabilitation of any child alleged to be in conflict with law, during pendency of any inquiry under JJ Act, 2015.



STAGE 6

APPEAL

Any party aggrieved by the order of the Child Welfare Committee (CWC) or Juvenile Justice Board (JJB) , can file an appeal within 30 days to the relevant children's court.

An appeal against the decision of the JJB to transfer a case to the Children's Court to be tried as an adult can be filed before the Court of Sessions.

A person aggrieved by an order of Children's Court may file an appeal before the High Court as per the procedure laid down in CrPC, 1973.



STAGE 7

RELEASE OF THE CHILD

Upon expiry of the period of stay ordered by the JJB or Children's Court, the person in-charge of Child Care Institution (CCI) must release the child who is in custody in compliance of the following processes:-

1) Release in case of Indian nationals

- the child must be released to the parent/s or guardian,
- the information about release of child must be timely shared with parent/s or guardian including exact date,
- the parent/s or guardian must be called to the CCI on the said date to take custody of the child,
- if the parent/s or guardian fails to come to CCI on the said date then the child must be escorted to the parent or guardian,
- the child may be placed in aftercare programme, when the child attains the age of eighteen years on leaving a child care institution, subject to consent of child and approval of JJB or CWC or Children's Court to facilitate child's re-integration into mainstream society [Section 46, JJ Act, 2015],
- in case the release falls on a holiday or a Sunday, the child may be discharged on the preceding day.

Restoration:

While passing an order to release, the JJB and Children's court must ensure the following:

- The child should be ordered to release to parents or guardians after the JJB or Children's court have satisfied itself about the identity of the person claiming the custody as a parent or guardian of the child.
- The release must be ordered after taking into account the reports of Probation Officer, Social Worker or Child Welfare Officer or Case Worker or NGO.
- The restoration order must include an individual care plan prepared by the Probation Officer or Social Worker or Child Welfare Officer or Case Worker or NGO.



2) Release in case of foreign nationals

The custody of the child is decided by the JJB or CWC or Children's Court based on the principle of best interest of the child.

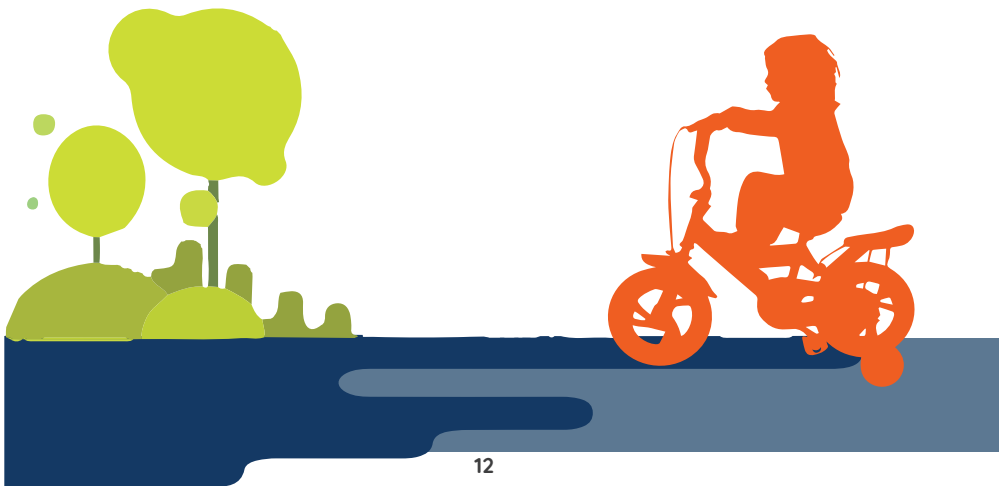
When a child is to be repatriated to another country, the CWC shall direct the District Child Protection Unit (DCPU) to take necessary steps including approaching the Foreigners Regional Registration Office (FRRO) and Ministry of External Affairs (MEA) for a no-objection certificate, contacting the counterpart committee or any voluntary organisation in the country where the child is to be sent. [Rule 19 (16) of the Model Rules, 2016]

Release to parent or guardian of child staying in India with valid documents: the child may be released to parent or guardian after verifying their identity as the parent or guardian of the child.

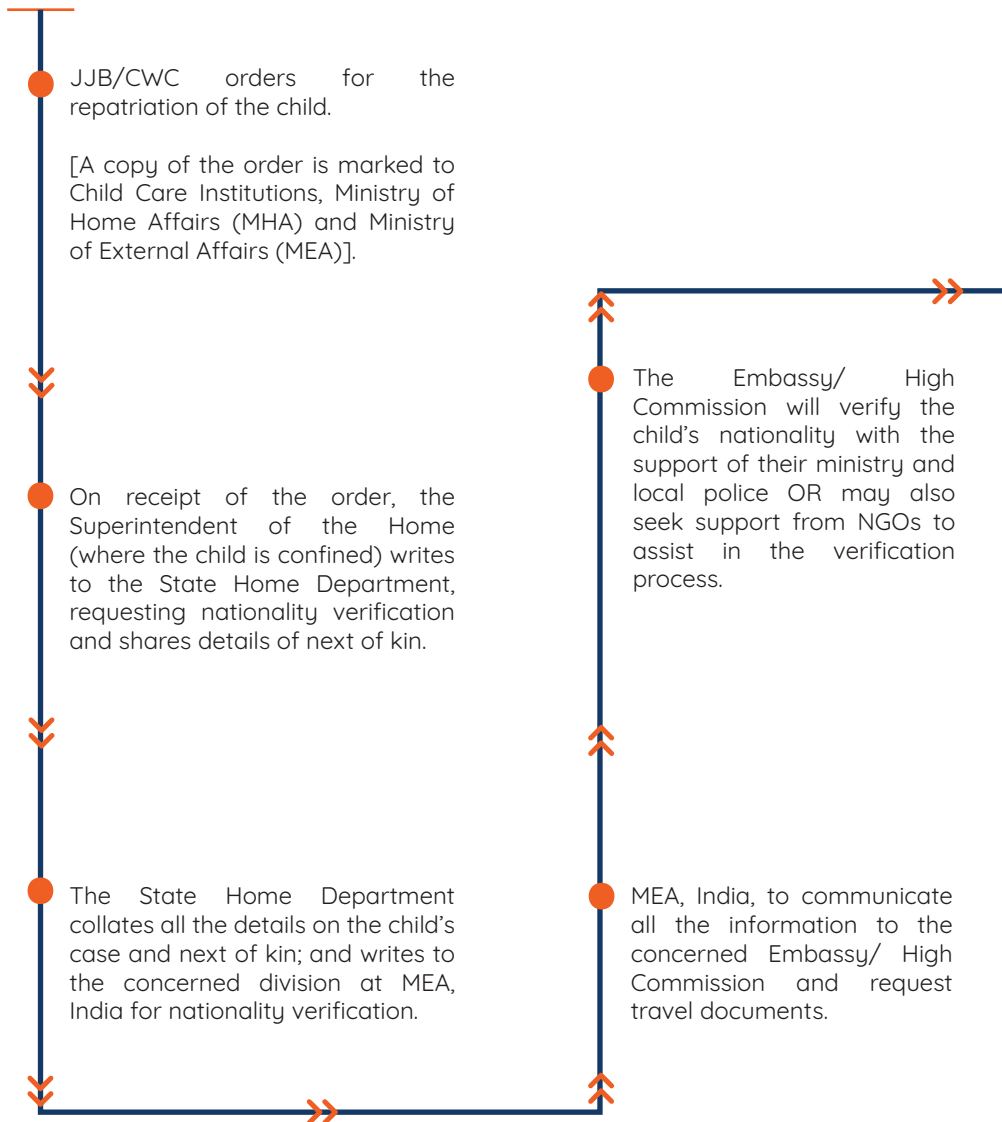
If the parent or guardian of the child do not have valid documents: the concerned CCI through the state home department and Ministry of External Affairs (MEA) shall get in touch with the embassy/consulate of the country to which the child belongs to initiate the repatriation process. The child in such cases is handed over to the custody of a designated person of authority at the respective consulate/embassy.

Refugees and asylum seekers should be an exception to this process. Keeping in mind the principle of best interest, children of refugees and asylum seekers should be handed over to the parents, extended family or guardian if they are in India as asylum seekers or refugees. [Sec 3(iv) and 3(xiii) JJ Act] This is in line with state obligations as per Article 22 of the United Nations Convention on the Rights of the Child (CRC) which details the protections to be extended to a refugee child. Among other protections, it emphasises that family reunification is a priority obligation of governments serving the best interests of children, having particular regard for unaccompanied and separated children.

In case the parent/s or guardian of the child are not in India: a detailed procedure is laid down in the next page.



REPATRIATION PROCESS OF FOREIGN NATIONAL CHILDREN



The child is then escorted to the airport/ integrated check post and repatriated home

[In most cases, the child is handed over to next of kin/ NGO/ state authority at the border/ airport].

Once nationality verification is done, the Embassy/ High Commission will issue appropriate travel permits for the child and send it to the concerned division at MEA in India.

MEA, India will send the travel documents to the State Home Department.

State Home Department, Department of Women and Child Development and Superintendent of CCI will finalise a date for repatriation and prepare all the documents.

The State Home Department on receipt of travel documents issues a No Objection Certificate.

[A copy of the certificate is marked to CCI, MEA, MHA and Embassy/ High Commission].

The State Home Department will issue an order to the Police Department, for escorting the child to the appropriate handover point.

About CHRI Programmes

CHRI seeks to hold the Commonwealth and its member countries to a high standard of human rights, strengthening transparency in democracies and meet the Sustainable Development Goals (SDGs). CHRI specifically works on strategic initiatives and advocacy on human rights, Access to Justice and Access to Information. Its research, publications, workshops, analysis, mobilisation, dissemination and advocacy, informs the following principal programmes:

1. Access to Justice

Police Reforms: In too many countries the police are seen as an oppressive instrument of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that the police act as upholders of the rule of law rather than as enforcers of a regime. CHRI's programme in India and South Asia aims at mobilising public support for police reforms and works to strengthen civil society engagement on the issues. In Tanzania and Ghana, CHRI examines police accountability and its connect to citizenry.

Prison Reforms: CHRI's work in prisons looks at increasing transparency of a traditionally closed system and exposing malpractices. Apart from highlighting systematic failures that result in overcrowding and unacceptably long pre-trial detention and prison overstay, it engages in interventions and advocacy for legal aid. Changes in these areas can spark improvements in the administration of prisons and conditions of justice.

2. Access to Information

Right to Information: CHRI's expertise on the promotion of Access to Information is widely acknowledged. It encourages countries to pass and implement effective Right to Information (RTI) laws. It routinely assists in the development of legislation and has been particularly successful in promoting Right to Information laws and practices in India, Sri Lanka, Afghanistan, Bangladesh, Ghana and Kenya. In Ghana, CHRI as the Secretariat for the RTI civil society coalition, mobilised the efforts to pass the law; success came in 2019 after a long struggle. CHRI regularly critiques new legislation and intervenes to bring best practices into governments and civil society knowledge both at a time when laws are being drafted and when they are first being implemented. It has experience of working in hostile environments as well as culturally varied jurisdictions, enabling CHRI to bring valuable insights into countries seeking to evolve new RTI laws.

Freedom of Expression and Opinion: South Asia Media Defenders Network (SAMDEN): CHRI has developed a regional network of media professionals to address the issue of increasing attacks on media workers and pressure on freedom of speech and expression in South Asia. This network, the South Asia Media Defenders Network (SAMDEN) recognises that such freedoms are indivisible and know no political boundaries. Anchored by a core group of media professionals who have experienced discrimination and intimidation, SAMDEN has developed approaches to highlight pressures on media, issues of shrinking media space and press freedom. It is also working to mobilise media so that strength grows through collaboration and numbers. A key area of synergy lies in linking SAMDEN with RTI movements and activists.

3. International Advocacy and Programming

Through its flagship Report, *Easier Said Than Done*, CHRI monitors the compliance of Commonwealth member states with human rights obligations. It advocates around human rights challenges and strategically engages with regional and international bodies including the UNHRC, Commonwealth Secretariat, Commonwealth Ministerial Action Group and the African Commission for Human and People's Rights. Ongoing strategic initiatives include advocating for SDG 16 goals, SDG 8.7 (see below), monitoring and holding the Commonwealth members to account and the Universal Periodic Review. We advocate and mobilise for the protection of human rights defenders and civil society spaces.

4. SDG 8.7: Contemporary Forms of Slavery

Since 2016, CHRI has pressed the Commonwealth to commit itself towards achieving the United Nations Sustainable Development Goal (SDG) Target 8.7, to 'take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms. In July 2019 CHRI launched the Commonwealth 8.7 Network, which facilitates partnerships between grassroots NGOs that share a common vision to eradicate contemporary forms of slavery in Commonwealth countries. With a membership of approximately 60 NGOs from all five regions, the network serves as a knowledge-sharing platform for country-specific and thematic issues and good practice, and to strengthen collective advocacy.

