



THE JUVENILE OFFENDER AND THE NIGERIAN CRIMINAL JUSTICE SYSTEM IN CONTEMPORARY TIMES

Yoummi Emmanuella Mamgin¹

Abstract

Prevention of offenses by juveniles is one part of the wider crime reduction strategy of any nation. This paper examined the administration of criminal justice system in Nigeria and attempted an inquiry into the challenges of administration of juvenile justice. Crimes are part of every society in its every day interactions. These crimes in times past were committed by persons that have attained the age of adulthood, but in the recent times, there had been an alarming rise in the number of juvenile delinquencies across the country. This juvenile may have to come face to face with the law and are unfortunately often treated like adults and mixed with adults in prisons. This paper looked into the legal frameworks of Juvenile justice system in Nigeria. The challenges of Juvenile justice administration in Nigeria identified include: Lack of juvenile court judges, Funding, Attitudinal and cultural changes, improper justice system. The paper recommended that there is an urgent necessity to employ more social workers in every state so as to rehabilitate individual juveniles, the Child's Rights Act (CRA,) needs to be speedily implemented by Federal and State governments, juvenile institutions to substitute home for juveniles, the acceptance of juveniles into society without discrimination and both the federal and state government should financially develop the juvenile justice system in Nigeria so as to rehabilitate and restore juvenile delinquents.

Key Words: Juvenile, Justice, Juvenile justice.

Introduction

The increasing interest of the youth in delinquent activities has prompted the development of numerous theories, and the continuous, yet rigorous, study of youth behaviour. Only recently, the concept of juvenile has justice become an issue in the way crime among youth is viewed. The implementation of Juvenile Justice System responsibility, has led to the development of specific assumptions such as neutralization, labeling and social control, by people who had a first-hand interest in the juvenile delinquency cases.

Most criminal activities start at young age. There are very few criminals, who have picked up the attitude in their adult life. Just as manners and norms are developed at an early age, delinquency or deviant behaviour is also. Such factor as hereditary do breeds deviant, how the

¹ Head of Department, Private and Commercial Law, Faculty of Law, Plateau State University, Bokoos, Plateau State, Nigeria.

individual may react to certain situations. The way an individual is treated and disciplined as a young child, directly affects how he or she will perceive and treat those around him/her in life. The environment a child grows up in plays a key role in determining the child's view about life, which may have direct effect on the young child's proneness to delinquency.

Juvenile delinquency is a clear and present danger in Nigeria. While there have been some debates about the challenges posed by juvenile delinquency, there seems to be no end in sight given Nigeria's inefficient juvenile justice system. In the words of Adegoke, the issue of juvenile delinquency is an age long problem; it seems that the juvenile delinquency of the past cannot be compared with that of the present era.² The anti-social behaviors often associated with the juvenile delinquents, such vices as vandalism, drug abuse, weapon carrying, alcohol abuse, rape, examination malpractices, school violence, bullying, cultism, truancy, school drop-outs, to mention but a few. Obviously, unless something is done to roll back the wave of juvenile offenders, the prospect of a better, safer and more prosperous society emerging in Nigeria, will remain elusive.

However, it is disheartening to see that Nigeria's juvenile justice system, is performing below expectation and has deviated from its established objectives. According to Bella, et al, despite the vocational and formal educational instruction that are put in place in order to realize the goals of reformation, rehabilitation and reintegration of the children and young offenders, these facilities have undergone a marked deterioration since the 1980's due to lack of proper policy, legal and institutional frameworks, gross under funding, inadequate staff, and lack of necessary training facilities.³

According to Adeboye, the term "juvenile delinquency", was established so that young lawbreakers could avoid the disgrace of being classified in illegal records as criminals.⁴

Adeboye went further to define juvenile delinquency as the resistant antisocial, illegal or criminal behavior by children or adolescents to the level that it cannot be controlled or corrected by the parents, endangers others in the community and becomes the concern of law enforcement agency.⁵ In view of the above, Igbo noted that: children and young persons are not only immature physically and mentally, they can hardly distinguish between right and wrong.⁶ Their idea of right and wrong depends on the nature and extent of the socialization process. They are not as rational as adults in making decisions. While it is believed that children and young persons act before thinking, adults generally think before acting.⁷

² Adegoke, N. „Factors Responsible for Juvenile Delinquency in Nigeria: A Case Study of Selected Primary Schools in Ikorodu, Lagos State, Nigeria“. *Research on Humanities and Social Sciences*, Vol. (5),No. (5) (2015)p. 17

³ Bella, T. T., Atilola, O., and Omigbodun, O. O. „Children within the Juvenile Justice System in Nigeria: Psychopathology and Psychosocial Needs“. *Annals of Ibadan Postgraduate Medicine*. Vol. (8) No. (1) (2010)p. 3

⁴ Adeboye, A. A. "Causes and Effects of Juvenile Delinquency Among Adolescents: A Case Study of Senior Secondary School Students in Odeda Local Government Area of Ogun State". (A Research Project Submitted to the School of Education Federal College of Education, Osiele, 2015)

⁵ Ibid

⁶ Ibid

⁷ Igbo, E. U. M. *Introduction to Criminology*. (University of Nigeria Press Ltd, 2007).

In this regard, children and young offenders are seen as persons who are immature physically and mentally. That is why, the juvenile justice system is established to provide the opportunity for proper reformation and reintegration of these children and young offenders into the larger society by making them part ways with crime. It is expected to give them directions that will enable them live normal lives again and inculcate in them, the need to be lawabiding. This is done through teaching them marketable vocational skills, teaching them moral education and providing them the opportunity to receive formal education especially for the disadvantaged and vulnerable ones among them, enhancing their family ties and future employability and engaging members of the community, so that they can feel accepted by the society. The present article analyses the current situation of juvenile justice administration in Nigeria and the problems faced by the juvenile in Nigeria and provides suitable recommendations to ameliorate the related issues.

According to Adeboye, the term “juvenile delinquency”, was established so that young lawbreakers could avoid the disgrace of being classified in illegal records as criminals.⁸ Adeboye, went further to define juvenile delinquency as the resistant antisocial, illegal or criminal behavior by children or adolescents to the level that it cannot be controlled or corrected by the parents, endangers others in the community and becomes the concern of law enforcement agency.⁹ Similarly, Edet saw juvenile delinquency as a crime committed by a young person under the age of 18 years as a result of trying to comply with the wishes of his peers or to escape from parental pressure or certain emotional stimulation.¹⁰ Relatedly, Shoemaker as recorded in Ugwuoke and Dauda, defined juvenile delinquency as “illegal acts, whether criminal or status offences, which are committed by youth under the age of 18”.¹¹ Also, Muncie defined juvenile delinquency as “any act in violation of criminal law, committed by a person defined under law as a juvenile, which if had been committed by an adult, will be treated as crime or criminal conduct”.¹²

In view of the above, Igbo noted that: “Children and young persons are not only immature physically and mentally, they can hardly distinguish between right and wrong. Their idea of right and wrong depends on the nature and extent of the socialization process. They are not as rational as adults in making decisions. Whereas very often, children and young person’s act before thinking, adults generally think before acting”.¹³

⁸ Adeboye, A. A. “Causes and Effects of Juvenile Delinquency Among Adolescents: A Case Study of Senior Secondary School Students in Odeda Local Government Area of Ogun State”. (A Research Project Submitted to the School of Education Federal College of Education, Osiele, Abeokuta, 2015)p. 74

⁹ Ibid

¹⁰ Edet, D. E. “The Nature and Consequences of Juvenile Delinquency in Nigeria: A Study of Enugu North Local Government Area, Enugu State”. (A Research Project submitted to the Department of Sociology Faculty of Management and Social Sciences

Caritas University, Amorji-Nike, Enugu, 2012)pp. 31-32

¹¹ Shoemaker, D. “Theories of Delinquency”. In Dauda, J. H. (2016). *A Sociological Analysis of the Law and Practice of Juvenile Justice in Niger State, Nigeria*. (A Ph.D

Thesis submitted to the school of Postgraduate Studies, Ahmadu Bello University, Zaria, 2010)p. 56.

¹² Muncie, J. *Youth and Crime: A Critical Introduction*. (Sage Publications, 1999)p. 65

¹³ Igbo, E. U. M. *Introduction to Criminology*. (University of Nigeria Press Ltd. 2007)p.

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However, it is disheartening to see that Nigeria's juvenile justice system is performing below expectation and has deviated from its established objectives. According to Bella, Atilola and Obidinma, despite the vocational and formal educational instruction that are put in place in order to realize the goals of reformation, rehabilitation and reintegration of the children and young offenders, these facilities have undergone a marked deterioration since the 1980's due to lack of proper policy, legal and institutional frameworks, gross under funding, inadequate staff, and lack of 84 necessary training facilities.¹³ The present article theoretically analyses the current situation of juvenile justice administration in Nigeria and the problems faced by the child prisoners in Nigeria and provides suitable recommendations to ameliorate the related issues.

Legal Framework on Juvenile Justice System In Nigeria

The various laws on Juvenile justice administration will be examined in this section. Both local and international treaties relevant to juvenile trials are discussed. It is asserted that the laws in their substantive state are not versatile enough to meet the demands of a contemporary growing population of Nigeria.

i. Convention on the Rights of the Child (CRC)

Nigeria adopted the United Nations Child Rights Convention (60) on April 16th, 1991 and in addition, two optional protocols to the convention were adopted on the 25th of May 2000. Under this Convention the interest of the child come first and should be a priority in the state

The CRC has a number of limitations (e.g. prohibiting the death penalty and life imprisonment without possibility of release) and requires that: "detention or imprisonment of a child... shall be used only as a measure of last resort and for the shortest appropriate period of time".¹⁴ The CRC makes provisions for a variety of concerns to be considered and which would effectively enable a custodial sentence to be avoided.¹⁵ These provisions emerges from the method that

¹³ Obidinma, A. E., &Obidinma, E. O. C. "Challenges and Prospects of the Juvenile Justice Administration in South East Nigeria". *Nnamdi Azikiwe University Journal of Law (NAUJILJ)*, Vol. (34) No. (12)(2012)p.85.

This particular right was put in effect in the National Conference on Juvenile Justice Administration in Nigeria.¹³ that adopts it. The rights in this convention include the right for children to participate in making decisions which affect their lives and the life of the community they are a part of.¹³

¹⁴ Art. 37(b), Convention on the Rights of Child, 1989,

¹⁵ Ibid, Art. 40(4),

the handling of a delinquent should take account of, among other things, “the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society”.¹⁶

The “reintegration” aim is nonetheless not entirely absent from the regime applicable to adults. The CRC thus states that; “the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation”.¹⁹ The avoidance of merely punitive sanctions against juveniles is also implied in Rule 5 of the Beijing Rules,¹⁷ which states that “the juvenile justice system shall emphasize the well-being of the juvenile”.¹⁸ The Rule then introduces the principle of proportionality “and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence”¹⁹ which, as stated in the Commentary to Rule 5, is similarly designed to curb undue recourse to such punitive sanctions.²⁰

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)

The Beijing rules were the first instrument to have made comprehensive statement specifically on juvenile justice system administration. The Beijing Rules were adopted in Beijing China in 1985. The rules aimed at a system that would be fair and humane, emphasising the well-being of the juveniles by providing for separate juvenile justice system and advocated for recognizance and incorporation in any legislative change. It demands for proportionate reaction of authorities to the circumstances of the offender as well as the offence.²¹ Diversion from formal hearing, respecting the right to due process while conducting proceedings, careful consideration before depriving a juvenile of liberty, specialized training for all personnel within juvenile justice system and the consideration of release both on apprehension and at the earliest possible occasion are some of the advocate strategies of the Beijing rules.

African Union Charter on the Rights and Welfare of the Child (AUCRWC)

It is also called the ACRWC or children’s charter. It was adopted by the Organisation of African Unity (OAU) on July 1, 1990,²² which is now the African Union and it was entered into force on the 29th of November, 1999.²³ It is also a comprehensive instrument that states the rights of children. It covers the whole civil, political, economic, social and cultural rights of a child. It defines the status of a child to be below the age of 18. The ACRWC was established because members of the AU believed that the CRC was missing important socio-cultural elements particular to Africa. It sought to include African culture and experiences in the rights of the

¹⁶ Ibid, Art. 40(1,) ¹⁹ ibid Art. 10(3),

¹⁷ This is the United Nations Standard Minimum Rules For Juvenile Justice(1985) and it is also referred to as Beijing Rules.

¹⁸ Ibid, Rule 5.

¹⁹ Ibid

²⁰ Ibid

²¹ UNICEF. Assessment Tool to Assist State Governments in the Implementation of Child Justice Administration in Nigeria. (UNICEF United Nations, 2008).

²² African Union. African Charter on the Rights and Welfare of the Child, <<https://au.int/en/treaties/africancharter-rights-and-welfare-child>>. Accessed 29/07/2019. ²⁶ Ibid

²³ ACERW. The African Charter on the Rights and Welfare of the Child (ACRWC), <<http://www.acerwc.org/thecharter/>>, Accessed 29/07/ 2019 ,

child, but still based on the best interest of the child and other basic principles from the CRC.²⁶ Nigeria adopted both the ACRWC and the CRC and implemented it into the Childs Right Act of 2003.

Criminal Code and Penal Code

The two major sources of Criminal Law in Nigeria are the Criminal Code, which applies in the Southern states, and the Penal Code of states, which applies in the northern states. Both laws made provisions for the juvenile as follow Section 30 of the Criminal Code provides that; A person under the age of seven years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that they ought not to do the act or make the omission. A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.”²⁴

Also section 50 of the similarly extant Penal Code, provides that: “No act is an offence which is done: (a) By a child under seven years of age; or (b) By a child above seven years of age but less than twelve years of age who has not attained sufficient maturity of understanding to judge the nature and consequence of such act.”²⁵ This means that a child under the age of seven years, is not criminally liable for any act or omission while a child under the age of twelve years, cannot be liable for any act or omission unless it can be proved that he had the capacity to know that he ought not to do the act or make the omission at the time of doing the act or making the omission.

In effect, this has automatically created an age limit below which a child can never be held guilty of a crime. He is not liable for his acts or omissions, if he is below the age of seven years, while those who have attained the age of seven years but are below twelve years are not criminally responsible unless it is proved that, they ought not to do the act or make the omission at the time of committing the offence, they had the capacity to know that and that children from twelve years upwards are fully criminally responsible for their crimes except if they enjoy anyof the general defenses provided under the laws.²⁶ This shows that in Nigeria, a child of seven years and above, can be prosecuted, but this must be done in a juvenile court.

Children and Young Persons Act (CYPA) and Laws

The Children and Young Persons Ordinance,²⁷ was the first statutory provisions in Nigeria in 1943 which also emerged as the prominent statute that regulates the administration of juvenile justice. Immediately after Nigeria gained independence, the statute created juvenile courts to administer cases relating to children and young persons, as this was originally recognized in Lagos and Calabar but established in the states of the Western and Eastern Regions and Social Welfare Officers were also employed across the regions.²⁸ Several other laws that concerns

²⁴ Section 30 Criminal Code Act, Cap. 77 Laws of the Federation of Nigeria, 1990.

Section 50, Penal Code Law Cap 89, Laws of Northern Nigeria, 1963.

²⁵ Section 50, Penal Code Law Cap 89, Laws of Northern Nigeria, 1963.

²⁶ Ahmed AB. An Appraisal of the Legal Rights of the Child in Nigeria, *Bayero Journal of private and Commercial Law Journal.*; Vol. (1) No. (1) 2015)p. 174.

²⁷ Children and Young Persons Act, Chapter 485 L.F.N 1990

²⁸ Ogunniran I, A Centurial Legal History of Child Justice Reforms in Nigeria 19142014, *Plymouth University*

juvenile delinquencies, began to emanate for example, from the Criminal Procedure Act and the Criminal procedure Codes²⁹ dealing with juvenile offenders. A National Workshop on the Child and Young Person

Law (CYPL) was held in 1991, suggesting that the juvenile court should maintain its own rules and procedure with emphasis on shifts towards informal, non-custodial and community-based methods.³⁰ Children and Young Persons Law, makes provisions for the welfare and treatment of young offenders and the establishment of juvenile courts³¹. The purpose of the Children and Young Person Law is to provide for the general welfare of the young, his treatment as an offender and the establishment of a juvenile court to try him. This law is still operational in 12 of the 36 states of the Nigerian federation with states such as Kebbi, Kano, Adamawa, Katsina, Sokoto, Jigawa, Zamfara, Bauchi, Borno Gombe and Yobe states making the holding onto this position.³² In

Summary, the statute created the following; establishment of Juvenile Courts, Special trial and punishment procedure, dealing with endangered juveniles and juveniles in need of care and attention, dealing with endangered juveniles and juveniles in need of care and attention and also dealing with constricted juvenile.

Child Rights Act (CRA), 2003

Interestingly, the CRA introduced a juvenile justice administration system known as child justice administration with a very striking law of the Act that stands out from the provisions of Child and Young Person Law (CYPA), because it specifically removes a child from the paraphernalia of the criminal justice process. It provides that non-subjection of the child to the criminal justice process or criminal sanctions.³³ It also provided for the establishment of Family Court at the High and Magistrate Courts' levels³⁴ while the procedures for administering juvenile justice is stated in Section 217.³⁵ These courts are conferred with unlimited jurisdiction to hear and determine, among others, any criminal proceeding involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a child, against a child or against the interest of the child.³⁶ Furthermore, Parents or Guardians are expected to be informed immediately (about the offence and or arrest) of the juvenile and consider releasing him without delay.³⁷ Sections 211 and 214 provides that the juvenile offender be handled with dignity by respecting his legal status, and promote his well-being and best interest during adjudication in order to avoid harming him, having regard to the situation of the child and the circumstance of the case.

Journals, SOLON Law, Crime and History, Vol.(5), (2015) p.54

²⁹ The Criminal Procedure Act and The Criminal procedure Codes

³⁰ Ibid n. 38

³¹ Ibid n. 36

³² Ibid. n. 30.

³³ Section 204 Child Right Act, 2003.

³⁴ Sections 149 and 150 Child Right Act, 2003.

³⁵ Section 217, Child Rights Act 2003.

³⁶ Section 151, Child Rights Act 2003.

³⁷ Section 217, Child Rights Act 2003.

The CRA emphasized on the competence, training and professionalism of all personnel (Judges, Police, Supervisors and Social Welfare Officers) dealing with child offenders in order to guarantee and protect their interest.³⁸ Because of the significance of the Police in juvenile justice administration (JJA), the Act emphasized on the establishment of a special section to specifically deal with children and to prevent them from committing offences. In addition, the section or unit is to apprehend and investigate child offenders and any other function that may be referred to the unit by the Act.³⁹ Under the child justice administration provisions of the CRA, the Police, prosecutor or any other person dealing with a case involving a child offender has the power to dispose the case without formal investigation or trial.⁴⁰

The Act also provides that cases could be settled through supervision, guidance, restitution and compensation of victims if only the offence is not serious. The Act advocates for reconciliation, taking into account the disposition of the family; school institution or where the police deem it necessary or appropriate in the interest of the child offender and the parties involved, while detention be used as a last resort and only for the shortest period of time.⁴¹ If because of the nature or circumstance of the offence the court did not release the child offender on bail, he shall be remanded in a State Government accommodation even though a State Government accommodation is not defined.⁴⁶ However, State Government accommodation may be interpreted to include homes or centres established by the State Government for such purposes. The Act guaranteed to the child, fundamental rights to presumption of innocence, the right to be notified of charges, the right to remain silent, the right of legal representation and free legal aid among others, as well as rights to fair hearing and due process.

The court in the determination of cases involving a child offender, is prohibited from ordering the imprisonment of the child offender, subject the child offender to corporal punishment or death penalty or have death penalty recorded against a child offender. The child offender can only be deprived of his liberty, if he is found guilty of

- (i) A serious offence involving violence against another,
- (ii) Persistence in committing other serious offences and there is no appropriate response that will protect the public safety.

Where however, the court decides against institutionalization, it shall utilize such disposition measures such as; dismissing the charge, discharging the child offender on his entering into recognizance, placing the child under care, guidance and supervision, including supervision by a supervision officer. Again, a child offender can be committed to the care of a guardian and supervision by a relative or any other fit person. A child offender may equally be ordered to participate in group counseling. He may also be ordered to pay a fine, damages, compensation or costs or to undertake community service. The child offender may equally be ordered to live in educational settings or ordering the parents or guardian of the child to pay a fine, damages compensation or costs, or to give security for good behaviour of the child.

³⁸ Section 206 Child Right Act, 2003.

³⁹ Section 207, Child Right Act, 2003.

⁴⁰ Section 209, Child Right Act, 2003.

⁴¹ Section 212, Child Rights Act 2003 ⁴⁶ Ibid

In broad perspective, the CRA, in content and principles, satisfies the a great deal of standards set by UNCRC, AUCRWC, Beijing Rules as well as other international treaties or instruments. However, the CRA is not without challenges in most States where the CRA has been enacted as State laws and Federal Capital Territory (FCT), complete machineries and structures for the implementation of the CRA are not yet in place. It is observed not to have taken care of local peculiarities (hawking, trafficking, the right to education, girl child education, adoption, etc) into consideration. This development puts to question of the sincerity of government. It would appear that the commitment of the government towards the protection and promotion of the rights of the child merely stops at enacting the law either to satisfy international obligations for the sake of it or political propaganda and aggrandizement. Other challenges are omission of State Shariah Courts of Appeal in matters relating to family matters including children, lack of political will to protect the best interest of the child, lack of collaboration and cooperation between State Governments and Civil Society groups to promoting children's rights in States and lack of continuing judicial education in comparative human rights jurisprudence. Other legal instruments used for juvenile justice are the Constitution of the Federal Republic of Nigeria, Penal code, Criminal Procedure Act and Police Act.

Some Perspectives To the Nigerian Juvenile Justice administrative System

The current system of juvenile justice in Nigeria is modeled after Nigeria's colonial past.⁴²

Most of the laws guiding juvenile justice administration in Nigeria were entrenched by the British, Nigeria's colonial master "whose philosophy on justice required a repressive legal system with oppressive penal institutions whose aim was to deter and punish offenders, as their disobedience to law was deemed detrimental to colonial interests".⁴³⁴⁴

Alemika and Chukwuma argued that the juvenile justice system may be regarded as a track within the criminal justice system of a society.⁴⁵ The criminal justice system consists of several tracks adult and juvenile process, and the rich and poor tracks to justice. Adult and juvenile tracks of justice administration were purposively designed and officially recognized. However, the differential tracks for the poor and wealthy are invisible and formally unrecognized, indeed denied, because to recognize class-based tracks of justice, will negate the ideology of equality of all (poor and rich) before the law. But in all societies, the poor are more likely to be arrested, detained, denied bail, convicted and sentenced to severe or harsh terms of punishment more than their wealthy and politically influential counterparts. The juvenile justice system is guided by a philosophy of concern, care and reformation. Young offenders are deemed to be immature and should not be treated as adult offenders. On the contrary, juvenile elinquents should be considered 'misguided' and therefore rescued or subjected to treatment, or reformation and rehabilitation programmes within correctional institutions.⁴⁶

The laws on juvenile justice administration in Nigeria include the Constitution of the Federal Republic of Nigeria (1999, 2011 as amended), the Children and Young Persons Law (CYPL, 1958), the Penal Code, Criminal Procedure Code, the Child Rights Act, 2003. Prior to the 2003 Child Rights Act, Nigerian child protection was defined by the Children and Young Persons

⁴² Eteete, A. M. "An Appraisal of the Regime of Juvenile Justice Under the Child's Right Act in Nigeria". *Arabian Journal of Business and Management Review*, Vol. (2) No. (8). (2013)

⁴³ Alemika, E. E. O, and Chukwuma, I. C. *Juvenile Justice Administration In Nigeria: Philosophy and Practice*. (Centre for Law Enforcement Education Lagos, Nigeria.

⁴⁴)p. 12

⁴⁵ Ibid p. 13

⁴⁶ Ibid p. 14

Law (CYPL). Originally the law was passed by the Colonial Government in 1943 and revised and incorporated into Nigeria's Federal Laws in 1958 (formerly chapter 32 of the Laws of the Federation of Nigeria and Lagos). However, its legal provisions fell short of the international standard. However, while Nigeria is a signatory to CRC and AUCRWC, the Conventions have not been incorporated into domestic law and thus have no legal force in Nigeria.⁴⁷

Challenges Of The Administration Of Juvenile Justice In Nigeria

The increasing rate of children and young person's getting involved in criminal activities in Nigeria poses a great threat to the peace, security and harmony of the society. Perhaps that is why Onyemachi noted that in the past, children were known to be involved in minor offences ranging from stealing some pieces of meat from the cooking pot to robbing their peers and playmates of their foods or toys. But nowadays, a lot of children have been found to have graduated from such minor offences to more serious crimes, such as rape, girl-child prostitution, drug trafficking, armed robbery, arson and vandalism, child-soldiering, suicide bombing and other acts of terrorism.⁴⁸

Some of the administrative challenges in the juvenile justice system of Nigeria are discussed below.

Trial of Juveniles

In relation to the trial of juveniles, the constitution of the juvenile court is regulated by section 6 of the Children and Young Persons Law (CYPL) which states that a juvenile court for the purpose of the hearing and determination of all matters relating to juveniles shall be constituted by a magistrate sitting with such other persons as the Chief Judge shall appoint.

In most states of Nigeria, there are no visible structures of the juvenile justice administration on ground. Instead of a permanent juvenile court, magistrates hear cases involving juveniles outside the normal court rooms or outside normal court sessions either in the courtrooms or in their chambers. This is to comply with the provisions in section 6 (2) which states that a court when hearing charges against juveniles shall, unless the juvenile is charged jointly with any other person not being a juvenile, sit either in a different building or room from that in which the ordinary sittings of the court are held, or on different days or at different times from those at which the ordinary sittings are held. The purpose of this provision is to protect the privacy of juvenile offenders and to protect them from the effects of stigmatization that may result from public trial. Further provisions are made to this effect, thus: while being conveyed to and from court or while waiting before or after their attendance in court, provision shall be made for preventing juveniles from association with adults charged with or convicted of any offence other than an offence with which the person apparently under the age of seventeen is jointly charged or convicted.⁴⁹ No person other than the members and officers of the court and the parties to the case, their legal practitioners and other persons directly concerned in the case, shall, except by leave of such court, be allowed to attend the juvenile court sessions.⁵⁴ In spite of these provisions relating to the constitution of the juvenile court and privacy of the juvenile,

⁴⁷ Dauda, J. H. "A Sociological Analysis of the Law and Practice of Juvenile Justice in Niger State, Nigeria". (A Ph.D Thesis submitted to the school of Postgraduate Studies, Ahmadu, Bello University, Zaria. 2016)

⁴⁸ Onyemachi, T. U. "Children, Status and the Law in Nigeria". *An International MultiDisciplinary Journal, Ethiopia*, Vol. (4) No. (3) (2017)p. 41

⁴⁹ s. 6 (4) CYPL ⁵⁴ s. 6 (5)

the standard anticipated by the Standard Minimum Rules for the Administration of Juvenile Justice has not been fulfilled. Furthermore, even the basic standard required under the CYPL is not fulfilled in most South Eastern States of Nigeria. For instance, in Anambra and Enugu States as in all the states in South East Nigeria, trials of juveniles are most often conducted in open court without any regard to the requirements of privacy provided under the law.

The CYPL regulates the trial procedure of juvenile courts through the provisions in section 8 which relate to the due process rights of the juvenile offenders. The provisions, to a very large extent, satisfy the requirements of section 36 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) and a lot of international rules and conventions on juvenile justice administration. However, notwithstanding the provisions, widespread derogation by the police, judges and parents, have been reported.⁵⁰ Of particular importance in this regard is the provision of section 8 (7), which provides that “if the juvenile admits the offence or the court is satisfied that it is proved, he shall then be asked if he desires to say anything in extenuation or mitigation of the penalty or otherwise. Before deciding how to deal with him, the court shall obtain such information as to his general conduct, home surroundings, school record and medical history as may enable it to deal with the case in the best interests of the juvenile and may put to him any question arising out of such information...” The provision fulfils the requirement in Rule 16 of the UN Minimum Rules for the Administration of Juvenile Justice requiring social enquiry report on the background and circumstances (social and family background, school, educational experience etc) of juveniles prior to their sentencing by a competent authority. In practice however, such inquiry and reports are not demanded by the courts, and where produced, they are so scanty and shallow to be of any meaningful use beyond hypocritical compliance with the law.⁵¹

The major setback in this regard, is the dearth of trained and qualified personnel to collect and collate the reports needed by juvenile courts. There may not be any medical or educational record for the juvenile offender and even where they are available, parents or relations of the juvenile offender, are skeptical and therefore not forthcoming with any information for fear of making the juvenile’s complicated matter, more compounded. Furthermore, either because of lack of the requisite knowledge/experience or due to the general negative attitude of the average civil/public servant in South East Nigeria, this requirement is not complied with in practice as virtually everybody in the system including the Magistrates, pay lip service to these requirements. All they do, is to, “fulfill all righteousness,”⁵² adopt a mechanical approach and have the juvenile either sentenced or discharged, most of the time for the wrong reasons. This is the case because there are no good precedents to act as a guide.

Punishment of Juveniles

By the provisions of the law, no child shall be ordered to be imprisoned, and no young person shall be ordered to be imprisoned, if in the opinion of the court, he can suitably be dealt with in any other way whether by probation, fine, corporal punishment, committal to a place of

⁵⁰ Alemika EEO and Chukwuma IC, *Juvenile Justice Administration in Nigeria: Philosophy and Practice*, (Centre for Law Enforcement Education, 2001) p.10

⁵¹ Ibid

⁵² Ibid

detention or to an approved institution or otherwise.⁵³ A young person ordered to be imprisoned shall not be allowed to associate with adult prisoners.⁵⁴ The section thus forbids imprisonment of a child as defined under the law, but permits imprisonment of young persons, however, sparingly and only when other forms of non-custodial punishment or correction orders are not feasible. Section 13 of the Children and Young Persons Law (CYPL) is to the effect that pronouncement of the sentence of death against a juvenile is prohibited. He may, however, be committed to custody at the pleasure of the governor. Although the court may not order the imprisonment of a juvenile where it is satisfied of his guilt, the court may adopt other measures such as dismiss the charge; or discharge the offender upon his entering into a recognizance; or discharge the offender and place him under the supervision of a probation officer; or commit the offender by a committal order to the care of a fit person; or commit the offender by a committal order to an approved institution; or order the offender to be whipped; or order the offender or the parent or guardian of the offender to pay a fine, damages or cost; or order the parents or guardian of the offender to give security for his good behavior;....The provisions of the CYPL are inclined more towards punishment against the rules of the Standard Minimum Rules of Juvenile Justice Administration. In this vein, it is submitted that the following aspects of the provisions are totally offensive.

- i) The continued retention of whipping in law violates international standards which classify it as degrading treatment;⁵⁵
- ii) parents and guardians are liable for the misbehaviors of their children and wards,⁵⁶ and
- iii) a charge against a juvenile offender can be dismissed even after the court is satisfied as to his guilt.⁵⁷

It need not be over-emphasized that the continued retention of the punishment of whipping, is not only barbaric but also runs, afoul of international standards. It is akin to the recent introduction of Islamic or Shariah law in parts of Northern Nigeria. Under that system of criminal justice, some punishments prescribed are inimical to the reformation and welfare of juveniles. Evidence of this, is the outcry that followed a bizarre incident which was widely reported in the media. In January 2001, a young girl, Bariya Ibrahim Magazu, whose age was variously put at between 13 and 17 years, was subjected to 100 strokes of the cane in public in Zamfara State of Nigeria, after she gave birth to a child without being married.⁵⁸ This is one of the worst atrocities that can ever be meted out to a juvenile. Yet, this is the way we live. We only pay lip service to the laws in the statute books without lifting a finger in implementing the provisions of the law. Again, what is the justification for holding the parents and guardians of a juvenile liable or responsible for the 2020 misbehaviors of their children and wards respectively? This practice runs contrary to the established principle of our criminal jurisprudence that one cannot be held responsible for the crime of another person. Or, how would a parent prevent the misbehavior of a juvenile if that child is beyond parental control? This is one of the deficiencies of the juvenile criminal justice administration in South East Nigeria and needs to be addressed.

⁵³ s. 12 (1) & (2) CYPL

⁵⁴ s. 12(3)

⁵⁵ s. 14 (f)

⁵⁶ Section 14 (g) CYPL

⁵⁷ s.14 (a) CYPL

⁵⁸ David-West T, „Sharia & Paternity Test: The Case of Bariya Magazu“ (2001)

<nigeriaworld.com/feature/publication/david-west/020100/html > accessed on 3 January

Determination of the Age of Juveniles

The age of the juvenile can be determined primarily by production of his birth certificate or other direct evidence as to his date of birth. In the absence of such certificate or other direct evidence, the court will resort to a certificate signed by a medical officer in the service of the government, giving his opinion as to such age, or declaration as to the age of the juvenile.⁵⁹ The determination of the age of the juvenile, is very important for various reasons among which is that the court shall not pronounce or record a death sentence on any person who has not attained the age of seventeen years. In *Modupe v The State*,⁶⁰ it was held that by virtue of section 368 (3) of the Criminal Procedure Act, if the evidence on record shows that at the time the offence was committed, an accused charged with capital offence has not attained the age of 17 years, it will be wrong of any court not only to sentence him to death, but also to even pronounce such sentence. If the trial judge felt that the accused put his age rather low, he was at liberty to adjourn the case and call a medical witness to testify to the age of the accused.

For lack of functional official birth registration in Nigeria, whenever there is controversy as to whether a suspect is an adult or a juvenile, it has not been easy for the police to determine the true age of an accused offender. In most cases, they arbitrarily put the age of such persons above 17 or 18, in order to validly deal with the person. One of our findings in the course of writing this paper was that police officers often deliberately falsify the ages of juveniles in order to pass them off in court as adults, in order to avoid adhering to the legal requirements for their treatment. The police are quick to wash their hands off these juveniles by rushing them to court so that the court can order them to be remanded in prison custody.⁶¹ This practice is more rampant in South East Nigeria where borstal or remand homes are not available. We also found that some children in prison custody claimed that the police never asked them about their ages while others said that they were compelled to exaggerate their ages and when they refused, the police just inserted any age above 20 years for them. In other cases, the police simply refused to accept their ages and insisted that they were above 18 years and wrote their ages as such.⁶²

Bail of Juvenile Offenders

Under Section 3 of the CYPL, a juvenile offender apprehended with or without warrant and cannot be brought forthwith before a court of summary jurisdiction, shall be released. Such release may be on recognizance entered by him or by his parents or guardians with or without sureties. This bail condition however, does not apply to a juvenile (a) if the charge is one of homicide or other grave crime; or (b) it is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute; or (c) the officer who arrested him has reason to believe that the release of such a person would defeat the end of justice. The condition under (c), appears too unmitigated and may be used to unnecessarily deny bail to young offenders.

⁵⁹ s. 6 (5) CYPL

⁶⁰ *Modupe v The State* (1988) 4 NWLR (pt 130) 50

⁶¹ Onwubiko E, "Nigeria, Govt. Orders Probe of Four-Old-Boy's Detention by Police (2001) <allafrica.com/stories/200108130172.html> accessed on 29 September, 2019

⁶² Ibid

Pre-Trial Custody or Detention

Where a young offender is not released on bail pending trial, the CYPL provides that: The police officer to whom such a person is brought, shall cause him to be detained in a place of detention provided under this law until he can be brought before a court. The police officer may not detain the juvenile if he can certify that it is important not to do so; or that he is of unruly or depraved a character that he cannot be safely so detained; or that by reason of his state of health or his mental or bodily condition, it is inadvisable so to detain him.⁶³ In detaining a juvenile, it shall be the duty of the police officer to make arrangements for preventing, so far as practicable, a juvenile while in custody, from associating with an adult charged with or convicted of an offence.⁶⁹ This provision is to prevent the criminal contamination or indoctrination of young offenders by adult criminals. Such measures are also desirable for the protection of young offenders from abuse and exploitation by adult criminals. However, in practice, this provision is not always enforced.

Nigerian correctional Service, especially those in South East Nigeria, contain a large number of young offenders, and they are often not separated from adult inmates on the basis of age or other relevant classifications. In Onitsha prison in Anambra State for example, there are, at the time of writing this paper, 19 juvenile inmates and even though a separate enclosure is provided for them for sleeping purposes mainly, during the day, they mingle with adult inmates of the Correctional facility.⁷⁰ There is also no separate detention facility for juveniles in Enugu and Awka prisons. The one that exists in Owerri prison is akin to the one in Onitsha prison. The result is that the principle of reforming and protecting juveniles and shielding them from being influenced and corrupted by adult criminals is defeated. They come out, whenever they do, more hardened and more criminal-minded than they were when they went in. The reason for this is that juvenile suspects are kept for long periods in company of adult suspects without trial.

The prisons are congested so juveniles are usually not separated from adult, hardened criminals, contrary to the provisions of the law. Juveniles thus face all the hazards and dehumanizing conditions of incarceration including poor feeding and clothing, exposure to disease, and the risk of physical and sexual abuse.⁷¹ For example, a female inmate at the Onitsha prison who is awaiting trial for murder gave birth to a baby girl eleven months after she arrived at the prison. A more startling example which grossly detracted from the fundamental philosophy of juvenile justice administration occurred in July 2001, when newspapers reported that the Police in Lagos had arrested a four-year-old boy for breaking the windscreen of a neighbor's car. The law enforcers, contrary to the provisions of the law and international best practice, not only kept the infant in the police station for two days, but also forced him to do manual labour.⁷²

⁶³ s. 4 (1) (a)(b)(c) and s. 423 Criminal Procedure Law Cap 37, Revised Laws of Anambra State of Nigeria, 1991 ⁶⁹ S. 5, CYPL ⁷⁰ Ibid. n. 65.

Conclusion

The administration of criminal justice for adults in Nigeria is already debilitating, with insufficient facilities, overcrowded prisons; long time spent awaiting trial, and gross inefficiencies in handling cases. The fact that juveniles are somehow incorporated into this system that is inhumane even for the adults is unacceptable. While

Nigeria's legal instruments recognize the existence of juveniles within the framework of criminal justice, provisions have not been made to deliver on these laws leaving child offenders lost in a repressive and highly punitive system that offers no rehabilitation.

There is an urgent necessity to employ more social workers in every state, so as rehabilitate individual juveniles and this will in turn, facilitate the juvenile justice system to be more efficient. There should also be a major tilt from trial to prevention and this can be achieved when government, religious bodies, Nongovernmental Organizations and the entire society establish programmes that will enlighten juveniles on abstinence from crimes. This also involves the psychosocial development of a child to abstain from crime and related offences.

The CRA needs to be speedily implemented by Federal and State governments. Implementation of the CRA goes beyond the adoption of the Act in legislative houses but also requires the establishment of the structures, and abiding by procedures called for in the Act. There is also need to provide education and training to officials involved in the administration of juvenile justice (this was also called for by the CRA). Separate structures, need to be established for juveniles, and the focus of juvenile justice administration should be on total rehabilitation, not retribution. In addition, government should partner with parents and NonGovernmental Organizations to reduce the rate of juvenile crime. The government can reduce frustration by ensuring that opportunities exist for employment, security, and development in an effort to reduce juvenile crime as there would be little motivation for juveniles to commit crime.

Juvenile institutions should be made a substitute to homes, for juveniles as it is intended. The need for a spacious accommodation cannot be overemphasized. Each inmate should have a bed, well dressed with mattresses and beddings. Such accommodation should also be mosquito free. Corporal punishments (where they are used as a control device) should stop. Instead, positive reinforcements should be utilized. Corporal punishments only endanger hostility between the juveniles and the administering agents in the institutions.

The 'iron wall' that is built between the juveniles and the community, where they are supposed to return to at the end, is very inappropriate. More damaging, is the total loss of contact with parents, guardians and other relatives. So, efforts should be made to see that inmates see their parents or guardians and other relatives at least twice a month, if not each week. After all, as Article 17(3) of the ACRWC urges, 'the essential aim of treatment of every child during trial and also if found guilty of infringing the penal law shall be its reformation, Reintegration into its family and social rehabilitation'.

⁷¹„NIGERIA: Focus on the Administration of Juvenile Justice“ (2002) <www.irinnews.org/report/33926/nigeria-focus-...> accessed on 3 November 2019 ⁷²Onwubiko E, "Nigeria, Govt Orders Probe of Four-Old-Boy's Detention by Police (2001) <allafrica.com/stories/200108130172html> accessed on 29 September, 2012

Both the federal and state governments should financially invest in the juvenile justice system in Nigeria so as to rehabilitate and restore juvenile delinquents. It is also recommended that juveniles must not be transferred to an adult court and that the economic, social, psychological, academic rights and status of every Nigerian child must be guaranteed by the government in order to secure an effective procedure mechanism of juvenile trials under the Criminal justice administration.