

*Memorial Lecture Series*

**RE- EVALUATING THE JUVENILE/CHILD  
JUSTICE SYSTEM IN NIGERIA**

*By*

**Professor Oluyemisi Bamgbose**  
*Faculty of Law, University of Ibadan*

**Text of the 2014 Professor Jadesola Akande  
Memorial Lecture**



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MONOGRAPH

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## Foreword

The Institute has immortalized through its public lectures eminent Nigerian jurists who during their lifetime made monumental contributions to the development of the law. One of such jurists was the late Professor Jadesola Akande. Topics of previous lectures traditionally focused on constitutional law and the rights of vulnerable groups. This year's lecture which examines the Juvenile Justice System in Nigeria is delivered by Professor Oluyemisi Bamgbose, a Professor of Criminal Law, Criminology, Law of Evidence and Comparative Criminal Law and Procedure at the University of Ibadan, Ibadan, Nigeria.

Juvenile Justice is an aspect of Criminal Law that is not given the attention it ought to receive. The Juvenile Justice System focuses on the rights and welfare of children and young persons who are vulnerable groups in the society. Children are a special gift from God and the pride of every parent. Unfortunately, despite their 'special position' in the family and the societies as a whole, children have in the course of history been abused, neglected, abandoned and treated unkindly in Nigeria and in other developing and under developed societies. There is therefore an urgent need for the Juvenile Justice System in Nigeria to be re-evaluated and given more precedence in the Administration of Criminal Justice. Thus, it is not far-fetched that Professor Oluyemisi Bamgbose has focused most of her renowned academic publications on the area of Juvenile Justice.

In her lecture, titled '*Re-evaluating the Juvenile/Child Justice System in Nigeria*', Professor Bamgbose begins by examining the history of the Administration of the Juvenile Justice System which she traced to as far back as 2270 BC. The modern Juvenile Justice System which she describes as a relatively recent invention is traced to the late 1800s. In the

history of the Juvenile Justice System in Nigeria, the extended family system and the traditional community structure played a vital role.

The modern Juvenile Justice System in Nigeria is mostly governed by National Statutes and International Instruments. These include the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Children and Young Persons Act/Law, the Child's Rights Act/Laws, the Declaration on the Rights of the Child, The Convention on the Rights of the Child and the African Charter on the Right and Welfare of the Child. The features of the modern Juvenile System in Nigeria include the role the definition of a child plays in juvenile justice administration, the Juvenile Court in Nigeria, the jurisdiction of the Juvenile Court and the procedures in the Juvenile Court. The agencies, institutions and persons responsible under the Juvenile Justice System in Nigeria are identified as the police, the court and the prisons.

The lecture proceeds with a comparative discourse of the Juvenile Justice System of England and the United States of America. She explains that these jurisdictions are highlighted because their Juvenile Justice Systems have similar historical features with Nigeria. Professor Bamgbose concludes that although the Nigerian Juvenile Justice System is undergoing reforms, a lot remains to be done. There is need to re-evaluate the laws, implement the provisions of child's rights legislations, re-evaluate the layout of the family court, and position the interest of children and young persons over religious and cultural interests and sentiments. Also a proactive action on the part of Government will enhance the Juvenile Justice System.

This well researched lecture provides the much needed opportunity for refocusing on the Juvenile Justice System in Nigeria. Professor Oluyemisi Bamgbose is undoubtedly a leading authority in the Juvenile Justice System. I recommend

this book to judges, magistrates, lawyers, the police, children, policy makers, legislators and everyone involved in administration of juvenile justice in Nigeria.

**Professor Adedeji Adekunle**  
*Director-General*  
*November, 2014*

## RE-EVALUATING THE JUVENILE CHILD JUSTICE SYSTEM IN NIGERIA

### INTRODUCTION

Children form an integral part of any society. Children are special gifts from God. They are to be protected, guided and guarded. It is not in doubt that they constitute one of the most vulnerable and powerless members of the society.<sup>1</sup> Okonkwo also stated that they require gentle handling and special attention in the protection and promotion of their interests, welfare and rights.<sup>2</sup> The United Nations at the Seventh Congress approved the Standard Minimum Rules for the Administration of Juvenile Justice in 1985. In the preamble, it is stated that the United Nations recognizes:

*That the young, owing to their early stage of human development, require particular care and assistance with regard to physical, mental and social development and require legal protection in conditions of peace, freedom, dignity and security.*

At the regional level, the African Charter on the Rights and Welfare of the Child<sup>3</sup> reiterated the above statement.

However, despite this special position, the child has, throughout the history of mankind, been abused, treated unkindly and suffered violation of rights. This is one of the world's social problems and it has attracted serious concerns. As far back as the 2270 BC, references were made generally

1. Okonkwo C O (1997) *Administration of juvenile justice in Nigeria-Constitutional Rights Project.*
2. *Ibid.*
3. OAU DOC CAB/LEG/24.9/49. 1990 Entered into force November 29 1999.



to children and young persons in laws and the law provided for ways of dealing with erring children. This did not mean that at that period in time there was a separate law or system for this category of persons within the society.

The Code of Hammurabi over four thousand years (4000) ago in 2270 BC included references to runaways, children who disobeyed their parents and those who cursed their fathers.<sup>4</sup> The Roman Civil Law and the Church Law over 2000 years ago distinguished between juveniles and adults based on the age of responsibility.<sup>5</sup> Early Jewish Law, the Talmud gave conditions under which immaturity was to be taken into account in giving punishment.<sup>6</sup> Bernard in his book also stated that Moslem Law provided for leniency in awarding punishment to a young offender and they were also not to be punished to death.<sup>7</sup> Under the Roman Law, children under the age of seven were classified as infants and not criminally responsible. The Anglo Saxon Common Law of the 11<sup>th</sup> and 12<sup>th</sup> Centuries in England, influenced by Roman Civil Law made reference to American Juvenile Justice because it has its roots in English Common Law.<sup>8</sup> The provisions on ways of dealing with children were based in part on the idea that young offenders were particularly malleable and would be more responsive than adults to individualized treatment efforts.<sup>9</sup>

The modern Juvenile Justice System is a relatively recent invention as the history can be traced to the late 1800s. This was a period in the history of Britain, that crimes and

4. Lawrence R & Craig Hemmen. (2008) 'History and Development in Juvenile Justice: A text/reader.' Chapter 1 Sage Publishing co. Retrieved from [http://www.sagepub.com/upm\\_data/19454\\_section1\\_pdf](http://www.sagepub.com/upm_data/19454_section1_pdf).
5. *Ibid.*
6. *Ibid.*
7. Bernard (1992) *The Circle of Juvenile Justice*. New York: NY: Oxford University Press.
8. Lawrence R & Craig Hemmens 2008 (*supra*)  
9 Taylor T. *The Juvenile Justice System: Oxford bibliographies online Research guide*. Oxford University Press.

misbehavior by children and the young were redefined as separate and distinct from adult offending.<sup>10</sup>

In Nigeria, at the Federal and State levels, steps have been taken and are still being taken to ensure that the rights of children and young persons are enforced in order to meet the international standards on the rights of the child as provided for by the United Nations and other International and Regional bodies. Despite all the efforts at the various levels, children and young persons are yet to be properly positioned. The protection of children is still an issue of concern.

The starting point in this lecture is to give it a proper title in compliance with the applicable laws relating to children and young persons in Nigeria. While at the Federal level, the applicable law is the Child's Rights Act 2003, in some states of the Federation, the Child's Rights Law applies. In some other States, it is the Children and Young Persons Law that is still applicable. Under the Child's Rights Act and the Child's Rights Law, the child is only to be subjected to the Child Justice System. In States where the Children and Young Persons Law apply, the child comes under the Juvenile Justice System. Therefore, this paper will be considering the reevaluation of both the Child Justice System and the Juvenile Justice System.

The highlights of this paper are the Juvenile Justice under the traditional societies in Nigeria, the modern Juvenile/Child Justice System in Nigeria, a discourse of Juvenile Justice in selected jurisdictions, a re-evaluation of the Juvenile/Child Justice System in Nigeria and finally, the recommendations and conclusion.

10. Whitehead J.T & Lab S.P (2006) *Juvenile Justice: An Introduction 5th Edition*. Lexis Nexis: USA Pg 1.

## TRADITIONAL JUVENILE JUSTICE PARADIGM IN NIGERIA

Under the traditional Nigerian system, the child is regarded as the pride of the family. This is depicted in the names given to the child and in proverbs and idioms amongst the people. For example, amongst the Yorubas it is said that "omo ni'n fidi ebi mule", which means that a child is instrumental to establishing a lasting family.<sup>11</sup> It is stated that the Igbos have a saying to show that high premium is placed on children.<sup>12</sup> The saying "o nweghi onye na - anu akwa nwanta ghara iga ku ya" meaning no one hears the cry of a child without going to his or her aid, also points to the prominence attached to children by the society.<sup>13</sup>

This fact was recognized in the African Charter on the Rights and Welfare of the Child.<sup>14</sup> The fifth preamble of the regional document states thus:

*"Recognizing that the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his personality, the child should grow in a family environment, in an atmosphere of happiness, dignity and security"*

Prior to colonization, the territory now known as Nigeria consisted of small traditional communities. The communities overtime, expanded due to many factors which included

11. Ayoade MT (2012) 'Juvenile Justice System in Nigeria: A Case Study of Juvenile Correctional Institutions in Oyo State.' An unpublished paper submitted to the Faculty of Law.

12. *Ibid.*

13. *Ibid.*

14. OAU DOC CAB/LEG/24.9/49. 1990 Entered into force November 29 1999.

marriage and conquest. The different communities which still exist today were governed by their customs and customary laws which varied from one community to another. Through the customs and customary laws, the communities administered their criminal justice which was enforced by social pressures. Pre-colonial Nigeria witnessed little or no juvenile related offences. Cases of children beyond parental control were rarely heard of. Children abandoned or found wandering without any family tie was rare. This was due to several factors. One crucial factor was the extended family system and the traditional community structure. The extended family system ensured that all family members were responsible for the training of and upbringing of a child.

The family is a highly valued institution in Nigeria. The modern system of one wife, husband and children did not exist. The traditional family was a close knitted family system. Generally, the traditional communities curtailed delinquent acts of children and crime through religious and social values and systems which were known and acceptable by members of each community and religion.

In the southern part of Nigeria, the different beliefs, norms and values of the people formed the customary law. These were unwritten and passed on from one generation to another.<sup>15</sup> In the Northern part, the Sharia system formed the basis of the law on the administration of justice and the tenets of the *Quran* governed the administration of justice.<sup>16</sup>

Generally, the traditional systems took account of wrong behavior which could be a criminal or civil wrong. Children generally were taught from childhood and made amenable to elders and older persons in the community. It was therefore not uncommon to discover that at one time or the other, a child would have been disciplined by an extended member of the

15. Obilade A.O (1979) *Nigerian Legal System*. Sweet and Maxwell: London

16. *Ibid.*



family, a neighbor or an older member of the community or would have been corrected or given a piece of advice for an act or omission considered as a misconduct. It should however be noted that children were not only corrected or disciplined, but children found to be of good conduct were encouraged to continue to be of good behavior and used as examples of what a good child should be. Various methods of social control were used. These include oral instructions, advice, persuasion, examples and punishment.

Summarizing the treatment of children under the traditional system, it can be stated thus. It was not problematic. It was guided by traditional standards and values. The standards were informal and well understood and obeyed. According to Bamgbose, the extended family system was looked upon to find solution to the social problem arising out of anti-social activities and the family regarded it as a shame and stigma for any of its offspring to violate societal norms.<sup>17</sup>

When a matter involving a child is to be addressed and it is a minor issue, the composition of the people to sit on the matter does not extend outside the family. However in more serious issues and when the matter extends beyond the community, like where a non family member is involved, the composition of those to address the matter extends beyond the family. In such cases, elders and community leaders may be involved. In the former case, the family head presides or facilitates the hearing with the assistance of other elders in the family. However, in the latter case, the community head and community elders sit to decide on the matter. The focus of the sitting is rehabilitation and not retribution. This type of proceeding is based on the principle that the nurturing,

training, supervision and discipline of children were the collective duties of parents, extended family members and the community as a whole. This is the philosophy of the people, the society and the community.

The venue of such a hearing also depends on the nature of the matter. Where the misconduct relates to a family matter, the hearing takes place in the family court yard while more serious cases are held in the village square or town hall. Cases, whether at the family or community levels more often than not are heard in the late afternoons as most traditional societies were agrarian in nature and petty trading was also known to exist. The timing was to enable persons attend to their means of sustenance. Hence the saying "*owuro lojo*" literally interpreted that the day time is very precious.

The procedure adopted is most times very informal and simple. No technicalities are involved. In cases where the misconduct of the child is attributed to neglect or lack of discipline or supervision on the part of the parents, such parents are admonished.

Treatment of young offenders under the traditional paradigm included warning, canning, community service and restitution. Custodial treatments as it is provided for by modern juvenile justice laws, where children are removed from their family or social setting into confinement and in the hands of strangers was not known. It should however be pointed out that where the parents are found to be totally incapable of taking care of a child who has been involved in a misconduct, there may be a decision that the child should be taken care of by a close family member and the parents would still have access to him or her. It is never the practice to estrange children to total strangers.

Generally, there were striking similarities in the traditional method of handling cases and issues involving children in different communities within Nigeria in particular and Africa

17. Bamgbose Oluyemisi (1991) 'Juvenile Justice System in Nigeria. A case for urgent Reform' in Akinyele I O et al (eds), *Economic and Democratic Reforms in Nigeria's Development*. Ibadan: Tenton Book Makers for Society for International Development and Friedrich Ebert Foundation, p 45.

as a whole. The structure of the traditional justice paradigm was well captured by Melton<sup>18</sup> thus:

*Conflicts are not fragmented nor is the process compartmentalized into pre-adjudication, pretrial adjudication and sentence.*

According to her, this hinders the resolution process and delays restoration of relationship and communal harmony.<sup>19</sup> On the adjudication method adopted under the traditional paradigm, Melton further stated thus:

*The contributing factors are examined, underlying issues addressed and all involved and affected by the problem participate in the process. An individual's misconduct affects the wider kins-group and the offender and kinsmen are held accountable and responsible for correcting the behavior and repairing relationship.*<sup>20</sup>

The need for probation officers did not arise under the traditional juvenile justice system. Compliance with sanction was effectively monitored by family members and community members.

18. Melton Ada Pecos (2005) 'Indigenous Justice System and Tribal Society' in Wanda D McCaslin, (ed.), *Justice as Healing: Indigenous ways, writing on community peacemaking and restorative justice from the native law center*. St Paul MN: Living Justice Press 108-120.

See also Melton AP (1989) *Traditional and Contemporary Tribal Law Enforcement: A comparative analysis*. Paper presented at the Western Social Science Association, 31st Annual Conference in Albuquerque, New Mexico.

19. *Ibid.*

20. *Ibid.*

The traditional societies in Nigeria still maintain the simple and informal system for addressing delinquent and protection cases involving children and young persons.

## HIGHLIGHTS OF THE MODERN JUVENILE/CHILD JUSTICE SYSTEM IN NIGERIA

The Juvenile Justice System also known as the Child Justice System in Nigeria<sup>21</sup> is expected to emphasize the wellbeing of the child and young person, while at the same time ensuring the protection of their rights to due process, fair hearing and privacy. The Juvenile Justice System comprises all those involved in dealing with children and young persons, the relevant agencies and institutions working towards the same goal.

The family plays a vital and major role in the training of a child. Under the traditional systems in Nigeria, this role was not contested. It was accepted and it was the norm. At a point in history, the traditional approach to the protection of juveniles proved inadequate as a result of growing complexities arising from urbanization, civilization and migration.<sup>22</sup>

The modern juvenile/child justice system in Nigeria cannot be adequately discussed without reference to the English Legal system. This is discussed in details later on in this lecture. However, it suffices to note that with the advent of the Europeans into the territory now known as Nigeria and the expansion of the traditional communities, the laws governing the people and the administration of justice became more complex. At first, customary laws of the different communities

21. Section 204 Child's Rights Act 2003; Section 192 Child Rights Law, Laws of Lagos State.

22. Bamgbose Oluyemisi (1991) 'Juvenile Justice System: A Case for urgent reforms' *Op cit* note 17.



continued to exist alongside with the English laws introduced by the British.

The treaty of cessions was in 1861. The colony of Lagos in what became Nigeria was ceded to the British crown under this treaty. In 1862, the British administration made Lagos a British colony and in 1863 introduced the English law into the colony of Lagos. The Common Law of England, doctrines of equity in force in England, statutes of general application were laws introduced by the British administration into the new colony with the existing complex traditional laws of the diverse communities. In 1906, the Southern Protectorate merged with the colony of Lagos and in 1914, there was the amalgamation of the Northern Protectorate which resulted in the emergence of the country, Nigeria. Nigeria became a Federation by the Nigeria Order-In-Council (Statutory Instrument) No 1146 of 1954 with three regions and a Federal Capital Territory of Lagos.

Before this time in the history of Nigeria, there were certain developments taking place in England which later affected the legal system in Nigeria in general and the juvenile/child justice system in particular. The developments are extensively discussed later. However, it is instructive to highlight some of them for a proper understanding of the modern juvenile justice system in Nigeria. Foremost is the enactment of the 1908 Children's Act which established the Juvenile Court in England, the 1932 Act that broadened the powers of the court and the 1933 Children and Young Persons Act (CYPA) which is the foundation of the juvenile/child justice legislations in Nigeria.

The modern juvenile/child justice system is statutorily founded on the Children and Young Persons Ordinance enacted in 1943.<sup>23</sup> This Act was a transplantation of the

23. Ordinance No 41 1943.

English 1933 Act. The 1943 Act in Nigeria was to make provisions for the welfare of the young offenders and the establishment of the Juvenile Court in Nigeria. Enacted as chapter 32 of the Laws of the Federation and Lagos of 1952, provision was made for its adoption as a regional law, when Nigeria was divided into regions. It is important to note that issues relating to the welfare of children and young persons, the treatment of young offenders and the establishment of the Juvenile Court are on the residual list in the Nigerian Constitution.<sup>24</sup> The implication is that it is only the State that can legislate on matters affecting children and young persons in Nigeria.

After the enactment of the 1943 Children and Young Persons Act, the different States of the federation either adopted the Act or enacted it as laws in the States with minor variations in the provisions. It is apt to state that while the States comprising the South of Nigeria had their individual laws, in Northern Nigeria, the States of the old Northern region enacted its law which was Children and Young Persons Law Cap 21 of the Laws of Northern Nigeria 1963. With the creation of more States from the Northern region, each State enacted its own laws.<sup>25</sup>

a. **The Enactment of the Child's Rights Act 2003 and Applicable Laws in the States**

In 2003, there was a giant stride in the development of the law relating to children and young persons in Nigeria. This was with the enactment of the Child's Rights Act (CRA) 2003 in Nigeria. This enactment was pursuant to Nigeria being a signatory to the Convention on the Rights of the

24. Sections 7(a) and 7 (b) 1999 Constitution of the Federal Republic of Nigeria, Cap C23 LFN 2004.

25. See CYPA cap 26 Laws of Yobe State. (formerly Cap 1 Laws of Borno State) see also CYPA cap 22 Laws of Kano State 1983.

Child (CRC)<sup>26</sup>. The Convention was adopted in 1989 by the United Nations General Assembly, which stated that State parties should adopt legislative measures to give effect to the Convention. Nigeria signed the Convention in 1991. The Child's Rights Act is therefore a domestication of the Convention of the Rights of the Child.<sup>27</sup> Nigeria is also a signatory to the African Charter on the Rights and Welfare of the Child<sup>28</sup> which the Organization of African Unity Assembly of Heads of States and Government adopted in July 1990. It entered into force on 29 November 1999 and Nigeria signed it in 2000. Both international instruments contain universal sets of standards and principles for the survival, development, protection and participation of children. In May 2013, twenty-four States of the thirty-six States in Nigeria adopted the Child's Rights Act as law<sup>29</sup> According to a 2014 report; only twenty-six States have either adopted or enacted the Child's Rights Act as laws in their States.<sup>30</sup>

The Child's Rights Act is a comprehensive legislation on the welfare, treatment of children and the establishment of the Juvenile Court. In States that have adopted or enacted the

Child's Rights Act as law, the Children and Young Persons Laws have been repealed. However, States that have not enacted the Child's Rights Law still use the Children and Young Persons Laws of the State.<sup>31</sup>

The States that have enacted the Child's Rights Laws are Abia, Akwa-Ibom, Anambra, Bayelsa, Benue, Cross-River, Delta, Ebonyi, Edo, Ekiti, Imo, Jigawa, Kwara, Kogi, Lagos, Nassarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Taraba and two other States in the Federation. In these States, issues relating to the child are subjected to the Child Justice System. Some States like Yobe and Bauchi in Northern Nigeria have the Bill before the House of Assembly, while others are yet to take any proactive step. All these states still apply the Children and Young Persons Laws of their States. The issues relating to the child are subjected to the exclusive jurisdiction of the child justice system<sup>32</sup> in the States where the Child's Rights Act and Child's Right Laws operates.

The history of the enactment of the Child's Rights Act in Nigeria is long and complex as it met with a lot of opposition. The genesis of the enactment could be traced to 1988, when the Nigerian Chapter of the African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) a nongovernmental organization, a few government agencies and UNICEF organized a conference to look into the issue of protecting the Nigerian child. The draft Child's Rights Bill produced after the conference was aimed at enacting as law in Nigeria, the principles in the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

26. GA RES 45/25 of 20 November 1989; entered into force on 2 September 1990.
27. Bamgbose Olujemisi (2008) Unpublished Lecture notes on Juvenile Justice System in Nigeria, Saint Louis University of Law, Saint Louis, Missouri USA Fall Semester
28. OAU DOC.CAB/LEG/24.9/149 (1990) entered into force November 29 1999
29. Aminu Augustine (2013) 'FIDA Chairperson calls for Domestication of Child's Rights Act,' Daily Times. Retrieved in <http://www.dailytimes.com.ng/article/fida-chairperson-calls-domestication-child-Rights-Act> Accessed 30/10 14.
30. Ezeamalu Ben (2014) Nigeria's Childs Rights Act non-functional, activist says. Premium Times of May 27, 2014. Retrieved in <http://www.premiumtimes.ng.com/news/161510-nigerias-child-rights-act-non-functional-activist-say.html>. Accessed on 30/10/14.

31. See Children and Young Persons Law of Yobe State; Children and Young Persons Law of Bauchi State.
32. Section 162 and 204 Child's Rights Act; See also sections 151 and 192 of the Child's Rights Law, Laws of Lagos State 2007.



The draft bill could not be passed at the National Assembly due to oppositions based on religious, customary and cultural grounds.<sup>33</sup> The review of the rejected draft bill by a committee set up for the purpose was again rejected by parliament on several grounds and in particular, the clause setting the minimum age at eighteen years. This was opposed, especially because it was said to be incompatible with religious laws.<sup>34</sup> In an article titled "Muslim Council in Nigeria Protest Child's Rights Act", the Supreme Council for Sharia in Nigeria said that any law that seeks to give equal rights to male and female children in inheritance, seeks to give an illegitimate child the same right as a legitimate one and an established Court (family court) that ousts the jurisdiction of a Sharia Court on all matters affecting children, is unacceptable to Muslims.<sup>35</sup>

The Child's Rights Act is a great improvement and comprehensive law. However, there is room for improvement hence we have attempted a re-evaluation of the legislation.

**b. Relevant National/ State Laws and International Laws/ Instruments in the Juvenile/Child Justice System**

There are various national and regional laws and International laws and instruments that govern juvenile/child justice system in Nigeria. Highlights of these laws and instruments and their effects will be useful in reevaluating the juvenile/child justice system.

**1. National/ State Laws**

These are laws that are enacted at the National Assembly or at the State House of Assemblies

**i. Constitution of the Federal Republic of Nigeria 1999 as Amended<sup>36</sup>**

The Constitution is the supreme law in Nigeria. It takes precedence over all laws in the country. Any law which contravenes the provisions of the Constitution is to that extent null and void. With regard to some provisions of the Constitution, it refers to all persons irrespective of whether the person is an adult, child or young person. Specifically, provisions on the fundamental rights in Chapter IV refer to all Nigerians irrespective of age, status, sex, religion.

In respect of children or young persons, there are some provisions specifically relevant to such category. Section 36 (4) (a) provides that juveniles should be excluded from public trials.

**ii. Children and Young Persons Act/Laws**

The primary law that governed the juvenile justice system in Nigeria was the Children and Young Persons Act/Laws. The Act, a product of colonial influence emphasized that welfare was to be the principal consideration in dealing with juveniles. All the States of the Federation enacted similar laws which governed the juvenile justice administrations within the States. This Act has now been repealed by the Child's Rights Act which Nigeria domesticated after being a signatory to the Childs Rights Convention 1990.

After Nigeria ratified the Child's Rights Convention which is a comprehensive international instrument on all matters relating to children, she domesticated it in Nigeria by the

33. Bamgbose O. (2008) unpublished Lecture notes, Saint Louis University School of Law, Saint Louis. Missouri, USA. Fall semester 2008

34. *Ibid.*

35. <http://www.allafrica.com/stories/20050823009.html>; see also [http://religionclause.blogspot.com/2005/08/muslimcouncil\\_nigeria\\_protest.htm](http://religionclause.blogspot.com/2005/08/muslimcouncil_nigeria_protest.htm) Wednesday August 24 2005.

36. Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010, C23 L.F.N. 2004.



enactment of the Child's Rights Act. This is a Federal Statute applicable to the Federal Capital Territory. The States were empowered to enact it as laws to be applicable in the State or as an alternative, make the Child's Rights Act directly applicable in the State. About twenty six States of the Federation including Lagos and Oyo have enacted the State Child Right Laws.

### iii. *The Criminal Code Act*

This Act is the primary code that governs criminal law; what constitutes crime and offences in Nigeria. A breach of the law of crime is governed by the Criminal Code Act. This Act has provisions which relates to children and young persons. For example, the age of criminal responsibility in Section 30 of the Act is fixed at seven years in Nigeria and it varies from one country to another. Sections 216, 217, 218, 219, 222, 222A, 222b, 225, 300- 301, 306, 307, 328 and 329 particularly deal with children. The Child's Rights Act<sup>37</sup> and the Child's Rights Law<sup>38</sup> recognize the continued application of all criminal law provisions securing the protection of the child whether born or unborn and also adopts the laws.

### iv. *Criminal Procedure Act/Criminal Procedure Code*

The Criminal Procedure Act<sup>39</sup> applicable in Southern Nigeria and Criminal Procedure Code in Northern Nigeria<sup>40</sup> governs the procedure in which criminal trials are conducted in the different regions. As much as children and young persons are not expected to come under the criminal justice system which is meant for adult offenders, there are certain instances when

they commit offences with adults and in very serious cases, may come under the criminal justice system. In such cases, the provisions of this law apply.

### v. *Evidence Act*<sup>41</sup>

The Evidence Act applies to all judicial proceedings in or before any court established in the Federal Republic of Nigeria.<sup>42</sup> However, there are exceptions.<sup>43</sup> The Juvenile Court/Family Court is not one of the exceptions. Sections 175 and 209 of the Act particularly apply to children.

### vi. *African Charter on Human and Peoples Right (Ratification and Enforcement) Act*

The above Act is a domestication of the African Union Charter on Human and Peoples Right. The Act provides for the protection of rights of all persons irrespective of status.<sup>44</sup> The fact that a person is a child does not exclude such a person from the provisions of the Act.

### vii. *Borstal Institutions and Remand Centers Act*<sup>45</sup>

This Act establishes Borstal Institutions and Remand Centers in Nigeria and provides for the regulation and governance of the institutions. The Borstal Institution is an institution which originated in Britain for offenders aged 15 to 21 to be detained for corrective training. In England, Borstals have been replaced by Youth Custody Center, now called a Young Offender Institution.<sup>46</sup> In Nigeria, they are still called Borstals or Remand Homes for persons between the ages of less than

37. Section 40 Child Rights Act.

38. See also Section 35 Child Rights Laws of Lagos State.

39. Chapter 80. Laws of the Federation of Nigeria 1990; Cap. C 41 LFN 2004.

40. Cap 30 Law of Northern Nigeria (as applicable in the different states) See

Cap 42. Law of Yobe State; cap 37 Laws of Kano State.

41. Cap E.14 2011.

42. Section 256.

43. *Ibid* (1) a-b

44. Article 2.

45. Cap B11 LFN 2004.

46. [www.thefreedictionary.com](http://www.thefreedictionary.com).

16 but under 21 for different categories of offences.<sup>47</sup> There are a few Borstal institutions located in different parts of the country. Therefore a committal to a Borstal Institution by a juvenile Court in a town where there is no Borstal, means transportation of the child to the Borstal institution nearest to it.

#### viii. Police Act<sup>48</sup>

The Legislation which is a federal statute applicable in all States is relevant under the juvenile justice system as children and young persons who come into conflict with the laws may be apprehended by the police as the first stage of entry into the justice system. Therefore, the process of arrest of an offender is covered under the Police Act and it is not restricted to an adult offender but applies to a child or young offender who infringed the law. The Child's Right Act has provisions that engage the police actively in the child justice system.

## 2. International Instruments

### i. Declaration on the Rights of the Child (DRC)

In 1959, the United Nations adopted the Declaration on the Rights of the Child (DRC), which affirmed the rights of children everywhere to receive adequate care from their parents and the community. The United Nations Declaration of the Rights of the Child (DRC) builds upon rights that had been set forth in a League of Nations Declaration of 1924. The Preamble notes that children need "special safeguards and care, including appropriate legal protection, before as well as after birth," reiterating the 1924 Declaration's pledge that "mankind owes to the child the best it has to give,"<sup>49</sup>

47. Section 3 (1) (a).

48. Cap P19 1990; Cap P. 19 Laws of the Federation of Nigeria 2004.

49. Library of Congress. Retrieved in <http://www.loc.gov/law/help/child-rights/international-law.php>. [Accessed on 16 November 2014].

### ii. Convention on the Rights of the Child<sup>50</sup>

It is an international convention setting out the civil, political, economic, social and cultural rights of children. It is the first international and legally binding document addressing a full range of human rights for children and young persons. It is the most widely ratified treaty in existence. Nigeria domesticated the convention as the Child's Rights Act 2003.

### iii. United Nations Standard Minimum Rules for the Administration of Justice (The Beijing Rules).<sup>51</sup>

The Beijing Rules is the first comprehensive attempt by the international community to look at the problem of children in conflict with the law from a human rights perspective. At the sixth United Nations Congress on Prevention of Crime and Treatment of Offenders in 1980, it was expressed that there is need for an internationally acceptable minimum standard for the development of a model standard minimum rules for the administration of justice for member States. This was to protect the fundamental human rights of young offenders. The draft was approved at the 7<sup>th</sup> United Nations Congress on crime and treatment of offenders in 1985 and became Beijing Rules.

It is a set of well thought out rules for dealing with young offenders. These Rules recognize that the Young owing to their early stage of human development, require particular care and assistance with regard to physical, mental and social development and require legal protection. This is an international rule that took note and affirmed the following:

50. GA RES 45/25 of 20 November 1989; entered into force on 2 September 1990. Nigeria signed without reservation on 26 January 1990 and ratified 19 April 1991.

51. GA RES 401.33 of 29 November 1985, adopted on that day.



*Placement of a juvenile in an institution as last resort; Juveniles deprived of liberty should be given special attention and protection of rights and wellbeing; Rules should be made readily available to juvenile justice personnel; Age of juvenile is under 18; consideration for the physical environment and accommodation of institutions to be clean, decent and that the food should be suitably prepared, of quality and quantity to satisfy standard of dietetics.*

**iv. United Nations Covenant on Civil and Political Rights<sup>52</sup>**

The instrument is aimed at promoting universal respect for and observance of human rights. Article 9 on right to liberty relating to arrest and right to dignity, Article 10 on separation of juvenile offenders from adult offenders and speedy trial and Article 14 on protection of a juvenile from public by keeping decisions relating to him or her private are particularly relevant.

**v. United Nations Rules for the Prevention of Juveniles Deprived of their Liberty<sup>53</sup>**

The instrument was motivated by concern over circumstances under which juvenile are deprived of their liberty, the vulnerability of such juveniles and was concerned on the non segregation of adult from young offenders. The Rules were therefore made to protect young people. The Rules took into consideration all other instruments relating to the child especially the Convention on the Rights of a Child, the ICC,

Political rights, Universal Declaration of Human Rights and other International Instruments relating to the protection of the rights and wellbeing of young persons and other rules on the treatment of offenders, United Nations standard minimum rules for the administration of juvenile justice.

**vi. African Charter on the Rights and Welfare of the Child<sup>54</sup>**

The Charter was modeled after the Convention on the Rights of a Child. It was adapted to meet African needs and culture of the African child. It contains provisions for the fair and human treatment of the African child who come in contact with the criminal justice system. Articles 2, 4, 5 and 17 are of particular relevance.

**vii. United Nations Guidelines for the Prevention of Juvenile Delinquent<sup>55</sup>(The Riyadh Guidelines)**

The instrument took into consideration all International Instruments relating to human, economic, political, social rights including Declaration of the rights of the child, the Convention on the Rights of a Child.

**viii. Administration of Juvenile Justice<sup>56</sup> (Vienna Guidelines)**

It provides an overview of the report received from government about how juvenile justice is administered in their countries. The document contains as an annex a draft of action on children in the criminal justice system at the meeting of experts in Vienna in February 1997. It provides comprehensive set of measures that need to be implemented in order to establish a functional system of juvenile justice

54. OAU DOC.CAB/LEG/24.9/149 (1990) entered into force November 29 1999.

55. A/RES/45/112 14 December 1990 (adopted as a preventive rather than curative mechanism for dealing with children in conflict).

56. UN Resolution 1997/30.

52. GA RES 2200A (XXI) of 16 December 1966 ratified by General Assembly on 16 December 1966, entered into for 23 March 1976.

53. GA RES 45/113 of 14 December 1990.



administration. In this guideline of Action, earlier international guideline including the Beijing Rules, the Riyadh guidelines and the United Nations Rules for the protection of Juveniles Deprived of their Liberty, are all together referred to as the United Nations Standards and Norms in Juvenile Justice.

*ix. The United Nations Rules for Non-custodial measures (Tokyo Rule)<sup>57</sup>*

For this rule, Article 4.1 is the relevant provision.

**Highlights of Some Features of the Modern Juvenile/Child Justice System**

*a. Definition of a Child*

The definition of a child in Nigeria had been a problematic issue. The use of age has been used to define a child for different purposes.<sup>58</sup> However, different legislation had different ages. For example, the Immigration Act 89 provides that a person below the age of sixteen is a minor. Prior to the Child's Rights Act, in Southern Nigeria, under the repealed Children and Young Persons Act or laws, a child was a person who had not attained the age of fourteen while young persons are those that are fourteen but under seventeen years of age.<sup>59</sup> In Northern Nigeria, under the Children and Young Person Laws 1963, Laws of Northern Nigeria, prior to the Child's Rights Act, the young person is a person who has attained 14 years but has not attained 18 years.<sup>60</sup>

However, this problem has been solved to an extent under the Child's Rights Act and in the laws that have been enacted subsequent to it. Under the Act and in some States like Lagos

57. RES 45/110 of 14 December 1990.

58. See *Labinjo v. Labake* 1924 5 NLR p.3.

59. See Section 2 of the Children and Young Persons Laws of Lagos State (Now repealed). Cap I, LFN 2004.

60. Section 2 caps 21 Laws of Northern Nigeria 1963. See also Section 2 Cap 22 of the Children and Young Persons Law of Kano State.

and Ogun, a child is any person under the age of eighteen years.<sup>61</sup>

This is in accordance with the definition of a child under the 1999 Constitution.<sup>62</sup> In other States like Akwa Ibom State, a child is a young person under the age of sixteen years.<sup>63</sup> The problem is not totally solved as some States in the Northern part of Nigeria are contending that a child ceases to be a child once the person reaches puberty. In the case of a female child, this is when the menstrual flow starts.<sup>64</sup> This position is being contended by child activists as an abuse.

*b. Juvenile/Family Court in Nigeria*

The Juvenile Court established under the Children and Young Persons Act, now known as the Family Court under the Child's Rights Legislation at Federal and State level has the same philosophy, as the Juvenile Court in England. It was established to protect the children and young persons and ensure their welfare.

The guiding philosophy behind a separate justice process is the desire to treat children and young offenders with a certain degree of care and attention so that they are not alienated from the society but rather reformed and rehabilitated.<sup>65</sup> This philosophy was re-affirmed in 1990 in the African Charter on the Rights and Welfare of the Child; that the essential aim of

61. Section 277

62. Section 29(4)

63. Isua N.B., 'Juvenile Justice and the Jurisdiction of the Family Court', presented at the 2009 All Nigerian Judges Conference, Abuja, p.8.

64. Child's Rights Act is more to modify Islam, Christianity- Justice Commissioner. Sunday Trust, March 2 (2008) p 48. Cited in Abifarin O, Abdulrasaq F.F and Olayemi, *Sola Reflections on marriageable age child marriage, Child Rights Act and the health of the child in Nigeria* in Retrieved in <https://unilorin.edu.ng/publications/abdulrazagiff/Reflections on Marriageable Age, Child Rights Act.pdf> accessed on 17 November 2014.

65. See also Principle 2 of the Declaration of the Rights of the Child. Proclaimed by the General Assembly Resolution 1386 (xiv) of 20 Nov 1959.

treatment of every child during the trial and if found guilty of infringing the penal laws shall be his or her family and social rehabilitation.<sup>66</sup>

The Juvenile Courts/Family Courts are special courts where issues relating to children and young persons are heard. There is a misconception that these courts are only for children and young persons in conflict with the law, who have done delinquent acts, which if done by adults, would have amounted to a crime. The truth is that the courts hear cases relating to children and young person whether as victims, offenders or for welfare and protection. The court is a special court because special procedure is adopted different from a regular adult court.

The Juvenile Court is a court of summary jurisdiction under the Children and Young Persons Act, but the newly constituted Family Court under the Child's Rights Act or Law is a court with unlimited<sup>67</sup> and exclusive<sup>68</sup> jurisdiction.

The Family/Juvenile Court is governed by the Child's Rights Act or Law or by the Children and Young Persons laws of different States. Children are regarded as human beings with human, civil and constitutional rights. Children are also considered as being in a special class of persons that need to be treated specially, because they are vulnerable. In administering justice in relation to crimes committed by a child or against the child, called juvenile/child justice system, which is distinguished from the regular criminal justice system for adults, the status of the child must be put into focus.<sup>69</sup> The

66. Article 17 (3).

67. Section 151 (1) Child Rights Act; Section 140 (1) Child Rights Law of Lagos State 2007.

68. Section 162 Child Rights Act; section 151 (1) Child Rights Law of Lagos State 2007.

69. Bamgbose Olujemisi (2008) Unpublished Lecture note: Saint Louis University School of Law, Saint Louis Missouri, U.S.A Fall Semester 2008.

above facts must be taken into consideration by the family/juvenile court.

A new development came up under the Child's Rights Act which was not emphasized in the Children and Young Persons Law. This has to do with the specialization of persons sitting over cases in the Family Court and professionalization and training of court personnel.<sup>70</sup> Presently this is generally lacking in the family courts in States where they have been established. It is common to find Judges who are posted for a specified period to sit in juvenile proceeding or who switch between trials of adult offenders with little or no specialization in the work with children making them insensitive to the plight of and needs of children. The absence of specialized judges, police and other personnel handling cases involving juvenile offenders is not in the best interest of the child.

### c. Jurisdiction the Court

As mentioned above, the Juvenile Court under the repealed Children and Young Persons Act is a court of summary jurisdiction. However, under the Child's Rights Act and Laws, the family court has unlimited and exclusive jurisdiction<sup>71</sup>. Under the repealed Children and Young Persons Act, and in the States where the Children and Young Person's Law apply, the court is under the jurisdiction of the State. It is the Chief Judge of the State that has power to constitute the court.<sup>72</sup> This is still the position under the Child's Rights Act.<sup>73</sup> The establishment of the Family Court is under the jurisdiction of each State of the Federation and the Federal Capital Territory.<sup>74</sup>

70. Section 154 (1) &(2) Child's Rights Act.

71. *Op cit* note 71 and 72.

72. Section 6 (1) Children and Young Persons Act.

73. *Ibid* 152 (2) and 153(2).

74. Section 149 Child Rights Act; see section 138 (1) Child Rights Law of Lagos State.



Unlike the position in most States in Southern Nigeria where the Child's Rights Laws have been enacted and the Children and Young Persons Laws repealed, most of the States in Northern Nigeria still operate under the Children and Young Persons Law. Surprisingly, the Laws of Northern Nigeria does not categorically provide for the establishment of a Juvenile Court. What exists in the form of the Juvenile Court in most States in Northern Nigeria is a court so implied, under the jurisdiction of the Magistrate Court, designated as such by the Chief Judge of the respective States and manned by a Magistrate so designated. This practice was confirmed by Akinseye-George in his study of juvenile justice system in some States in Nigeria. In Kano State, the study revealed that "an experienced Magistrate was designated to handle juvenile cases."<sup>75</sup> The establishment of the Family Court is to hear and determine matters relating to children. The family court has civil and criminal jurisdiction in matters relating to children.

However, unlike the Juvenile Court under the repealed Children and Young Persons Act, which was a court under the division of the magistrate, the new constituted family court under the Child's Rights Act exists at two levels. This is the division under the High Court at the High Court level and the Court as a Magistrate Court at the Magistrate level. The jurisdiction of the Family Court at the High Court level covers such areas as constitutional matters of rights of the child on enforcement, redress or infringement, offences punishable by death, terms of imprisonment for a term of ten years and above, child related matters where claims involve an amount of fifty thousand naira and above, divorce and custody of the child, appeals from the magistrate court.

An appeal can lie to the Court of Appeal from the High Court on such matters listed above. At the Magistrate level,

the family court is properly constituted by a magistrate who must not be below the rank of a Chief Magistrate, two assessors, one of whom must be a woman and the other person must be an expert in child matters, preferably in the area of child psychology education.

#### d. Composition of the Court

The composition of the Juvenile Courts determining the cases of children under the repealed Children and Young Persons Act differs slightly from that of the Family Court under the Child's Rights Act. The Juvenile Court under the Children and Young Persons Act and applicable laws is established only at the magisterial level and constituted by a Magistrate and at least two assessors, one of whom is usually a woman. Persons constituting the courts are all appointed by the State Chief Judge.<sup>76</sup> The family court established under the Child Rights Legislation is duly constituted at the High Court level by a Judge and two assessors and at the Magistrate Court level by a magistrate and two assessors. They are all appointed by the Chief Judge of the State.<sup>77</sup> One of the assessors at both levels must have attributes of dealing with children and matters relating to children preferably in the area of child psychology education.

#### e. Procedure in the Court

The procedure adopted by the court under the repealed Children and Young Persons Act and the Child's Rights Act is simple and informal. The proceedings must be conducive for and in the best interest of the child. Due to the philosophy of the Juvenile or Family Court for the welfare and rehabilitation

76. Section 6 (1) Children and Young Persons Act. For Northern Nigeria see generally the Criminal Procedure Code.

77. Section 152(2) and 153(2) ; see also Section 141(2) and 142(2) Child Rights Act; also Child Rights Law of Lagos State.



of the child or young offender, undue exposure of the child or offender to public glare is generally avoided. Thereby, the proceedings of the Juvenile or Family Court is not made public in the sense that not everybody can be allowed during court proceedings.<sup>78</sup> This practice which existed under the repealed law still exists under the Child's Rights Act. The child is expected to participate in the whole proceeding. The provision under the repealed Act is more explanatory as to the procedure to be followed than the Child's Rights Act which states generally that it should be conducive and in the best interest of the child.

#### *f. Parties in Proceedings*

As a general rule, only officers and members of the court, the parties to the case including their parents and guardian, counsels in the case and persons specifically authorized are allowed in the Family Court proceedings. In other cases, by the special leave of the court, other persons such as newspaper reporters may be allowed.<sup>79</sup> Under the Child's Rights Act,<sup>80</sup> it is specifically stated that members of the press are excluded from attending a Family Court proceeding while in Northern Nigeria, bona fide representatives of a newspaper are allowed.<sup>81</sup> In both the Child's Rights Act and the Children and Young Person's Law of Northern Nigeria, it is provided that no person shall publish the name, address, school, photograph or anything likely to lead to the identification of a child whose matter is before the court, except in so far as is required by the

78. Section 156 Child Rights Act; See also Section 145 Child Rights Law of Lagos State; Section 6(2) CYPL Laws of Yobe State; Section 6 (2) CYPL Laws of Kano state Section 6(2) CYPL and Section 225 Criminal Procedure Code Laws of Northern Nigeria.

79. Section 6 (5) Children and Young Persons Act.

80. Section 156(4) Child Rights Act.

81. Section 6 (2) Children and Young Persons Laws of Northern Nigeria.

provision of the Act.<sup>82</sup> Contravention of this provision attracts a fine or a sentence to a term of imprisonment or both.

A significant improvement under the provision of this law compared to the repealed Children and Young Persons Act is the review in the punishment for contravention of the law from 100 naira fine to 50,000 naira under the Child's Rights Act<sup>83</sup> and an addition of a term of imprisonment for a term of five years or both to the provision in Section 157 (2) of the Child's Rights Act.

#### *g. Venue of Proceedings*

The different states of the Federation have adopted two approaches to the establishment and operations of Juvenile Courts. In a few States (especially Lagos State), a visible structure of the juvenile justice administration is on the ground. But in most states, such structures are not readily visible. Instead of a permanent Juvenile Court, Magistrates hear cases involving juveniles outside the normal courtrooms or outside normal court sessions either in the courtrooms or in their chambers. This is to protect the privacy of the young offenders and also to protect them from the effects of stigmatization that may result from public trial, in line with Section 6 (2) of the Children and Young Persons Act.

#### *h. Agencies, Institutions and Persons Responsible under the Juvenile/Child Justice System in Nigeria*

In Nigeria, the juvenile justice system is undertaken majorly within and by three core criminal justice institutions.<sup>84</sup> These

82. Section 157 Child Rights act; section 6(3) CYPL Laws of Northern Nigeria

83. See Section 6 (6) Children and Young Persons Act.

84. Alemika E. E. O. and Chukwuma I. C.(2001) Juvenile Justice Administration In Nigeria: Philosophy and Practice Centre for Law Enforcement Education. Lagos, Nigeria. Retrieved in <http://www.cleen.org/Juvenile%20Justice%20Report.pdf>. Accessed on 17 November 2014.

are the police, the courts and the prison. Other institutions and agencies involved in the system include government agencies at both the Federal and State levels such as the Ministries of Justice, Education, Women Affairs, Social welfare. Officials involved include probation officers and social workers. Non governmental agencies and professional bodies like the Nigerian Bar Association are also involved. Collectively, all these institutions and agencies and officials play important roles in juvenile justice administration. A few of these agencies and institutions will be discussed.

### *i. The Police*

The police is the first entry point for an offender in the Criminal Justice System. This is the same under the juvenile justice system. The Nigeria Police Force has wide functions and powers. Those functions are to prevent, investigate and detect crimes; apprehend offenders, protect life and property, preserve law and order and enforce all laws.<sup>85</sup> The Children And Young Persons Act (now repealed) and the applicable laws in the states where the Children And Young Persons Laws still applies, recognizes the above functions of the police, especially where the offender apprehended is a juvenile or young person.<sup>86</sup> The police may directly apprehend a child or young person found committing an offence, or may have contact with such persons when an official report is made that such persons have infringed a law.

Under the Police Act, there are provisions for Juvenile Welfare Units and special police units for children, to be established and managed in major divisional police offices. In order to best fulfill their functions, police officers who frequently or exclusively deal with juveniles or who are

primarily engaged in the prevention of juvenile crime are to be specially instructed and trained. In Nigeria, the practice is that female police officers are often deployed to juvenile welfare departments in divisional and state police command headquarters. However, more often than not, they are not given specialized training. Assignment to the unit is considered a general duty posting and officers are frequently transferred in and out of the unit.<sup>87</sup> These units which had long been neglected are now being given some attentions in some police stations in Nigeria.

Under the repealed Children and Young Persons Act, and applicable laws, the Inspector General of Police or Commissioner of Police in states, are to make arrangements for preventing so far as practicable, a child or young person while in custody, from associating with an adult charged with an offence.<sup>88</sup> This provision is to prevent the criminal contamination or indoctrination of young offenders by adult criminals and it is said to be a measure desirable for the protection of young offenders from abuse and exploitation by adult criminals.<sup>89</sup> However, in reality, this provision is not always enforced, especially in police cells. According to Akinseye - George, children in conflict with the law are usually ascribed adult age by the police to justify their detention.<sup>90</sup> Under the Child's Rights Act and applicable Child's Rights Laws in the States, there are duties and powers given to the police. It is expected that there would be established in the State, a specialized Children Police Unit<sup>91</sup>.

The roles of the police officers in the unit, who are supposed to be specially trained, are spelt out in the Act and

85. Section 20 The Police Act Cap P19 LFN 2004.

86. Sections 3 - 5 CYPA. See also Section 3 - 5 CYPL Laws of Northern Nigeria.

87. Alemika E. E. O. and Chukwuma I. C. (2001) *op cit*.

88. Section 5 CYPA; See section 5 CYPL Laws of Northern Nigeria

89. Alemika E. E. O. and Chukwuma I. C. (2001) *op cit*.

90. Akinseye George Y (2009) Juvenile Justice System in Nigeria. Center for Socio- Legal studies, Abuja, Nigeria.

91. Section 207 Child Rights Act.



applicable laws.<sup>92</sup> The need for specialized police officers to deal with cases involving children is imperative. Under the Child's Rights Act there are now more responsibilities given to police officers.<sup>93</sup> Police officers now have the power to use their discretion to dispose of cases involving child offenders without resort to a formal trial by using restitution and compensation as means of settlement. The exercise of this discretion must be in the best interest of the child and the parties involved.

It is also expected that all rights under the Constitution, International instruments and Laws applicable to adults with respect to any contact with the police, will be applicable to a child or young offender.<sup>94</sup> The need for humane treatment and consideration must be given to a child or young person who comes in contact with the police.

## ii. Court

The Juvenile Court is the next stage of contact. This has been discussed extensively earlier on in this paper. However, one of the parties in the court proceedings involving a juvenile or child is the counsel or legal practitioner. Legal representation is very important. The Constitution of the Federal Republic of Nigeria, relevant National and States Law and all the international instruments all recognize the representation of a counsel, or legal practitioner in the case involving a child in conflict with the law.<sup>95</sup> However, in most proceedings there is no legal representation neither is legal aid provided. This may

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92. Section 44(1) - (10) Child Rights Act; see also Section 39 (1) - (11) Child Rights Law, Laws of Lagos State.
93. Section 209 Child Rights Act.
94. Adeyemi A.A (1992) Juvenile Justice Evaluation, policies and Programmes. In Okonkwo, C.O (ed) *Contemporary Issues in Nigerian Law, Essay in Honour of Judge Bola Ajibola* p.45.
95. Section 155 Child Rights Act; Section 144 Child Rights Law, Laws of Lagos State 2007.

be attributed to the little weight given to such proceedings in light of the fees charged by lawyers.

## iii. Prisons

The Child's Rights Act,<sup>96</sup> the Child's Rights Law<sup>97</sup> and the Children and Young Persons Laws<sup>98</sup> provide against the imprisonment of a child. However, the Child's Rights Act<sup>99</sup> and the Child's Rights Law<sup>100</sup> provide for exception from imprisonment for the child in certain cases of crimes. These include cases of attempted treason, murder, robbery manslaughter, wounding to cause grievous harm. The Children and Young Persons Law also provide for imprisonment as a method of dealing with a young person and not a child (emphasis mine) found liable for an offence.<sup>101</sup> Under the Children and Young Persons Law, there is a distinction between a child and a young person.<sup>102</sup> In practice, this provision for imprisonment for young people is usually applied in violent cases of murder, wounding and serious cases of treason or rape. The law further provides that a young person can be only be ordered to prison as a last resort if it is in the opinion of the court, that no other method of treatment is suitable for the young offender.<sup>103</sup> However, in inadequacy in the number of remand centers, approved schools and Borstal Institution have led to the detention and imprisonment of

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96. Section 221 (1) (a) Child Rights Act.
97. Section 209 (1) (a) Child Rights Law, Laws of Lagos State 2007.
98. Section 12 (1) of CYPA Laws of Northern Nigeria; section 12 (1) CYPL Laws of Kano State and Section 12 (1) CYPL Laws of Yobe State.
99. Section 222 (1) and (2).
100. Section 210 (1) and (2) Child Rights Law, Laws of Lagos State
101. Section 10 (i) CYPA Laws of Northern Nigeria; See section 10 (i) CYPL Laws of Kano State; section 9 (i) CYPL Laws of Yobe State.
102. See Section 2 of the CYPL of Kano and Yobe States.
103. Section 11 (2) CYPA Laws of Northern Nigeria; See section 12 (2) CYPL Laws of Kano State; section 12 (2) CYPL Laws of Yobe State.



young offenders in the prisons when the offence does not deserve it.

The Children and Young Persons Law further states that the young person so imprisoned "shall not be allowed so far as is practicable to associate with adult prisoners."<sup>104</sup> This it is believed is to buttress the fact that they are malleable and can be rehabilitated and become useful in the society. However, it appears that in reality, it is not practicable for the officers of the prisons to segregate young offenders from the adults due to problems of overcrowding.<sup>105</sup> The Nigerian prisons are said to contain a large number of young offenders, and often they are not separated from adult inmates on the basis of age or other relevant classifications. According to a 2009 study by Akinseye-George, 'great majority of children in conflict with the law are held together with adults in regular prison.' He further noted that twenty one percent of persons in Kuje prisons in the Federal Capital territory are children,<sup>106</sup> that there is a high population of children in Kano prisons<sup>107</sup> and that Rivers State had the highest number of children in regular prisons compared to four (4) other states where the study was conducted.<sup>108</sup>

#### iv. Treatment of Juvenile Offenders in Nigeria

The colonial government established the first juvenile justice custodial institution in 1937 as a wing of the Enugu Prison. Inmates from the various Regions were sent to this institution for several years. The Children and Young Persons Act empowered the establishment of remand homes and approved

104. Section 12 (3) of CYPAL Laws of Northern Nigeria; section 12 (3) CYPL Laws of Kano State and Section 12 (3) CYPL Laws of Yobe State.

105. Article 10(3) and 14(3)(d) International Covenant on Civil and Political Rights.

106. Akinseye-George Y (2009) *op cit* p 64.

107. *Ibid* p 68.

108. *Ibid* p 73.

institutions. Under the applicable law, there are various treatment methods and interventions available for the child or young offender. It ranges from dismissing the charge to committal to custody in detention.<sup>109</sup> The disposition methods under the Children and Young Persons Act and Laws were punitive in nature. There is provision for the establishment of Borstal Institutions.<sup>110</sup> It is a federal juvenile correctional institution. According to the regulation, the purpose of the institution is to "bring to bear upon the inmates every good influence which may establish in them the will to lead a good and useful life on release and to fit him to do so by fullest development of his character, capacities, and sense of personal responsibilities"<sup>111</sup>. A Borstal Remand Center was established as a remand and reception center, prior to the transfer of committed juvenile offenders to the Borstal Institution, in Kaduna.<sup>112</sup>

Towards the realization of the objectives or goals of reformation, there were provisions for vocational training in tailoring, photography, welding, building (masonry or bricklaying), electrical installation, as well as formal educational instruction, up to General Certificate of Education (ordinary level)<sup>113</sup> and the facilities were fairly well managed in the 1970's.<sup>114</sup> Ahire however stated that by the 1980s, the facilities and training had deteriorated.<sup>115</sup> A report by the

109. Section 223 Child Rights Act; Section 211 Child Rights Law of Lagos State; Section 9 of the CYPL Laws of Northern Nigeria.

110. Borstal Institutions and Remand Center Act cap B11 LFN 2004.

111. Section 4 Borstal and Remand Center Regulations Cap B11.

112. Alemika, E.E.O. (1978) 'A Study of Socio-Cultural and Economic Factors in Delinquency among Kaduna Borstal Inmates.'" Unpublished B.Sc. Sociology Original Essay, University of Ibadan, Ibadan Nigeria.

113. *Ibid*.

114. *Ibid*.

115. Ahire, P.T. (1987) "Juvenile Delinquency and the Handling of Young Prisoners in Nigerian Borstal Institutions" in *The Nigerian Prisons Service and the Public*. Abuja: The Nigerian Prisons Service.

Human Rights Monitor stated that by the 1990's the facilities and training were virtually non-existent.<sup>116</sup> The conditions in the prisons and juvenile custodial institutions have continued to deteriorate. The observation by the Nigerian Law Reform Commission in 1983 has not changed substantially to the effect that:

*From all indications, the Nigerian prison system as at present, is not geared towards the reformation of prisoners to enable them live a more useful life ... instead our prison system appears more punitive and retributive.<sup>117</sup>*

It is important to state that the treatment methods under the Child's Rights Act and Laws take into account treatment methods that are diversionary instead of custodial treatment. The death penalty has never been recognized as a punishment for a child or young person in Nigeria.<sup>118</sup> The laws generally prohibit imprisonment for a child<sup>119</sup> except in certain circumstances. Canning is a method recognized under the Children and Young Persons Act/Law and it is still recognized in the States where the law applies. However it has been banned in the Child's Rights Act<sup>120</sup> and in the international instruments. How feasible the implementation of this provision will be, is very difficult to say.

## A COMPARATIVE DISCOURSE OF THE JUVENILE JUSTICE SYSTEM IN SELECTED JURISDICTIONS

To complement the discussion on the juvenile justice system in Nigeria, the juvenile administration in two other jurisdictions, that have similar historical features with Nigeria will be considered. These are the United States of America and Britain.

The legal systems in Nigeria and the United States of America are founded on the English legal system. At a point, in the history of these countries, the family was the primary unit of social control. The difference lies in how long each country was able to sustain the concept.

### *a. Juvenile Justice System in England*

In England, from the middle ages up through the 1500 and 1600, the family was the primary unit of social control. The family was responsible for the socialization and control of young persons. One of the most foremost English lawyers in history, William Blackstone, as early as the late 1760s identified infants as incapable of committing crimes because they had no intent to commit crime.<sup>121</sup> This, Blackstone referred to as "Vicious Will". According to him "infants under the age of discretion ought not to be punished by any criminal prosecution whatever". The use of the word "infant" in the commentaries does not mean infants in the modern sense of the word, but refers to children too young to fully understand their action.<sup>122</sup> These he said are under the age of discretion.<sup>123</sup>

116. Human Rights Monitor (1997) *Administration of Juvenile Justice: the Example of The Borstal Training Institution* Kaduna: Human Rights Monitor

117. Nigerian Law Reform Commission (1983) *Report and Draft Bill for Reform of Prisons in Nigeria*. Lagos: Nigerian Law Reform Commission.

118. Section 221(c) Child Rights Act; Section 270 Criminal Procedure Code, Laws of Northern Nigeria.

119. Section 221(a) Child Rights Act; Section f1 (1) Children and Young Persons Law of Northern Nigeria.

120. Section 221(B).

121. Blackstone, William 1760 Blackstone's Commentaries on the Laws of England (1765-1769) Book IV Chapter 2. Retrieved from Lonang Institute in <http://lonang.com/library/references/blackstone-commentaries-law-england/bls-402/>. Accessed on 5 November 2014.

122. The history of Juvenile Justice – American Bar. *Dialogue on youth justice*. Retrieved in [http://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJPart1\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJPart1_authcheckdam.pdf). Accessed on 6 November 2014.



At Common Law, Blackstone stated that children under the age of seven were not criminally liable. Children between the ages of seven to ten and a half years which he referred to as *aetas infantiae proxima*, meaning age nearest infancy, which in fact is a stage of childhood, are not punishable for any crime. However, during the other half of childhood, i.e. when approaching puberty (from ten and a half to fourteen) they are indeed punishable, if found to be *doli capaces*, meaning capable of mischief but with mitigation and not with the utmost rigor of the law.

Blackstone further stated that during the last stage, which is the age of puberty and afterwards, minors were liable to be punished, as well capitally, or otherwise.<sup>124</sup> This categorization of age of criminal responsibility at that period in history was referred to by Blackstone as *malita supplet aetatem* (malice supplies the age). Describing this, Blackstone went on to say:

*But by the law, as it now stands, and has stood at least ever since the time of Edward the third, the capacity of doing ill, or contracting guilt, is not so much measured by years and days, as by the strength of the delinquent's understanding and judgment. For one lad of eleven years old may have as much cunning as another of fourteen years.*<sup>125</sup>

It was at the time that Blackstone expressed this views, scholars in England and the United States of America began to realize that a particular age of young persons, could not be held responsible for their action.

123. Blackstone Williams *Op cit*.

124. *Ibid*.

125. *Ibid*.

The separation of juvenile and adult offenders is relatively of modern origin. The revolution in the treatment of children and young persons in England came up in the twentieth century. The passing of the Children's Act in 1908 introduced new issues which hitherto did not exist in matters relating to children and young persons. The Act also abolished other issues which were found unsuitable for children. This 1908 Act introduced the idea of a Juvenile Court into British legal system. It is important to note that the first British Juvenile Court was not established until 1900. This was the Juvenile Court in Birmingham.<sup>126</sup> Before the establishment of a formal court for juveniles, magistrates who presided over cases of young persons, used their initiatives, in separating the young offenders from adult offenders and prevented them from mixing. It should be noted, that this practice in England in the nineteenth Century is still used by some Juvenile Courts in Nigeria. They tried to sit in a different court and at a different time when hearing cases of young person

The treatment of juveniles in England has gone through a lot of debate and controversies. Before 1970, the approach adopted was the welfare approach, which was to divert children from the criminal justice system of adult offenders towards treatment of young offenders.<sup>127</sup> This was the attitude in England towards juvenile offenders through much of the twentieth century, between 1950s and 1960s. The intervention was based on meeting the needs of the young offenders rather than punishing them for their deeds.<sup>128</sup> In the wake of the

126. Bradley Kate 2008 Juvenile Delinquent Evolution of the British Juvenile Court. 1900-1950 in *History in Focus. Issue 14 2008*. Retrieved in <http://www.history.ac.uk/ihr/focus/index.html>.

127. Carrabine Eamonn 2008 Youth Justice in the United Kingdom. Paper delivered at the UKIERI, Child's Right Conference, Uni of Essex, April 2008. Retrieved in <http://projects.essex.ac.uk/ehrr/V7N1/carrabine.pdf>.

128. Muncie J. 2004 Youth Crime: A Critical Introduction. London : Sage 2004. 2nd Edition pp 257.

1970s, this concept of 'welfarism' came under severe attack for diverse reasons. The clamor was that juvenile offenders should be punished for their offences rather than the juvenile justice system meeting their needs. This affected the way juvenile offenders were being treated by the courts.<sup>129</sup> The period of the 1980s in England witnessed a period where according to Gelsthorpe and Morris, crime policies were "designed to reassert the virtue and necessity of authority, order and discipline".<sup>130</sup>

In the 1990s, there was a great increase in serious crimes by repeated juvenile offenders. The situation worsened when a two year old child, James Bulger was killed by two boys aged ten. This brought about criticisms and clamor for a rethink as to whether the welfare approach should continue for young offenders.

The Crime and Disorder Act was enacted in 1998. The Act introduced a new aim into the juvenile justice system in England which is to prevent offending and reoffending by children and young persons. The Act introduced certain bodies to assist in achieving its aim, new orders affecting the juvenile offender and the parents were inserted as part of the provisions in the Act. The rebuttable presumption of *Doli Incapax* of a child above ten year was abolished.<sup>131</sup> Carrabine described the 1998 Act as that, which introduced measures which combined both punishment and welfare in the treatment of young persons.<sup>132</sup>

The age of criminal responsibility in the United Kingdom is ten years. A child is a person under the age of eighteen

129. Bottoms A 1977. Reflections on the Renaissance of Dangerousness. 1977 Howard Journal of Criminal Justice 16 pp 70-96.

130. Gelsthorpe L and Morris A. 2002 Restorative Justice: The last vestiges of welfare in Muncie J, Hughes G and McLaughlin E (ed), Youth Justice: Critical Readings London: Sage 2002 pp240.

131. Section 34.

132. Carrabine E 2008 Op Cit Pg 16.

years and a young adult offender is a person over the age of eighteen but under the age of twenty-one. There are many laws that govern the juvenile. The latest which is the Children and Families Act of 2014 repealed some earlier legislations and made amendments to others. That Act has relevant sections that relates to the juvenile justice system.<sup>133</sup>

#### *b. Juvenile Justice System in the United State of America*

The juvenile justice system in the United States of America bears some resemblance to that of the United Kingdom. The reasons are not farfetched. The migration of persons between 1492 and 1900 from different parts of Europe including England to the American colonies, that now form the States in the United States of America, accounts for this. The migrants took along and transplanted much of their old English culture including their law and justice to regulate their way of life in the new settlement.

Another factor is the influence of the Child Study Movement that started in Britain in 1893. The movement that was started by an English man, had other experts from other parts of the world including America. The members of the movement were instrumental to the establishment of the Cook County Juvenile Court in Chicago, Illinois in 1899 and other courts established across the United States.<sup>134</sup>

### RE-EVALUATION OF THE JUVENILE JUSTICE SYSTEM IN NIGERIA

The Juvenile/Child Justice System has a chequered history. In Nigeria, a lot of reliance is on the received English law as a result of colonization. Whereas in England, a lot of changes

133. Section 70-75.

134. Bradley Kate 2008 Juvenile delinquent Evolution of the British Juvenile Court 1900-1950. In *History in Focus Issue 14 2008*. Retrieved in <http://www.history.ac.uk/1hr/focus/index.html>.



have taken place with regard to the juvenile system, in Nigeria, the juvenile/child justice system is in the last decade undergoing reforms. It is not in doubt that socio-economic conditions continue to increase the susceptibility of juveniles to criminal activities in the different communities. Coupled with this fact are advances in science, public attitude especially in respect to corruption and sky rocking cost.<sup>135</sup>

The enactment of the Child's Rights Act in Nigeria was a major leap for the juvenile/child justice system. However, there is the need to re-evaluate the laws, the agencies and the system as a whole to have a viable Juvenile/Child Justice System in Nigeria.

#### a. Re-evaluation of the Laws

The Convention of the Rights of the Child is said to be the most ratified human rights documents and also the most violated.<sup>136</sup> The provision in the Child's Rights Act establishing the Family Court is laudable.<sup>137</sup> There are similar provisions in the laws of states that have enacted or adopted the Act, for example, Lagos,<sup>138</sup> Ogun and Oyo States.

The Child's Rights Act and the law in Lagos State provide that the Court shall be of two levels which are the Court as a division of the High Court at the High Court level and the Court as a Magistrate Court at the Magistrate level.<sup>139</sup> The Family Court used to be the Juvenile Court under the Children and Young Persons Law. Lagos State is an example of a State that has enacted the Child's Rights Law 2007 and the Children

135. Scott Elizabeth & Steinberg Lawrence 2008 *Rethinking Juvenile Justice* - Harvard University Press.

136. Muncie John 2014 The punitive turn in juvenile Justice: Cultures of control and rights compliance in Western Europe and the USA. Retrieved in <http://ijj.sagepub.com/content/8/2/107.refs>.

137. Section 149 Childs Rights Act 2003.

138. Section 138 Childs Rights Law 2007, Lagos State.

139. See Section 150 Childs Rights Act 2003 & Section 140 Childs Rights Law.

and Young Persons Law of Lagos State has been repealed.<sup>140</sup> Any provision of the Children and Young Persons Act which is inconsistent with the Child's Rights Act is void.

The Family Courts as they exist now are not independent courts. They are and can only be divisions under the Magistrate or High Courts. If it is otherwise, their establishment would be unconstitutional as they are not presently recognized under the Constitution of the Federal Republic of Nigeria. This is more so, when Section 152 (5) of the Child's Rights Act and Section 141 (2)<sup>141</sup> of the law in Lagos State states that *Appeal will lie from the family court of the High court to the Court of Appeal*. The Constitution of the Federal Republic of Nigeria in Section 240 outlines courts from which appeal will lie to the Court of Appeal. The family court is not one of such courts, but the high court is one. Therefore, the family court can only be a division of the high court in order that appeal should lie from it to the Court of Appeal.

It should however be made clear that this paper is not challenging the validity of the Child's Rights Act as a Statute. However, it is the express provision in section 152(5) of the Act that may be a problem if care is not taken. The case below buttresses the concern of the writer. In *Adeyemi (Alaafin of Oyo) & Ors v. Attorney General of Oyo State & Ors*,<sup>142</sup> the Supreme Court held that there was a vast difference between the constitutional validity of an enactment of a statute and the constitutional validity of the express provisions of the statute thus validly enacted. The statute as statute may be validly

140. Section 263 Child Rights Laws of Lagos State.

141. There appears to be an error in the numbering of the Law as it should be 141 (5).

142. (1984) 15 NSCC 397, cited in Bamgbose Olatokunbo John (2014) Digest of Judgments of the Supreme Court of Nigeria, vol.3, Para. 45, pg 235.

enacted but the content may variously be in consonance with the constitution or be in conflict with it.

This is therefore to sound a note of warning to States that are yet to enact their State Laws that the Family Court, if it must be established at the High Court level, must be a division of the High Court. Anything contrary to this will be unconstitutional.

For the government to show commitment to the cause of children, it is advocated that the Family Court should be a court of record and given recognition under the Nigerian Constitution. This will enable all cases where a child is involved, whether as offender or victim to be heard in the family court, so that the philosophy of welfare, protection and rehabilitation can be achieved. It will also put a stop to the confusion arising especially with the police as to where to take a case where a child is involved either as victim or offender with an adult or child. For example, the case of a thirty two year old man arraigned at a Magistrate Court for the rape of a child of 11 years would have been taken directly to the Family Court.<sup>143</sup>

In the opinion of this writer, there may be need for a constitutional amendment to include the family court as a court of record. This will have to follow the trend of the National Industrial Court which is now a court of record recognized by the amendment in the third Alteration Constitutional Amendment.

Apart from the above fact, a properly structured Family Court should have a Magistrate/Judge depending on the adopted structure, who should specialize in Child's law, and who is trained adequately in norms and best practices on safeguarding the welfare of the child in order to achieve the aims of the court. The situation in many of the existing family

courts where magistrates undergo training in child welfare and are only posted to the family court for a period of time and then reposted out only for a new magistrate to be posted is not the best practice for specialization and continuity.

It is opined that it is when there is specialization and training for judges and magistrates, that the family court will be in the best position to adjudicate on and have unlimited jurisdiction to hear and determine

*any civil proceeding in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim in respect of a child is in issue and 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 a child.*<sup>144</sup>

With the structure discussed above, all cases where a child is involved either as complainant or victim or as an offender would be properly situated in the family court either with similar powers as that of the High Court or the Magistrate Court as appropriate.

In this paper, the present practice in the family court at the Magistrate level in Lagos State is highly commendable. All cases involving a child with a child or a child with an adult of which is within the powers or jurisdiction of the Magistrate Court are heard and completed in the family court. This practice is in line with the aim of the Child's Rights Legislation.<sup>145</sup>

143. Onyegunam Esther (2014) 'Pastor Allegedly Impregnates 11 year Old' Vanguard, Wednesday, November 12, 2014, p 6.

144. Section 151 of the Child Rights Act and Section 140 of the Child Rights Laws of Lagos State.

145. Section 1 Childs Rights Act; Section 1 Childs Rights Law, Lagos State.



*b. Implementation of the Childs Rights Legislation*

The full implementation of the Child's Rights Legislation is a serious problem in nearly all the States of the Federation including the Federal Capital Territory to which the Child's Rights Act applies. Funding/budgeting allowance has been a major problem of many of the States. The result is the establishment of a family court only in principle as it is in Oyo State, or conversion of the old juvenile court to a family court as it is in some family courts in Lagos (though there are some newly built courts).

An unstructured interview with some magistrates manning family courts in different states shows that Section 154 (1) and (2) of the Child's Rights Act similar to Section 143 (1) and (2) of the Child's Rights Law of Lagos State is not complied with as much as it should be. This has to do with professionalization and training of court personnel.<sup>146</sup> This is more so with the situation where magistrates and judges are not appointed to the family courts but are posted.

*c. Layout of Family Court*

Another area that should be reevaluated is the layout of the family court. The idea of the family court as opposed to the adult court is found in Section 158 of the Child's Rights Act or in Section 147 of the Child's Rights Law of Lagos State. This is that the proceedings of the court shall be conducted in an atmosphere of understanding. Some family courts in some States still hold sitting as regular courts. This defeats the aim and idea of a family court even when the personnel present in the court are only those permitted by the law.

The layout of an adult court in this writer's opinion is not conducive for child proceeding due to several factors, and does not eventually meet the need of the child. The above thought

146. Ezeamalu B 2014 Premium Time of May 27, 2014.

on this issue is aligned with that of Judge Julian Mack, one of the first judges in the first juvenile court in Chicago, Illinois in the United States of America about the hearing in the juvenile court compared to the adult court.

*The ordinary trapping of the Court (adult court – emphasis mine) are out of place in such hearing. The judge on a bench looking down upon a boy standing at the bar can never evoke proper sympathetic spirit. Seated at the desk with the child at his sides, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge while losing none of his judicial dignity.<sup>147</sup>*

*d. Governmental Bureaucratic/Proactive Action*

The actions of government may hamper or enhance the effective running of the juvenile justice system in the States in Nigeria, creating a hybrid structure of family courts. According to a report by Ogunsola, the Child's Rights Law in Oyo State has been passed twice in less than ten years and yet the Law is not being implemented in the State.<sup>148</sup> In 2003, a Child's Rights Law of Oyo State was passed. In 2006, a review of that law was done under another government. Presently, the Family Courts provided for under the 2006 Law have not been created. A hybrid structure is in existence. This is because the Juvenile Courts as operated under the Children and Young Persons Law still exist in structure, layout and composition. However, the magistrates in charge of the court

147. Mack Julian (190) "The Juvenile Court" Harvard Law Review Vol 23 1909 pp 120.

148. Ogunsola Oladele 2014 Groups blame Oyo Government over child abuse: Daily Independent October 6 2014. Retrieved in <http://dailyindependentnig.com/2014/10/groups-blame-oyo-govt-child-abuse/>

try as much as possible to adopt some provisions of the Child's Rights Law as much as it feasible.

Rather than being bureaucratic, proactive action on the part of government will enhance the juvenile/child justice system. For example in Ogun State, a new Child's Rights Law was passed in August 2013.<sup>149</sup> This new law in 2013 removed the flaws and lacuna in the 2006 Child's Rights Law of the State. A major flaw and a lacuna in the 2006 Law of Ogun State was the non-provision for the establishment of a family court. The 2013 law has taken care of this "first and major step towards the protection of Child's rights in the State"<sup>150</sup>, and the Ogun State government has embarked on the construction of a family court which will soon be in operation.<sup>151</sup> This proactive step is commendable

#### *e. Overriding Child Interest versus Religious Interest*

The introduction of Sharia Law has brought about a new dimension to the juvenile/child justice system in Nigeria. This new dimension is in conflict with the aim that "in every action concerning a child undertaken by any individual, public or private body, institution, court of law, Administrative or Legislative authority, the best interest of the child shall be the primary consideration".<sup>152</sup>

The implication of the conflict arising from cultural and religious interest and the child's interest is the non passage of the Child's Rights Law in some States in the Northern part of

Nigeria. In an unstructured interview with government officials in States in Northern Nigeria, it was found that previous attempts to pass the law at the House of Assembly generated a lot of noise and was violently resisted by some members of the house and members of the larger society. The Child's Rights Act was condemned by the States for not taking into consideration the provisions of the Children's Rights Convention which provides that State parties in domesticating the convention should take cognizance of cultural and social conditions.

The argument is that some provisions of the law contravene the Islamic religion especially in relation to marriage. The bone of contention is that whilst the Sharia Law provides for the age of puberty in defining a child, the Child's Rights Act on the other hand defines a child as one under the age of eighteen years. It should be taken into cognizance that culture is dynamic. While realizing that children belong to the society where law will be operated, the child's best interest should override culture and religious interest that may hinder the full harmonious, physical, mental development of the child.

#### *f. Definition of a Juvenile/Child*

The common criterion for the definition of a juvenile is the use of age. For example, under the repealed Children and Young Persons Law of Lagos State, this was the same pattern adopted<sup>153</sup>. In section 2 of the above repealed law, a child was defined as a person under the age of fourteen.

The use of age has its advantages and disadvantages. It has been argued by a religious group, as seen in the discussion earlier, that the age fixed in the Child's Rights law contravenes Islamic law. Bamgbose also argued that relying on age

149. Adebowale Segun 2013 Ogun Assembly passes Bill on Child's Rights in Eagle online. Retrieved <https://theeagleonline.com.ng/ogun-assembly-passes-bill-on-childs-rights/> August 2 2013. Accessed on 7 November 2013.

150. Ogunisola Oladele 2014.

151. Ogun news 2013 Ogun commences implementation of Child Rights Law. Retrieved in <http://www.ogtv.com.ng/ogun-commences-implementation-of-the-childs-rights-law/> October 11 2013. Accessed Nov 7 2013.

152. Section 1 of the Child's Rights Act; Section 1 Child's Rights Laws of Lagos and Ogun States.

153. Cap 10.



sometimes fails to take into consideration social, physical and psychological development of the child.<sup>154</sup> This was illustrated in the case of *Joseph Uwa v. State*.<sup>155</sup> The Supreme Court held that the age of an Ibo villager who says he is thirteen years old may not actually be thirteen, as would have been, if said by an English boy. According to the Court, this may not be the exact age of the boy as ages are reckoned by certain festivals and by saying he is thirteen years, he may be about twelve years plus and not actually thirteen as in the English sense.

The problem created by the definition of juveniles and child, appears to have been laid to rest in States that adopted the Child's Rights Act and in the States that have stated the definition of age in their State laws.

*g. Importance of Parental, Family and Community Values*

The question arises if there can be a viable juvenile/child justice system without reference to the values from parents, family and the community. As far back as 1870, the role of the parents in the socialization of a child was reiterated. In the case of *People v. Turner*, the Illinois Supreme Court said:

*In our solicitude to form youths for the duties of evil life, we should not forget the rights which inhere both in parents and children. The principle of the absorption of the child is and its complete subjection to the despotism of the State, is wholly inadmissible in the modern civilized world. The parent has the right to the care and custody and assistance of his child. The duty to maintain and protect it is a principle of natural law.*<sup>156</sup>

154. Bamgbose Oluyemisi 1991 Juvenile justice System in Nigeria *op cit*. 155. 1965 ANLR 356.

156. 1466, 58 S. Ct. 1019.

As far back as 1909, a judge of the juvenile court in Denver, in the United States of America stated thus:

*All the courts or probation scheme on earth, can never effectively correct the faults of the child as long as there remains the fault of those who dealt with children in the home, schools, in neighborhood – in the community itself.*<sup>157</sup>

The importance of the family as a social unit cannot be overemphasized especially in the treatment of delinquent children and those in need of protection. Many countries of the world have incorporated the ideals of the family into the child justice system. The Child's Rights Act recognizes the importance of parents in Section 174 (5) of the Child's Rights Act and family ties in Section 178 (2) (a) (i) & (ii) in the treatment of a child under the child justice system.<sup>158</sup> A child rights activist and lawyer has advocated that issues of child and parents are better settled outside the court.<sup>159</sup>

In New Zealand, the youth justice system recognizes that children and young persons cannot be dealt with in isolation and therefore involves families in responding to youth offending.<sup>160</sup> Except for child offenders between the ages of ten to thirteen who commit murder or manslaughter and are tried in adult courts in all other cases, child offenders are

157. Becroft A.J & Thompson Rhonda (2006) Youth Offending: Factors that contribute to how the systems respond. Retrieved in <http://www.justice.govt.nz/courts/youth/publications-and-media/speeches/youth-offending-factors-that-contribute-and-how-the-system-respond>

158. See also Section 166 (3)(a); 167 (2)(a)(i)&(ii) and 167 (4)(a)&(b) and 167 (6)(a)&(b). Childs Rights Law of Lagos State 2007.

159. Ogunsonla Oladele 2014. Daily Independent *op cit* note \_\_\_\_?

160. Becroft AJ & Thompson Rhonda.

treated by way of a family group conference.<sup>161</sup> This process allows the family, the community, the victim and the offending child or young person to have a say on an issue that may affect all those involved in the conference. This gives the victim a voice which is believed to facilitate healing process. It shifts the burden from the State to the family and community, therefore allowing the State to focus on more serious problems and if necessary intervene.<sup>162</sup> It is a form of restorative justice.<sup>163</sup>

The age of criminal responsibility in New Zealand is ten years. Persons between the ages of fourteen to below seventeen who are unmarried are regarded as young persons and may appear before a youth court for offending. Becroft and Thompson argues that research shows that there are four pillars that hold the key to understanding and addressing child and youth offending. These are family, schools, peers and community.<sup>164</sup>

There is the need to go back to the basics. The family is no doubt the best unit to settle issues between parents and children. The Yoruba saying "A ki lo si kootu, ki a tum se ore" literally translated to mean a person who has instituted a case against another in court does not expect that they will ever be friends again.

161. *Ibid.* See also Young offenders Act 1993 (South Australia, Part 3 DIV 3). This was first Australia Jurisdiction to give statutory backing to conferencing.

162. Becroft A J & Thompson Rhonda *op cit* note \_\_\_\_\_?

163. Wundersitz J (1996) *Juvenile Justice* in Hazlehurst K (ed) Crime and Justice: An Australian Textbook in Criminology LBC. Information services: Sydney 1996 137-141.

164. Becroft A J & Thompson, Rhonda paper delivered at a symposium on child and youth offenders: what works Tuesday 22 August 2006 The youth court of New Zealand Retrieved in <http://www.justice.govt.nz/courts/youth/publications-and-media/speeches/youth-offending-factors-that-contribute-and-how-the-system-responds> Accessed on 14 November 201.

In Canada, a territory has also adopted a system known as sentencing circles in the treatment of juvenile offenders. It is an updated version of the traditional sanctioning and healing practices of Canada's aboriginal people.<sup>165</sup>

In the United States of America, similar community courts have been established in many States and its prominence continues to grow.<sup>166</sup> This has also been introduced in Britain.

There are different models adopted by different countries to suit their legal system. The aims are all the same. The parties are the Magistrate, youth workers, family members, offender victims and respected elders. The major difference between this form of approach and the family court is that the family courts under the Child's Rights Legislations is that it is not held in a formal court setting, it is informal and it diverts the child from the court system. The belief is that contact with the formal system may contaminate the young offender.

It is the opinion of this writer that there can be a fusion of the traditional and modern child justice system to create a system which will serve the best interest of the child.

#### ***h. Funding***

Studies show that institutional facilities for children in Nigeria are in very deplorable conditions and generally lack the minimum comfort. The States are finding it difficult to fund and build new facilities.<sup>167</sup> There is a disparity between the care promised juveniles or children in court and the care

165. Bazemore G and Griffith CT 2003 Conferences Circles < Board and Meditations: The "new wave" of community justice decision making. In McLaughlin G, Fergusson R, Hughes G and Westmarland (ed) *Restorative Justice: Critical Issues*: London: Sage or 1997 Federal Probation 61 (2) December 1996 25-37.

166. Johnstone, Gerry, Daniel W. Van Ness. 2007 Handbook of Restorative Justice. Devon, UK: Willan Publishing, 2007

167. Akinseye George Y 2009 Juvenile Justice in Nigeria. Centre for socio-legal studies. Abuja: Nigeria.



actually provided. It is said to be more abusive than parental. Krisberg described the inhumane living condition as exploitation rather than training.<sup>168</sup>

The Act generally frowns at institutionalization as a form of treatment except where it is desirable or unavoidable.<sup>169</sup> It is provided that placement in an approved accommodation or Government Institution shall be a disposition of last resort.<sup>170</sup> Section 221 (1) (a) of the Child's Rights Act also provides that no child shall be ordered to be imprisoned except where the provisions of Section 222 (1) applies. These include where a child is found to have committed serious offences like treason, murder, robbery, and like offences.<sup>171</sup>

In such unavoidable cases, where the child has to be taken into custody, the Child's Rights Act and Law provide different types of custodial facilities. The objective of the institutional treatment is to provide care, education and vocational skills to assist the child to assume socially constructive and productive roles in the society.<sup>172</sup> However, due to budgetary constraints, States are not able to fund or construct the list of laudable custodial facilities in Section 248 and 249 of the Child's Rights Act.<sup>173</sup> However the provision creating these Institutions is commendable. The plea is that the government should be committed to the establishment of these Institutions as soon as possible.

168. Krisberg B 2005 *Juvenile Justice: Redeeming our Children*. Thousand Oak, CA: Sage.

169. Section 215 Childs Rights Act.

170. Section 223 (2)(a) of the Childs Rights Act. See also Section 211 (2) of Childs Rights Law of Lagos State 2007.

171. See also Section 209 of the Childs Rights Law of Lagos State 2007

172. Section 236 Childs Rights Act: See also Section 224 of the CRL of Lagos State.

173. Section 236 and 237 of the Childs Rights Law of Lagos State.

#### i. Language

It has been argued that the use of gender neutral language may seem unnecessary. It is also argued that the masculine pronoun "he" and "his" refers to both men and women.<sup>174</sup> Arguments like these cannot stand. It has been said also that "there is no good reason for keeping our legal terms anachronistic and with words that do not respect our current contemporary times".<sup>175</sup> This paper agrees with this statement.

In many countries, attempts have been made to pass new laws to root out gender bias from the statute. In many states in the United States of America, this is being done.<sup>176</sup> It is important to note that changing words can change what we think about the world around us.<sup>177</sup>

In the repeals and reforms of laws in Nigeria, the legislators should take note of this important but yet ignored issue. In Washington State for example, while the State had passed a law as far back as 1983 requiring that new laws be gender neutral, there is a more pro-active step in "combing through State statutes every law passed since the State's founding in 1854".<sup>178</sup> While in this paper, it is not yet advocating that laws passed decades ago should be "tweaked", an attempt should be made to make new laws gender neutral.

174. Grinker, Marc A (1994) *Gender Neutral Language*. Retrieved in [http://www.kentlaw.edu/academics/irw/grinker/lwtaGender\\_Neutral\\_Language.htm](http://www.kentlaw.edu/academics/irw/grinker/lwtaGender_Neutral_Language.htm)

175. Nye James 2013 Farewell to freshman - Washington State to remove 40,000 pieces of legislation of "gender biased language"... but manhole survives in Mail Online July 2 2013. Retrieved in <http://www.dailymail.co.uk/news/article-2353939/farewell-freshman-washington-state-remove-40,000-pieces-legislation-gender-biased-language>

176. *Ibid*.

177. Fox news 3 February 2013 *Washington State considers final gender-neutral language bill*. Retrieved in <http://www.foxnews.com/politics/2013/02/03/washington-state-considers-gender-neutral-language-bill/>

178. Scott Dylam 2013 *Gender Neutral Language* written into State laws. ... in *Governing* April 2013. Retrieved in <http://www.governing.com/topics/politics/gov-gender-neutral-language-rewritten-into-states-law.html>

This especially applies to the Child's Rights Act and Laws. States that are yet to adopt or enact the legislation should take note of this fact.

#### **j. Functions of Assessors**

A reevaluation of the composition of the family court is another issue considered. The Child's Rights Act and the applicable laws in the States where they have been enacted provides for a two tiered system in the structure of the family court. This is at the High Court level and also at the Magistrate Court level. At both levels, the composition of the court is a judge and two assessors at the High Court or Magistrate Court respectively. The judges or magistrates are qualified legal practitioners. However, the assessors as provided by the law are non lawyers. It is important that the role of assessors should be spelt out in the legislation to avoid conflicts which according to some magistrates in an unstructured interview has arisen in some cases in the family court. Issues of law should only be looked into and decided by the judge or magistrate. Opinions of the assessors should be restricted to their areas of specialization.

#### **RECOMMENDATIONS**

A few recommendations are made for a more purposeful juvenile/child justice system.

#### **a. Collective responsibility**

There is a duty on everyone to ensure the proper development, the promotion and protection and welfare of the child. This function should not and must not be left to a group of people or section of the society, but it is the collective responsibility of all.

#### **b. Parental involvement in Juvenile system**

Parenting process includes protecting, nourishing and guiding the child. It involves a series of interaction between the parent and the child through the life span.<sup>179</sup> In particular, the law should encourage greater parental responsibility as the family unit is critical to much social behavior.

#### **c. Use of Alternative/Diversionary Approaches**

The diversionary principles are being advocated in the Child's Rights Law. Child offenders should as much as possible be divert from the formal and harsh criminal justice system. The judicial officers in the family court should avoid the errors of their counterpart in the adult courts that have contributed to the congestion of the prisons by leaning too much on custodial methods of punishment.

#### **d. Juxtaposition of Traditional and Modern Methods**

There is the need for a rediscovery of a distinctive indigenous system of justice that can be juxtaposed with the modern justice system. The question may be asked if the informal control of juvenile offenders is a solution to reoffending. This concept used under the traditional juvenile justice system may be adapted taking into cognizance contemporary trends in addressing youth matters. The traditional concept of controlling children with all its advantages should be considered in developing the juvenile justice program taking into consideration modern trends.<sup>180</sup> Countries like the United Kingdom and the United States of America have discovered this and used it in the treatment of young offenders with the

179. D'Souza Ajith & D'Souza Renita. Role of parents in upbringing children in <http://www.articlesbase.com/parenting-articles/role-of-parents-in-upbringing-children-543148.html>

180. Asuni T 1979 Traditional and Innovation in Child care in Nigeria in <https://www.ncjrs.gov/App/publications/abstract.aspx?ID=49299>.



introduction of family group conferences in the juvenile justice system.

#### e. *Use of Non Custodial Methods*

The state of the facilities for young offenders is in a deplorable state. It is therefore advocated that non custodial remedies should be adopted in the treatment of children and young offenders. As a matter of urgency, it is recommended that the institutions that are to be established under the Act in the Federal Capital Territory by the Minister<sup>181</sup> and in the States by the Commissioner charged with the responsibility for matters relating to children in the state<sup>182</sup> should be established as a matter of urgency.

One of the instances where a child can be deprived of his or her personal liberty is where the case is of a serious nature.<sup>183</sup> It is important that what constitutes *serious offences* be properly defined in terms of offences. It is also said that children under the age of 14 years can only be given a custodial sentence if he or she is a persistent offender.<sup>184</sup> It is also recommended that the definition of persistent offender must be outlined.

The child between the age of 10 but less than 12 years can only be given custody sentence if it is in interest of the public to keep them in custody. Period of detention should also be clearly stated.

#### f. *Reparation as Treatment Method*

Reparation as a sentence or treatment method was introduced in the English 1998 Act<sup>185</sup> and of Powers of Criminal Court

181. Section 248 Childs Right Act; see also section 277 of the same Act.

182. Section 236 Childs Rights Law of Lagos State; see also section 262 of the same law.

183. Section 215 (d) (i) & (ii) of the Childs Right Act.

184. Section 215 (d) ii.

185. Section 67 and 68 of.

Sentencing Act 2000.<sup>186</sup> Reparation is a non custodial treatment for a young offender, either to the victim or society at large.<sup>187</sup> It is recommended as one of the treatment methods in addition to the numerous ones in Section 223.<sup>188</sup> It is said to be a valuable way of making young offenders face the consequences of their actions and see the harm they have caused. It can be a catalyst for reform and reforms and rehabilitations can also benefit victims.<sup>189</sup>

#### g. *Coordination of Overlapping Agencies*

The administration of the juvenile system involves a number of overlapping systems and agencies. This makes implementation not very easy. There is need for coordination amongst the different systems to take a holistic approach in tackling matters relating to the young persons.

### CONCLUSION

Is juvenile Justice really the unwanted child in the United Nations system?<sup>190</sup> Regardless of the bottlenecks in the juvenile justice system in Nigeria, a lot of improvement has occurred in the juvenile justice system in Nigeria in the twenty first century. There is however need for a periodic review of the law relating to children and young persons in Nigeria and an adoption of a holistic approach in addressing issues of these

186. See also Section 73.

187. See also Government paper in the Home Office 1997 Paragraph 4:14.

188. Child Rights Act 2003.

189. Ashworth Andrew 2000 Sentencing and Criminal Justice 3rd Edition. London Butterworth.

190. Abramson B 2001. Juvenile Justice: The 'unwanted child' of state responsibilities, International Network on Juvenile Justice, Defence for Children International. Cited in Juvenile Justice: Modern Concepts of Working with Children in Conflict with the Law. Retrieved in [https://www.essex.ac.uk/armcdcon/story.../save\\_jj\\_modern\\_concepts.pdf](https://www.essex.ac.uk/armcdcon/story.../save_jj_modern_concepts.pdf) on 14 November 2014.

category of persons in Nigeria in order to fully achieve the aims of or philosophy behind the legislations protecting them.

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