

# Juvenile Justice in Nigeria



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*Published by*

**CENTRE FOR SOCIO-LEGAL STUDIES, ABUJA,  
NIGERIA**

ISBN:

*For further information, contact:*

CENTRE FOR SOCIO-LEGAL STUDIES  
44, Gana Street, Maitama, Abuja

OR

P. O. Box 14312, Wuse Post Office, Abuja

[www.censolegs.org](http://www.censolegs.org)

# Juvenile Justice in Nigeria



[A STUDY OF THE LAWS AND PRACTICES RELATING TO  
JUVENILE JUSTICE IN NIGERIA WITH SPECIAL FOCUS ON  
THE FEDERAL CAPITAL TERRITORY, ABUJA; KANO,  
LAGOS, PLATEAU AND RIVERS STATES ]

**Yemi Akinseye-George**  
Centre for Socio–Legal Studies

*With Support of:*

**John D and Catherine T. MacArthur**  
**Foundation**

## *Dedication*

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This work is dedicated to:

**Dr. Jonathan Fanton,**  
President,  
MacArthur Foundation: 1999-2009

For sharing MacArthur Foundation's  
vision-

*“To enhance public Safety  
while holding young offenders  
accountable for their actions,  
providing for their  
rehabilitation, protecting them  
from harm, and improving  
their outlook for success as  
responsible and productive  
members of society”-*

**“A new century for juvenile justice”,**  
MacArthur Foundation Newsletter 05.3 p.3

# Contents



<i>Dedication</i> ... ..	iv
<i>List of Abbreviations</i> ... ..	vii
<i>Preface</i> ... ..	viii
<i>Acknowledgement</i> ... ..	ix-xi
<i>Executive Summary</i> ... ..	xii-xvi

## **Chapter 1 - Introduction**

1.1 Introduction ... ..	1-4
1.2 Methodology ... ..	4-5
1.3 Literature Review ... ..	5-13
1.4 Meaning Goals and Importance of Juvenile Justice... ..	13-16

## **Chapter 2 - Universal Standards and Principles**

2.1 Convention on the Rights of the Child (CRC)	17-19
2.2 United Nations Guidelines for the Prevention of Juvenile Delinquency... ..	19-22
2.3 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) ... ..	22-26
2.4 United Nations Rules for the Protection of Juveniles Deprived of their Liberty ... ..	26-29

2.5 Other Relevant International Instruments ... 29-30

**Chapter 3 – An Overview of Laws relating  
to Juvenile Justice Administration  
in the focal Jurisdictions ... .. 31-55**

**Chapter 4 - Juvenile Justice Administration:  
Practices and Problems : Reports from  
the Field**

4.1 Introduction ... .. 56

4.2 Juvenile Justice Indication ... .. 56-58

4.3 Applicable International Standards ... .. 58-63

4.4 Federal Capital Territory of Abuja ... .. 63-65

4.5 Kaduna Borstal Training Institution ... .. 66

4.6 Kano State ... .. 66-69

4.7 Lagos State ... .. 69-73

4.8 Rivers State ... .. 73-76

4.9 Plateau State ... .. 76-80

**Chapter 5 - Child Justice Administration  
under the Child Rights Act ... 81-122**

**Chapter 6- Recommendations for the Future 123-127**

**Appendix**

## List of Abbreviations



CRC	Convention on the Rights of the Child
CRP	Constitutional Right Project
CYPL	Children and Young Person's Law
CRA	Children Right Act
CRL	Child Right Law
CYPO	Children and Young Person's Ordinance
CPA	Criminal Procedure Act
CPC	Criminal Procedure Code
CCPR	Covenant of Civil and Political Rights
FCT	Federal Capital Territory
JWS	Juvenile Welfare System
LRC	Legal Resources Consortium
LEADS	League of Democratic Women
NGO	Non-Governmental Organisation
NORAD	Norwegian Agency for Development
OSJI	Open Society Justice Initiative
UNICEF	United Nation Children Education Fund
UNDP	United Nation Development Programme
UNCRC	United Nation Convention on the Right of the Child

# *Preface*

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The tension between idealism and realism is quite pronounced in the field of juvenile justice or child justice administration. While on the one hand, the law requires that the state provides juveniles with an impartial judicial proceeding, the law, on the other hand, also underscores the protection of the best interests of the child by diverting him or her from formal judicial proceedings which engender stigmatization. Yet, the simultaneous pursuit of the child's best interests and due process rights often produces contradictory outcomes.

This report posits that the problem is not so much that juvenile justice in Nigeria has failed to resolve this tension as that it never attempted to until recently when the Child Rights Act was passed. The policy that informed the anachronistic Children and Young Persons Laws across the country seems to be that of institutionalization and punishment, which, by nature are antithetical to the best interests of the juvenile delinquent.

The report focuses on the principles, practices, problems and prospects of child justice administration in Nigeria. Its prognosis is that a proactive implementation of the Child Rights Act (federal) or Law (states) holds great promise for salvaging the country's juvenile justice system from its prevailing state of utter paralysis.

**Professor Yemi Akinseye-George,  
Centre for Socio-Legal Studies, Abuja,  
Nigeria**



## Acknowledgements



We want to express our deepest gratitude to all who contributed in one way or the other to make this report a reality. First and foremost, we note with gratitude the interest personally taken in our work by Dr. Jonathan Fanton who always created time to engage us in deep conversations about Nigeria whenever he visited the country. Some of our conversations focused on juvenile justice and the initiative of the MacArthur Foundation with respect to juvenile justice in the United States. Please see Appendix 1.

We wish to place on record our debt of gratitude to Dr. Kole Shettima, the Director, Africa Office of the MacArthur Foundation whose assistance was unquantifiable. Our numerous phone calls, text messages and e-mails to him helped to clarify our thoughts and approach to many of the issues dealt with in this report. His questions about ‘indicators’ always set us thinking and brainstorming. We are also grateful to his colleagues in the Africa Office in Abuja and the headquarters of the Foundation in Chicago, USA for their painstaking assistance as regards matters of administration of the grant.

We could not have met the challenge of putting this report together without the unwavering determination of our team at the Centre. At the heart of that team was our Vice President, B. O. Akinseye-George (Mrs.) who co-

ordinated the efforts of our staff and collaborators at different stages of the project. The team comprises Yetunde Olarinde, Bimbo Agbogun, Simon Eromosele, Samuel Nwankwo, Akinleye Akinseye, Princess Akinseye-George, Kelvin Mejulu, Titi Fatorisa and others. These were of tremendous assistance in pulling the varied elements of this project together.

We note particularly the rich and outstanding contributions of Yetunde Olarinde. She was of tremendous assistance to us through her excellent research interpersonal relations skills and field work.

The project was also greatly assisted by our numerous administrative officers namely: Emmanuel Ojong, Becky Amos and Tope Olaoye.

Beyond our Centre, we also had the benefit of the kind assistance of Mrs. Maryam A. Sabo, Aishatu Habib (Kano), Mr. Michael Toby (Port Harcourt), Mrs. Yewande Badejo-Okusanya, Mr. Oyeneye Dada Olusegun (Lagos), Jaiyeola Oluwatoyin Ayoade, Jude Igbanoi, Innocent Anaba, Francis Moneke, Mrs. Maryam Uwais, Mrs. E. S. Olarinde, Dr. Kole Shettima, Mr. Godwin Odo, Mrs Kehinde Ajoni, Mrs. Laeticia Nwaka Akinlami, Chief (Mrs.) Carol Ndaguba and others participants in the Stakeholders Seminar on Juvenile Justice which took place in Abuja from 8<sup>th</sup> to 10<sup>th</sup> October 2008.

This report also benefited from the views of stakeholders especially our lead discussants at the Stakeholders Forum

held on 27<sup>th</sup> May, 2009 for the purpose of considering the report in draft. In this connection we wish to thank Chino Obiagwu of LEDAP, Innocent Chukwuma of the CLEEN Foundation, Wale Fapohunda of LRC, Stanley Ibe of OSJI, Toyin Badejogbin of CRP, Amina Usman of MacArthur Foundation and others too numerous to mention.

Needless to add however, that the views and opinions expressed in this report are entirely ours.

Our thanks, of course also go to our technical consultant, Wolex Alase Osidipe for the excellent typesetting and to our publishers. They shared our enthusiasm about the report.

Finally, we want to thank our families not only for sharing our passion and commitment for this project but also for their love and prayers which continue to enrich our lives.

**Professor Yemi Akinseye-George**  
Centre for Socio-Legal Studies,  
Abuja, May 2009.

## *Executive Summary*



Juvenile justice system focuses on establishing a pattern of social justice for children brought before courts of law or otherwise coming into contact with the law. It seeks to provide separate courts and flexible alternatives to imprisonment. It proceeds on the premise that the rights and needs of children are different from those of adults and that this should be reflected in way they are treated. Juvenile justice therefore emphasises rehabilitation instead of punishment, prevention rather than retribution, as the principal goals of the justice system. Further, it advocates special procedures, distinct correctional facilities for children in conflict with the law and deinstitutionalization for minor offences.

The above goals and features are captured in the Children and Young Persons Laws that are applicable in all the states of the Federation. Some states (numbering about 22) have also gone ahead to enact the Child Rights Law based on the Child Rights Act passed by the National Assembly in 2003. The Child Rights Act (Federal) and the Child Rights Laws (states) make elaborate provisions reflecting and reinforcing the unique goals and features of juvenile justice.

The harsh reality however remains that children are commonly tried in the same courts as adults and are subjected to similar sentencing practices including

incarceration for minor offences. Worse still, children from less privileged backgrounds often face harsher treatments than their counterparts from more privileged socio-economic circumstances.

This report highlights these harsh realities of the remand homes and so-called correctional facilities in this country. It observes that the Nigerian criminal justice system has completely missed the road in the handling of juveniles. This is evident in the large population of children detained in adult prisons and the decrepit state of juvenile facilities across the country.

In the course of this Study we discovered that the United Nations Children Education Fund (UNICEF) had already developed some indicators for assessing the effectiveness of juvenile justice systems around the world. We attempted to review the practices of the juvenile justice institutions in our focal states against the backdrop of those indicators.

We found that the Juvenile Justice System is the most neglected aspect of the justice system in Nigeria. This neglect is prevalent at both the federal and state levels. A study of the budget of the various Ministries of Justice shows that they made no provision for the implementation of any project in the area of juvenile justice. However, at the state levels, juvenile justice is grouped with social welfare and received only marginal attention. By classifying juvenile justice as social welfare, the system does not enjoy the same attention as the other aspects of the justice system. Social Welfare appears to be low on the list of government priorities. This practice of classifying child justice issues as

social welfare creates an erroneous impression that there is no obligation on the part of the government to really fund it. Consequently, many facilities for child welfare depended mainly on gifts and handouts from charitable organizations.

The report advocates better treatment of children through the proactive implementation of the standards embodied in the Child Rights Act, the Convention on the Rights of the Child and several other international instruments with a view to improving the welfare of children and reducing the number of those who might take to a lifestyle of criminality and threat to society in future.

**Practical Measures proposed include:**

- Passage of Child Rights Bill into law by all States of the Federation and proactive implementation of its child justice provisions by the twenty two states that have already passed it;
- Reform of CYPL of Kano State by extracting the provisions of the CRA pertaining to child justice administration and incorporating them into the CYPL until such a time that the State would be able to overcome the current opposition to the passage of the CRL.
- Public enlightenment on the CRA aimed at promoting a better understanding of its provisions and the rationale behind them.
- Removal of all children from detention places and relocation to suitable accommodations to be provided

by the government in accordance with the provisions of the Child Rights Act and CRL as may be appropriate.

- Establishment of conciliation-oriented family courts to handle cases involving children in accordance with the principles embodied in international human rights instruments and guidelines for the treatment of children and provisions of the CRA or CRL.
- Value re-orientation of Youths by government and civil society actors through educational and enlightenment campaigns and other activities designed to improve the values of young people, improve their personality, talents, mental and physical abilities to the fullest.
- Improved dissemination of the CRC and Riyadh Guidelines by the various Ministries of Social Development. Any prospective child justice worker must be adequately educated about all the applicable international instruments. Since most law faculties and the Nigerian Law School do not teach child rights, any lawyer or magistrate who is to be engaged in child justice implementation must undergo a course in child rights law.
- Development of a comprehensive multi-sector perspective planning by the federal and state governments for the prevention of child and youth crime. The objective of such a plan would be to mobilise and coordinate all stakeholders toward the

prevention of delinquency. The plan should also involve inter-ministerial collaboration under the Ministry of Justice and Ministry of Youth and Social Development.

- Overhauling and upgrading of existing juvenile institutions before being integrated into the institutions established by the CRA for the implementation of that law.
- Periodic nation-wide audit of Juvenile facilities and progress tracking and performance rating.
- Capacity-building by federal and state governments for the development of a new, informed and well-motivated corps of child justice administrators and children police unit with specialised skills for administering the provisions of the CRA or CRL as the case may be.
- Greater emphasis on Family-based juvenile welfare that emphasises the role of families in preventing delinquency and facilitating the rehabilitation of children leaving detention in preference to formal judicial and legalistic interventionist measures.

The Child Rights Act has introduced far-reaching innovations which could completely transform the administration of child justice in the country. Already, the provisions of the Act have been enacted into the local law of no less than twenty two states. The challenge however is to move beyond mere enactment of the legal provisions and



take practical measures toward the implementation of the reform measures.





# Introduction

## 1.1 Introduction:

*“Children have not been immune to the upsurge of crime and violence seen in Nigeria over the past two decades. In addition to problems such as high-level corruption, fraud and international money laundering, the whole Nigerian society, in particular the urban areas, has been directly affected by the high incidence of armed robbery, the frequent assault on the streets, abductions and disappearances, and the rise of phenomena such as violent campus cults, gangs and vigilantism. Children are both victims and in some cases perpetrators of such criminal activities”<sup>1</sup>*

Whether as perpetrators or victims of crime, children and young persons, by virtue of their immaturity and vulnerability, occupy a special place in the administration of justice.

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<sup>1</sup> Unicef, Children’s and Women’s Rights in Nigeria: A Wake-up Call (Situation Assessment and Analysis 2001) p.222.

Consequently, the policies, laws and procedures which apply generally to adults are tempered when children and young persons come into conflict with the law. Until recently, the term, 'juvenile justice'<sup>2</sup> was used to describe the branch of criminal law which deals with cases involving children and young persons. It was observed that the boundary between juvenile justice administration and the general criminal justice administration was increasingly becoming smaller. Children and young persons in conflict with the law were routinely handled and treated as adults and subjected to procedures which ought to be applied only to adults.<sup>3</sup> For instance, a recent report on the Port Harcourt prisons stated as follows:

*"No fewer than 200 juveniles are currently languishing in Port Harcourt Prison as they have been put behind bars amongst over 2,400 inmates, in (sic) which over 1,800 of the adults and children are awaiting trial."*<sup>4</sup>

The report added that the State Government has concluded plans to transfer the adolescents to a juvenile home in Port Harcourt as part of the reformation and rehabilitation of the youths so that they can become better citizens in future. The Commissioner for Social Welfare and Rehabilitation, Mr Joe Phillip Poroma disclosed after inspecting the prison but did not state the offences of the children before they were lumped in the jail house with hardened criminals. However, our

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<sup>2</sup> Although this remains a common usage, the trend is now to use the term '**child justice**' instead of 'juvenile justice'.

<sup>3</sup> See generally Unicef, Children's and Women's Rights, op. cit.

<sup>4</sup> The Vanguard, September 5, 2008 p.10

inquiry at the Port Harcourt Prisons several months after the promise by the Commissioner revealed not only that the children detained in the prison were yet to be transferred to juvenile centres but also that many more children have since been admitted to the overcrowded adult prison. Even more disheartening was the discovery in the course of this study that the pathetic story from the Port Harcourt prison could be replicated for other prisons in the country.<sup>5</sup> Since the prisons are at the receiving end of the criminal justice system, it is necessary to re-examine the process of child justice administration in the country in order to find out why so many children<sup>6</sup> are languishing in adult prisons rather than undergoing rehabilitation in Remand Homes, Approved Schools and Borstal Institutions.

The objective of this report is to examine the current situation of the administration of child justice in Nigeria with particular reference to the Federal Capital Territory (FCT), Abuja and four of the thirty six states in the Federation, namely Lagos, Kano, Rivers and Plateau states. The common as

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<sup>5</sup> See National Prison Audit (2007-2008) by the National Human Rights Commission in collaboration with UNDP and NORAD 2008, p.15.

<sup>6</sup> The non-existence of comprehensive and reliable data from the prisons makes it difficult to ascertain the magnitude of the problem of detention of children in adult prisons. Reports from the prisons, the media and NGOs as well as stories of Police parading teenage armed robbery suspects on television indicate that the percentage of children in Nigerian prisons may be in the region of 40% or more of the total prison population. This estimation takes account of children who are arbitrarily assigned adult ages by the Police in order to justify their detention in police cells and in adult prisons as there are often no facilities for separate detention of children.

well as divergent features of child justice administration in these states were examined during field work with a view to understanding the strengths and weaknesses of child justice administration in the different jurisdictions. The knowledge gained will be used to propose ideas for future interventions in this sector not only in the focal states but also all over the country.

## **1.2 Methodology**

This study used a variety of methods to obtain information. Firstly, we conducted a fairly comprehensive desk review of existing literature in the field such as reports of UNICEF, publications by the National Human Rights Commission, books, monographs, articles and other publication by individuals and civil society organizations. Secondly, we interviewed a wide range of individuals who are working on child rights and juvenile justice issues. Thirdly, we visited the remand homes, borstal institutions and magistrates courts designated for juvenile justice cases. Although the officials of the homes demanded that we should not disclose their identities, they allowed us to see their facilities and the children who are under their custody. In one of the homes visited (not one of the five focal states) we were allowed to take pictures on the condition that we will not disclose the name of the institution concerned. The pictures used in this report are therefore not from any of the five jurisdictions that were the primary focus of this project. But apart from Rivers State which has good facilities in the remand facilities, the conditions of the remand homes in Lagos, Plateau and Kano are no better than the ones shown in the pictures. However, the borstal institution in Kaduna appears to have fairly better

facilities as the institution is located on a spacious ground which allows room for recreation and sports. But the facilities for sports and recreation are either broken down or non-existent. The reference to Kaduna is because the Borstal Institution there also caters for the Federal Capital Territory which has no separate juvenile institutions of its own.

A further method deployed was to bring together the officials including magistrates and child rehabilitation officers from the focal states for a two-day workshop in Abuja during which we discussed extensively and compared notes on each of the items listed on the UNICEF indicators of child justice. One of the states, Plateau was unable to participate in the workshop. However, we were fortunate to conduct, on the condition of anonymity detailed interview with high-level officials of the Plateau State Ministry of Women and Social-Development which is directly responsible for child justice matters. The findings from these various research endeavours are outlined in chapter 4 of this report in the light of contemporary standards with respect to child justice matters.

### **1.3 Literature Review**

This deals with literature relevant to the subject matter which we consulted and found helpful in the study of the Juvenile Justice System in Nigeria generally and elsewhere. At the moment, we found only one work which focuses on only one state i.e Lagos State as literature in the field tend to be general. In this section, we summarise the main themes of what the materials we consulted and which we found to be of significant assistance to this effort.

**(a) *Criminology and Criminal Justice***

*Criminology and Criminal Justice*<sup>7</sup> (A.B. Dambazau, 2007) covers the theme, mentioned in its title, which has become an increasing popular field of study in many tertiary institutions in Nigeria. A.B Dambazau is particularly helpful in shedding light on criminology in the national context as there is dearth of local literature on the subject.

Criminology and the criminal justice, represents the nature and extent of both conventional and transitional organized crimes in Nigeria. It contains seven chapters all focused on crime and its prevention in Nigeria. The final chapter, chapter seven covers a wide number of areas relating to juvenile delinquency, its causes, the juvenile courts and its prevention. The book also contains illustrative examples, while selected important primary documents are produced as appendices.

**(b) *The Rights of the Child in Nigeria***

The Rights of the Child in Nigeria, reports on a study carried out in Nigeria; it was edited by I.A Ayua and I.E Okagbue.<sup>8</sup> The report is divided into two parts, Part I is basically the introductory section and it consist of the introduction and two further introductory chapters on “Data and Methodology” and “An Overview of the Rights of the Child in

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<sup>7</sup> Dambazau, A.B., *Criminology and Criminal Justice*( Spectrum Books Limited Ibadan, Nigeria 2<sup>nd</sup> edition 2007)

<sup>8</sup> Ayua & Okagbue, *The Rights of the Child in Nigeria* (Nigerian Institute of Advanced Legal Studies, Lagos,, 1996)



Nigeria.” These chapters provide the necessary background for a proper understanding of the study. Part II examines the finding of the study and comprises six chapters namely, “The Right of the Child to Education”, “The Right of the Child to health”, “Child Welfare”, “Child Labour”, “Child Abuse” and “The Treatment of Child Offenders and the Rights of the Child”. The ninth chapter is our focus because it deals with the Juvenile Justice System in Nigeria. It highlights the legal framework of Juvenile Justice Administration in Nigeria and it gives a report on the finding of the study that was carried out in Nigeria. Chapter ten is a summary of the study and the recommendation emanating from is. In this chapter a section is devoted to the treatment of Juvenile offenders in Nigeria.

**(c) *Beyond Parental Control (A guide for juvenile justice)***

This is a monograph based on a research carried by Festus Okoye of the Human Rights Monitor. This guide provides simple ways and means of proceeding against a juvenile in conflict with the law. The guide inclines towards the summation of the learned Justice Potter Stewart in *Re Gault*<sup>9</sup> that the juvenile justice should serve as a corrective institution and not as centre of punishment for a criminal act, as it provides for it. The procedure of the juvenile system is outlined in this guide while making reference to the relevant laws on the subject.

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<sup>9</sup> 387 U.S. 1 (1967)

**(d) “Juvenile Justice: Evaluation, Policies and Programmes”**

This article focuses on the aims of the Juvenile Justice System as outlined in the Beijing rules. Professor A.A Adeyemi (1992),<sup>10</sup> notes that these rules emphasise the well being of the juvenile and ensure that any reaction to juvenile offenders should always be in proportion to the circumstances of both the offender and the offence. For there to be an effective Juvenile Justice System, there must exist an admixture of “*the justice model*” and “*the welfare model*”.

The article clarifies who a juvenile under the law is, while discussing the protection of juveniles by the constitution and the criminal law. It also discusses the administration of juvenile justice in Nigeria.

Finally, the article agrees with the guidelines laid down in the Beijing Rules with exception to the rule against corporal punishment. It argues that Nigeria being a traditional African society would rather inflict corporal punishment on a child than institutionalise the child. This very much indicates that the modernisation of our juvenile justice system should borrow some elements of the customary law practice with respect to non-institutionalisation of children in conflict with the law.

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<sup>10</sup> In Okonkwo, C.O., SAN (ed.), Contemporary Issues in Nigerian Law: Essays in Honour of Judge Bola Ajibola (Toma Micro Publishers, Lagos 1992): p. 396.

**(e) *“The Law and the Imprisonment of Children: The Juvenile Justice System”***

This article examines the Juvenile Justice System in Nigeria in the light of International Conventions and Declarations on the subject. The author Professor M.O Adediran 2003<sup>11</sup> discusses the various stages of Juvenile Justice from apprehension of offenders, the procedures followed during trial and eventual treatment of juvenile offenders. In doing this the paper is divided into Pre-trial, Trial, and Post- trial stages.

It argues that the juvenile justice system in Nigeria does not fall below international standards as the various laws, rules and regulations are fair, reasonable and intended to reform the offender rather brutalize them. The main problem however, noted the author, is the inability of those responsible for the system to comply with the framework.

The paper concludes with recommendations for improving the juvenile justice system in Nigeria. These recommendations range from personnel training and legislative reforms to alternative disposition measures and institutional reforms.

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<sup>11</sup> See Ogungbe, M.O, (Ed.), *Nigerian Law: Contemporary Issues, Essays in Honour of Sir, Chief (Dr) G.O Igbinedion*, (College of Law, Igbinedion University, Okada) P. 337

**(f) *A Handbook on Sharia Implementation in Northern Nigeria: Women and Children's Rights Focus***

This is a book of essays written by Dr Mohammed T. Ladan (2005),<sup>12</sup> and others. The articles highlight Islamic provisions which guide the treatment of women and children. The book is divided into seven chapters which cover the development and application of the *Sharia* in Northern Nigeria as well as human rights and the administration of justice under that law.

It uses quotation from the Holy Quran to justify the provisions relating to women and child. However, it observes that many of the provisions which are meant to protect women and children are applied in a manner that turn out to harmful to their welfare. It advocates better training for judges under the Sharia system in order to minimise conflicts with the provisions of the constitution in the application of Sharia. The book also provides a critical analysis of the *Almajiri* system.

**(g) *Transforming Relationships through Participatory Justice*<sup>13</sup>**

Wherever there are people, the possibility of conflict exists. One method by which conflicts are dealt with is through the justice system. Due to the

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<sup>12</sup> Ladan, M.T, *A Handbook on Sharia Implementation in Northern Nigeria: Women and Childrean's Rights in Focus* (League of Democratic Women (LEADS-NIGERIA) Kaduna, 2005) pp.119-120.

<sup>13</sup> Law Commission of Canada, 2003)

unsatisfactory results recorded by the Canadians there is a need to move to a more effective means of resolving conflict.

These alternative means are grouped into two broad categories; the Restorative justice, which refers to a process of resolving crime and conflicts by redressing the harm to the victim while holding the offenders accountable for their actions. Secondly the consensus based justice, which refers to innovative methods of resolving non criminal matters.

This book deals with both alternative means of achieving justice in its first two chapters. Its main aim is to ensure that the child offender gets the best means of justice as it is the aim of the justice system to rehabilitate the child offender and not to punish him or her.

***(h) Juvenile Justice in Scandinavia<sup>14</sup>***

This article, (Anette Storgaard 2004) focuses mainly on the legal protection of children and juveniles suspected of or convicted of crime in the Scandinavia. The age of criminal responsibility of children is also considered.

The juvenile justice system in Denmark, Finland, Sweden, and Norway are reviewed. The author observes that the juvenile justice systems of these countries have a lot in common with a few differences. These countries have all ratified the

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<sup>14</sup> Journal of Scandinavian Studies in Criminology and Crime Prevention, Vol. 5 No. 2 , 2004.

UNCRC and the age of criminal responsibility is 15. Furthermore, the author observes that none of these countries prohibits the possibility of a juvenile serving a prison sentence in the same prison as an adult.

Crime is stated to appear uniformly regardless of which model a particular country embraces; these models are the Penal Model and the Social Welfare Model. A close analysis shows that neither of the two models provides all the answers to the problem of juvenile delinquency. Each has something to borrow from the other.

**(i) *Street children and the Juvenile justice System in Lagos State***

This is a report<sup>15</sup> of a study carried out in Lagos State. The report describes the prevalence of the phenomenon of street children in Lagos State and the approach of the juvenile justice system of the state. It x-rays the institutions dealing with children such as the Police, Magistrates, the Remand Facilities and the Welfare office. The process through which a juvenile offender passes is analysed.

Further, the report makes recommendations for preventing juvenile delinquency, for dealing with children in conflict with the law and especially for dealing with street children in the hope of reducing

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<sup>15</sup> Owasanoye, B. and Wernham, M., *Street Children and the Juvenile justice System in Lagos State* (Report of a study carried out in Lagos State 2004).

the number of children who come in conflict with the law.

**(j) *Administration of Juvenile Justice in Nigeria***

This booklet<sup>16</sup> examines the law and practice relating to the administration of Juvenile Justice in Nigeria. It notes that the concept of juvenile justice is anchored on the recognition of the rights of the child to growth, protection and effective participation in society. And that It is intended to be corrective as well as preventive. In Nigeria however, these ideals are fast losing their importance in the system of administration of juvenile justice. This is because of the neglect of this aspect of the justice system and dwindling resources devoted to it. There is also the problem of lack of specialist skills required for effective administration of juvenile justice. The report proffers suggestions for improving the situation.

**1.4 Meaning, Goals and Importance of Juvenile Justice**

Historically, the juvenile court system was premised on two foundational beliefs about young people who violated the law.<sup>17</sup> One was that young people were both cognitively and morally undeveloped so that they should not be considered fully responsible for their offences. The other was that young

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<sup>16</sup> Okonkwo, C.O., Nwankwo c., and Ibhawoh, I, Administration of Juvenile Justice in Nigeria (Constitutional Rights Project, 1997)

<sup>17</sup> Empey, L.T The social construction of childhood and juvenile justice. *In the future of childhood and juvenile justice*. L.T Empey, ed Charlottesville; University Press of Virginia, 1979, pp. 138-74.

offenders were particularly malleable and therefore susceptible, to moral and social rehabilitation. Thus, it was the mission of the juvenile court to accomplish the rehabilitation of the juvenile law-breaker and to prevent future criminal behaviour. In furtherance of this mission, the juvenile court adjudicatory hearings were, in contrast to criminal trials, designed to be informal proceedings, which aim at the well being of the child offenders.<sup>18</sup>

The crux of the traditional juvenile court hearing was disposition or sentencing of the youth rather than the determination of the youth's guilt or innocence. The juvenile courts were more concerned with how best to reform the deviant's behaviour rather than the determination of guilt. To this end the judges had almost unlimited discretion both in adjudicatory and in dispositional sanctions.

However, beginning with the *In re Gault*,<sup>19</sup> decision in 1967, the Supreme Court began to impose procedural due process requirements on juvenile court adjudication. These requirements were designed to ensure that juveniles accused of crimes would have the opportunity to contest the allegations meaningfully. The later case of *In re Winship*,<sup>20</sup> expanded the list of mandated procedural guarantees to include the requirement that prosecutors have to prove delinquency charges beyond a reasonable doubt.

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<sup>18</sup> Rendleman, D,R "Parens patriae. From chancery to juvenile court". South Carolina law Review (1971) 23:205-59

<sup>19</sup> *In re Gault*, 387 U.S 1 (1967)

<sup>20</sup> 397, U.S 358 (1970)



Juvenile justice system focuses on establishing a pattern of social justice for children brought before courts of law or otherwise coming into contact with the law. It seeks to provide separate courts and flexible alternatives to imprisonment. It proceeds on the premise that the rights and needs of children are different from those of adults and that this should be reflected in way they are treated. Juvenile justice therefore emphasises rehabilitation instead of punishment, prevention rather than retribution, as the principal goals of the justice system. Further, it advocates special procedures, distinct correctional facilities for children in conflict with the law and deinstitutionalization for minor offences.

The above goals and features are captured in the Children and Young Persons Laws that are applicable in all the states of the Federation. Some states (numbering about 22) have also gone ahead to enact the Child Rights Law based on the Child Rights Act passed by the National Assembly in 2004. The Child Rights Act (Federal) and the Child Rights Laws (states) make elaborate provisions reflecting and reinforcing the unique goals and feature of juvenile justice.

The harsh reality however remains that children are commonly tried in the same courts as adults and are subjected to similar sentencing practices including incarceration for minor offences. Worse still, children from less privileged backgrounds often face harsher treatments than their counterparts from more privileged socio-economic circumstances.

This report highlights these harsh realities of our remand homes and so-called correctional facilities in this country. It

observes that the Nigerian criminal justice system has completely missed the road in the handling of juveniles. It advocates better treatment of children through the proactive implementation of the standards embodied in the Child Rights Act, the Convention on the Rights of the Child and several other international instruments with a view to improving the welfare of children and reducing the number of those who might take to a lifestyle of criminality and threat to society in future.





## Universal Standards & Principles

### 2.1 Convention on the Rights of the Child (CRC)

#### *Principles governing child justice system and its processes*

The Convention on the Rights of the Child is the first legally binding international instrument to incorporate the full range of human rights—civil, cultural, economic, political and social rights. In 1989, world leaders decided that children needed a special convention just for them because people under 18 years old often need special care and protection that adults do not. The leaders also wanted to make sure that the world recognized that children have human rights too.<sup>1</sup>

The Convention<sup>2</sup> has 54 articles, which spell out the basic human rights that children everywhere have.<sup>3</sup> When a

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<sup>1</sup> The UNICEF, Convention on the Rights of the Child. [www.unicef in action.com](http://www.unicef.inaction.com)

<sup>2</sup> *ibid*; The CRC in Article 1 defines a child as anyone who is under the age of 18. But it does not define the age of criminal responsibility, but leaves it to the member states to define. (Article 40 (3)(a))

<sup>3</sup> The right to survival, to develop to the fullest, to protection from harmful influences, abuse and exploitation; and to participate fully in

national government commits itself to protecting and ensuring children's rights it agree to hold itself accountable for this commitment before the international community. States parties to the Convention are obliged to develop and undertake all actions and policies in the light of the best interests of the child.

***The legal status and fundamental rights of the child***

According to Articles 37 and 40 of the Convention, children in conflict with the law have the right to treatment that promotes their sense of dignity and worth and also those treatments that take into account their age and aims at their reintegration into society. Also, placing children in conflict with the law in a closed facility should be a measure of last resort, to be avoided whenever possible. The convention prohibits the imposition of the death penalty and sentences of life imprisonment for offences committed by persons under the age of 18. However the appropriate juvenile justice mechanisms can be difficult to apply if public opinion favours tougher responses and harsher sentences. The prevalent public opinion in Nigeria appears to weight against the application of the death penalty to children who are too young to understand the consequences of their actions.

It is mandatory that in the administration of the child justice system the legal status and rights of the child are given

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family, cultural and social life The four core principles of the Convention are non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child.

due recognition. These rights are set out in Part II of the UNCRC and in particular they include:

- (a) the presumption of innocence;
- (b) the right to be notified of charges;
- (c) the right to remain silent;
- (d) the right to the presence of a parent or guardian;
- (e) the right to free legal representation and legal aid shall be respected to the administration of the child justice system set out in this Act.<sup>4</sup>

## **2.2 United Nations Guidelines for the Prevention of Juvenile Delinquency**

The guidelines stress the need to pursue a child-centred orientation in any preventive programme. A successful prevention of juvenile delinquency requires efforts on the part of the society to ensure the wellbeing and harmonious development of adolescents, with respect for and promotion of their personality from early childhood. Young persons should have active role and partnership within society and should not be considered as mere objects of control.<sup>5</sup>

The prevention of juvenile delinquency is an essential part of crime prevention. Young persons can develop non-

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<sup>4</sup> Section 210 of the CRA and Article 40 of the CRC

<sup>5</sup> A report of three conferences on Juvenile Justice Administration in Nigeria: National Conference on Juvenile Justice Administration in Nigeria Abuja, 2-3 July 2002 Northern Zonal Consultative Conference on Juvenile Justice Administration in Nigeria, Kano 16-17 September 2002 Southern Zonal Consultative Conference on Juvenile Justice Administration in Nigeria, Ibadan 16-17 October 2002

criminogenic attitudes by engaging in lawful socially useful activities and adopting a humanistic orientation towards society and out look on life.<sup>6</sup>

The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.<sup>7</sup>

According to the General Assembly of the United Nations,<sup>8</sup>

*“The need for and importance of progressive delinquency prevention policies and systematic study, and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:*

*(a) the provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and serve as a supportive framework for safeguarding the personal development of all young persons, particularly those*

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<sup>6</sup> Section I,1 Resolution 1386 UN General Assembly Resolution 45//113  
14<sup>th</sup> Dec 1990

<sup>7</sup> Section I, 2 Resolution 1386 UN General Assembly Resolution 45//113.  
14<sup>th</sup> Dec 1990

<sup>8</sup> Section I, 5 Resolution 1386 UN General Assembly Resolution 45//113.  
14<sup>th</sup> Dec 1990

*who are demonstrably endangered or at social risk and are in need of special care and protection;*

- (b) specialized philosophies and approaches for delinquency prevention, on the basis of laws processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infraction;*
- (c) official intervention to be pursued primarily in the overall interest of the young persons and guided by fairness and equity;*
- (d) safeguarding the well-being, development, rights and interest of all young persons;*
- (e) consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood; and*
- (f) awareness that, in the predominant opinion of experts, labeling a young person as “deviant”, “delinquent” or “pre-delinquent” often contributes to the development of a consistent pattern of undesirable behaviour by young persons”.*

Although the guidelines are to be implemented in the context of the economic, social and cultural conditions prevailing in the state,<sup>9</sup> they underscore the respective minimum roles of the family, educational systems, community, mass media, government agencies including law enforcement agencies, legislative bodies and other relevant institutions.

Finally, when dealing with children methods used must be in form of correction and not in form of punishment. Imprisonment, detention, and the use of formal agencies of social control should only be used as a means of last resort. As much as possible, the use of death penalty, beating, imprisonment with adults and deprivation of food, clothing, recreational facilities and education should be avoided.

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

The Beijing Rules was the first international statement to focus specifically on juvenile justice administration. Its aim was to develop a juvenile justice system that should be fair and humane, emphasising the well-being and rehabilitation of the juveniles.<sup>10</sup>

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<sup>9</sup> Section I, 8 Resolution 1386 UN General Assembly Resolution 45//113 14<sup>th</sup> Dec 1990

<sup>10</sup> See report of three conferences on Juvenile Justice Administration in Nigeria: National Conference on Juvenile Justice Administration in Nigeria Abuja, 2-3 July 2002 Northern Zonal Consultative Conference on Juvenile Justice Administration in Nigeria, Kano 16-17 September 2002 Southern Zonal Consultative Conference on Juvenile Justice Administration in Nigeria, Ibadan 16-17 October 2002



Although it is not a treaty per se, many of its provisions have become binding on States by virtue of their incorporation in the Convention on the Rights of the Child. The rules encourage<sup>11</sup>:

- (a) the use of diversion from formal hearings to appropriate community programmes;
- (b) proceedings to be conducted in the best interests of the juvenile by respecting the right to due process and the requested procedural safeguards;
- (c) careful consideration before depriving a juvenile of liberty;
- (d) specialised training for all personnel dealing with juvenile cases;
- (e) the consideration of release both on apprehension and at the earliest possible occasion thereafter.

### ***General Principles***

Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family. Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.

Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources,

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<sup>11</sup> Ibid;

including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

Juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the Rules.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) laid down the rule by which the juvenile justice system should operate. These rules main focus is the best methods by which juvenile offenders would be handled.

The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

***The two most important objectives of juvenile justice***

The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well-being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions.

The second objective is "the principle of proportionality". This principle is aimed at avoiding punitive sanctions, mostly expressed in terms of just deserts based on the gravity of the offence. It emphasizes the fact that the response to young offenders should be based not only on considerations of the gravity of the offence but also on the child's personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reactions (for example regard may be had to the offender's endeavour to indemnify the victim or to her or his willingness to turn to a wholesome and useful life).

In summary, the Beijing Rules advocate a proportional and fair reaction in any given case of juvenile delinquency. The importance of the rules lies in its ability to inspire the development of new and innovative types of reactions as well

as precautions against any undue widening of the net of formal or legalistic social control over children.

#### **2.4 United Nations Rules for the Protection of Juveniles Deprived of their Liberty**

The litigation process aims at justice. However when dealing with children the judiciary should take into account the rights, safety, physical and mental well being of juveniles and imprisonment should only be used as a last resort.<sup>12</sup> Children when detained should not be detained with adults as there is a high likelihood that the adults may influence them to become hardened criminals. When children are exposed to more violence in prison they often come out worse than they were before they entered the prisons.

Section 11<sup>13</sup> defines deprivation of liberty as:

*“the deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority”.*

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<sup>12</sup> Section 212(a) of the CRA and Section 1 United Nations Rules for the protection of Juveniles Deprived of their liberty, UN General Assembly Resolution 45/113, annex 45 UN GOAR Supp (No.49A), at 205 UN Doc., A/45/49 (1960)

<sup>13</sup> Nations Rules for the protection of Juveniles Deprived of their liberty, UN General Assembly Resolution 45/113, annex 45 UN GOAR Supp (No.49A), at 205 UN Doc., A/45/49 (1960)

Under Part III<sup>14</sup> of the Rules, juveniles who are detained, under arrest or awaiting trial are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

The UN Rules laid down some regulations, which should be followed when dealing with juveniles. These rules include:

*(a) Access to counsel*

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

*(b) Access to work and education*

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

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<sup>14</sup> Article 17

**(c) *Access to recreation***

Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interest of the administration of justice.

These rules are intended to establish minimum standards accepted by the UN for protection of juvenile offenders deprived of their liberty. Such detention must be consistent with their human rights and fundamental freedom in order to minimize the detrimental effect of all types of detention and enhance integration in society.

The rules deal in details with the management of juvenile facilities and spell out guidelines relating to:

- Adequate and accurate record keeping including legal records, medical records and records of disciplinary proceedings; access to these records by an appropriate third party shall be in line with certain procedure and the records are to be expunged at an appropriate time.
- Admission, registration, movement and transfer;
- Classification and placement by reference to the 'type of care best suited to the particular needs of the individuals concerned;'
- Physical environment and accommodation that guarantee the juvenile's right to health and human dignity;
- Education, vocational training and work
- Recreation including remedial physical education and therapy, under medical supervision, to juveniles needing it

- Medical care provided as much as possible within the detention facilities in order to avoid stigmatization; medical examination on admission, specialised institution for those suffering mental illness;
- Notification of illness, injury and death;
- Contact with the wider community including adequate communication with the outside world, families and friends, visits and periodic leave from the detention facility which shall count as part of the period of sentence;
- Limitations of physical restraint and the use of force
- Disciplinary procedures;
- Inspection and complaint
- Return to the community, family life, education or employment;

Other matters covered by the Rules include the qualification of personnel who shall include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists.

## **2.5 Other Relevant International Instruments**

Mention must be made of the following additional instruments which make far-reaching provisions on juvenile justice:

- (a) UN Covenant on Civil and Political Rights 1966 which prohibits the imposition of death sentence on persons below 18 years of age (Article 6 (5)); penitentiary system aimed at reformation and social rehabilitation as well as segregation of juvenile offenders from adults and

provision of appropriate treatment based on their age (Articles 10(3), 14 (1) and (4)).

- (b) African Charter on the Rights and Welfare of the Child which provides that the best interests of the child shall be the primary consideration in all actions concerning the child (Article IV(1); opportunity to be heard in person or by representatives in judicial or administrative proceedings (Article IV (2) and right to special treatment if found guilty of violating the penal law with the aim of reformation, re-integration and rehabilitation. (Article XVII).







## A Review of Laws on Administration of Juvenile Justice in Nigeria

### **3.1 Who are children and young persons?**

The term '*young persons*' first appeared in the Children and Young Person's Ordinance (CYPO), promulgated in Nigeria in 1943, which clearly defined two categories: A child is a person under 14 years of age and a young person is over 14 years of age and under 17 years of age. This definition was adopted by many states in their Children and Young Persons Laws. The term juvenile covers both categories.

Both the United Nations Convention on the Rights of the Child (1989) and the African Charter on the Rights and Welfare of the Child in 1991<sup>1</sup> define a child as a 'person below the age of 18 years'. This is consistent with the definition of a child under the Child Rights Act (CRA) 2003 applicable in the Federal Capital Territory and the Child Rights Laws (CRL) applicable in Lagos and Plateau States. As would be seen shortly, the distinction between a 'child' and a 'young person' under the Children and Young Persons Law (CYPL) continues

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<sup>1</sup> See paragraph 2.5 (b) of Chapter 2 hereof. The enactment of the Child Rights Act may be regarded as constituting domestication of these international instruments by Nigeria. Recourse may therefore be had to these instruments in interpreting the provisions of the CRA or CRL.

to apply in Kano and Rivers States which have not passed the CRL.

### **3.2 Relevant laws guiding the juvenile justice system in the focal Jurisdictions of FCT, Kano, Lagos, Plateau and Rivers State**

The relevant laws pertaining to juvenile justice in these jurisdictions are:

- ***The Constitution of the Federal Republic of Nigeria<sup>2</sup> (CFRN)***: This is the fundamental law of the country by reference to which the validity of all other laws are determined.
- ***The Children and Young Persons Act (CYPA)<sup>3</sup>***, a federal statute that specifically provides for children and young persons. It was the first law in Nigeria that dealt with matters relating to children and young persons. Following the passage of the CRA, the CYPA has now been superseded. Section 274 of the CRA provides that any provision of any other law pertaining to children that are inconsistent with the CRA shall be void to the extent of its inconsistency.
- ***The Children and Young Persons Law (CYPL)<sup>4</sup>*** the local statute that used to apply in all the focal states has now been repealed in Lagos and Plateau States. It continues to apply in Kano and Rivers States.

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<sup>2</sup> Promulgation Act Cap C23, LFN 2007

<sup>3</sup> Amended in 1945, 1947, 1950, 1954, 1955 and 1958

<sup>4</sup> Cap 10 Laws of Lagos States 2003

- ***The United Nations Convention on the Rights of the Child (UNCRC)***<sup>5</sup> is an international instrument that deals comprehensively with virtually all matters concerning children. It makes special provisions for children in conflict with the law and how they are to be handled. Nigeria ratified the convention in 1991 and hence it is operational in the country.<sup>6</sup> Reference has already been made in chapter 2 to this and other international instruments that are applicable to Nigeria.
- ***The Child's Rights Act (CRA)***<sup>7</sup>: Following the ratification of the UNCRC, the CRA was enacted in Nigeria as a Federal statute. Its application is however limited to the Federal Capital Territory being a law concerning children, a residual matter within the legislative competence of the states. In order to apply in the states, each state may either enact a local equivalent of the CRA or make it directly applicable in the state as is the current practice in Rivers State where we found that the state prosecutes certain offences directly under the Child Rights Act as the need arises.
- ***Criminal Code Law***<sup>8</sup>: cases involving children in conflict with the law are always criminal in nature and are therefore within the scope of the substantive

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<sup>5</sup> UN General Assembly Resolution 44/25 of November 20, 1989

<sup>6</sup> Act Cap C23, LFN 2007

<sup>7</sup> 2003, Act No 26, Federal Republic of Nigeria Official Gazette Vol. 90 No116

<sup>8</sup> Cap 17, Laws of Lagos 2003

provisions of the Criminal Code in Lagos and Rivers States and the Penal Code in Kano and Plateau States as well as the FCT.

- ***The Police Act***<sup>9</sup> : when children come in conflict with the law their first form of contact with the system is usually through the police. This brings the Police Act into operation subject to other relevant laws described above.
- ***Administration of Criminal Justice Law 2006***: This is the procedural law that regulates criminal procedure in Lagos State. Although it deals mainly with general criminal procedure which usually involves adults, some of its provisions impinge on the trial of children.
- ***Criminal Procedure Code (CPC) and the Criminal Procedure Act (CPA)***: The CPC applies to the procedural aspects of a normal criminal trial of adult offenders in the F.C.T, Kano and Plateau States whilst the CPA applies in Rivers State to the procedural aspects of a normal criminal trial of adults. However, some provisions of these procedural laws apply to the trial of children and young persons.

The juvenile justice system takes into account all these laws when dealing with children. These laws are interwoven and sometimes cannot be separated from one another in practical situations. Relevant provisions will be highlighted in the course of this work.

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<sup>9</sup> Cap P19 LFN 2003 (Formerly Cap. 359, LFN, 1990)

### **3.3 Stages of the Juvenile Justice administration**

The juvenile justice system can be divided into three stages. These stages differentiate the phases which a child offender passes through.

- The Pre-Trial Stage
- The Trial Stage
- The Post- Trial Stage

#### **3.3.1 The Pre-Trial Stage**

This is where the juvenile first comes in direct contact with the justice system. When a juvenile comes into contact with the law enforcement agencies, the juvenile offender should be managed in such a way as to respect the legal status of the juvenile, promote his or her well being and avoid harm to him or her with regard to the circumstances of the case.<sup>10</sup> The pre-trial stage consists of arrest, detention and processing of bail.

- **Arrest**

The Constitution of the Federal Republic of Nigeria in Section 35(1), guarantees the right to personal liberty of every person. Accordingly no body shall be deprived of his or her liberty, save in certain circumstances and in accordance with a procedure permitted by law. Similarly, the right to life is guaranteed save in limited exceptions one of which is “in order to effect a lawful arrest or to prevent the escape of a person lawfully

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<sup>10</sup> Adeyemi, A.A. , “Juvenile Justice Evaluation, policies and Programmes” Okonkwo, C.O. (ed), *Contemporary Issues in Nigerian Law, Essay in Honour of Judge Bola Ajibola* (1992) p.45

detained”.<sup>11</sup> Although the Constitution does not specifically mention children it is clear that the section also applies to children.

The Police Act and the various criminal procedure laws empower the police to arrest a person including a child who is reasonably suspected of having committed an offence.<sup>12</sup> Therefore, the police may arrest any person who commits an offence in his presence.<sup>13</sup>

Usually the procedure for effecting an arrest requires that a police officer actually touches or confines the body of the person to be arrested unless there is a submission to the custody by word or action. An arrested person is not to be subjected to unnecessary restraint except in certain circumstances.<sup>14</sup>

The use of force is only allowed where the offender resists or attempts to evade the arrest.<sup>15</sup> However a person making an arrest can only use such force as may be reasonably necessary to overcome any force used in resisting an arrest. Where a person authorized by law to use force uses excessive force, such a person would be criminally liable.

However, when dealing with children, the laws do not specifically deal with the manner by which children

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<sup>11</sup> Section 33(2)(b)

<sup>12</sup> Section 20 of the Police Act Cap P19 LFN 2003

<sup>13</sup> See Section 3, CPL, Cap. 22 Laws of Kano State

<sup>14</sup> Section 4 of the CPL

<sup>15</sup> See Administration of Criminal Justice Law of Lagos 2006

should be arrested. However, the UNCRC provides that the arrest of a child should be carried out in conformity with the law.<sup>16</sup>

Therefore, the arrest of a child should be in accordance with the relevant statutes which are in operation in each state.

The Constitution recognises three exceptional circumstances when the constitutional right to personal liberty of persons including children in conflict may be inoperative. These are:

- (i) For the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence or to such extent as may be reasonably necessary to prevent his committing a criminal offence;
- (ii) In the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare
- (iii) ... or vagrants, for the purpose of their care or treatment or the protection of the community.<sup>17</sup>

★ ***Modes of Contact***

Children come into contact with the criminal justice system by the police through three main streams:

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<sup>16</sup> Article 37(b) of the UNCRC

<sup>17</sup> Section 35(1) of the 1999 Constitution

- (a) **Direct Apprehension:** The police have the power to arrest a person who is reasonably suspected of having committed an offence.<sup>18</sup> Also, the police may arrest any person who commits an offence in their presence. This power extends to the direct apprehension of a person in flight after having committed an offence. It must be noted that the law authorizes the use of reasonable force in the course of making a lawful arrest. A child could also be apprehended in this manner.
- (b) **Official complaint:** where a child is accused of committing a crime or infringing penal provisions, an official complaint may be made to the police. The parents, guardian, neighbours or victim of the crime may make complaints. A child may also be reported to the police as “beyond parental control”<sup>19</sup> or ‘in need of care and attention.’<sup>20</sup>
- (c) **Task Force or Police Raids:** Task force or police raids are other modes of contact between the suspected offender and the Police in Lagos State. Although the offence of wandering has been abolished, it is a fairly regular occurrence for the police to carry out surprise raids of specific areas known to be

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<sup>18</sup> Section 20

<sup>19</sup> Section 50, CRL, Lagos State

<sup>20</sup> Section 28, CYPL Kano State



notorious for criminal or other anti social activities, such as motor parks. In the process many children who live on the streets and persons regarded as being without legitimate means of livelihood are picked up.

Of all the three modes, the surprise raids by the police violates the children's rights the most because children are arrested with adults without distinction in the treatment of children as opposed to adults. Also there is no separation between 'children in need of care and protection' and children identified and arrested for involvement in criminal activities.

Although the power of the police to arrest serves a useful purpose, it has been found to be prone to abuse. Many children are arrested during police raids and these children are sometimes maltreated. This power of the police to arrest children must be in constant check in order to forestall abuse.

It is noteworthy that the Children and Young Persons Law does not lay down any procedure, rule or manner which should guide police officers when dealing with child offenders during arrest. It only provides for the "*Bail of children and young persons arrested*"<sup>21</sup> and the "*Custody of children and young persons not discharged on bail after the arrest.*"<sup>22</sup> This law clearly falls short of the

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<sup>21</sup> See Section 3 of CYPL, Kano

<sup>22</sup> See Section 4 of the CYPL, Kano

standards set by the Beijing Rules which states that contacts between law enforcement agencies and a child shall be managed in such a way as to respect the legal status of the child, promote the well-being of the child and avoid harm to him or her with due regard to the circumstances of the case. A child in conflict with the law needs to be handled with care and should not be maltreated.

Although it has been stated by Section 298 of the Criminal Code law,<sup>23</sup> that where a person authorized to use force uses excessive force, such a person would be criminally responsible, this provision is often breached with impunity as policemen are hardly ever punished for misuse of force when apprehending adults let alone children.

♦ ***Procedure following arrest***

After an arrest has been made the arrested person has the right to remain silent or avoid answering questions until after consultation with a legal practitioner or any other person of his own choice.<sup>24</sup> Under this provision, a child offender also enjoys the right to silence.

• **Detention by the police**

This is the second phase of the pre-trial process. This is the period after the child has been arrested and is awaiting trial. According to the Constitution any person

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<sup>23</sup> Cap 17 Laws of Lagos States 2003

<sup>24</sup> Section 35(2) CFRN

arrested must be brought before a court of law within a reasonable time.<sup>25</sup> In Kano State, under the CYPL, a child under sixteen years of age who cannot be brought before a court of summary jurisdiction when apprehended, should be released on bail to his guardian or parents as soon as possible unless the case is one of homicide or grave offences, it is in the interest of the child and it will defeat the ends of justice.<sup>26</sup> Furthermore, the law provides that a juvenile not released on bail by the police is to be detained in a place of detention (a remand home).<sup>27</sup> Where this is not practicable, the Police or prison authorities are to make arrangements to prevent the association of the child or young person in police custody with adult offenders as far as it is practicable.<sup>28</sup> The necessary implication of this provision is that where it is not practicable young offenders will remain in custody and may not be separated from adult offenders. This exception appears to have become the rule in all the five jurisdictions under reference as it is often impracticable to separate children from adult offenders due to lack of facilities.

An offender including a juvenile, is to be taken before a court within a reasonable time. Section 35(5) of the Constitution defines a “reasonable time” to mean—

- (a) in the case of an arrest or detention in any place, where there is a court of competent jurisdiction

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<sup>25</sup> See Section 35(4)CFRN 1999

<sup>26</sup> See Section 3 CYPL

<sup>27</sup> See Section 4 CYPL

<sup>28</sup> See Section 5 CYPL

within a radius of forty kilometres, a period of one day; and

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

During our visit to the children remand home in Lagos, a total of about 70 children were in detention and each day, in the state, more children are brought into the home by the order of the court. Another significant area is that the release of such children was always on fast tracked. Children are released from the remand home to their guardians particularly those who meet the bail conditions. There are however some who have spent several months and sometimes years in detention due to the nature of the crime they were alleged to have been involved in e.g. armed robbery.

The general rule under the Constitution limiting pre-trial detention to 24 hours equally applies to children particularly when the child offenders were brought to the police detention before being brought to court.

Once a child offender is brought to court, the due process of the law follows. The child passes through the stages of arraignment, bail and perfection of bail condition. The length of pre-trial detention depends on the type of offence committed. In simple offences bail is perfected by the surety, the child offender is released to the surety who ensures his appearance in court for the proper trial. However, for children involved in serious offences like armed robbery, the pre-trial detention is

longer. This is because the police must carry out a thorough investigation in order to determine the extent of the child's involvement. Furthermore, bail in this situation is not easily granted as that may hamper the course of justice. This is so because the child may serve as a principal witness in the trial of the adult involved in the same offence.

- **Processing of Bail**

Where a person apparently under the age of sixteen years, is apprehended with or without a warrant, and cannot be brought forthwith before a court of summary jurisdiction, the police officer in immediate charge for the time being of the police station to which such person is brought, shall inquire into the case and may in any case and shall: unless (a) the charge is one of homicide or other grave crime or (b) unless it is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute or unless the officer has reason to believe that the release of such person would defeat the ends of justice, release such person on a recognisance being entered into him or by his parent or guardian, with or without sureties, for such an amount as will, in the opinion of the officer, secure the attendance of such person upon the hearing of the charge.<sup>29</sup>

### **3.3.2 Trial Stage**

A child who has been apprehended by the police is taken to the Community Development and Social Welfare office,

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<sup>29</sup> See Section 3 CYPL

under the Ministry of Women Affairs. It is at this point that the necessary action to determine the fate of the child is taken. The gravity of the crime would be determined by the trained Social Workers or the Probation Officers during the interview of the child. If the offence is a minor offence the child would be cautioned and he or she would be counselled and sent home with a serious warning.

However once it can be established by the Probation officers or Social Workers that it is a serious offence then the case would go before the Magistrate and it is the Magistrate that would determine what follows. If the child is to be remanded it is only the Magistrate that has the authority to remand the child and the child is taken to the remand home where he or she spends a maximum of 3 weeks or 21 days in custody.

When a child is in custody he is supervised by the probation officer at the remand home. Notwithstanding this the Social Welfare office still intervenes and both institutions work hand in hand to try to rehabilitate the child offender. But if within 21 days the child offender has not been rehabilitated due to the personality of the child then he would be taken back to the Magistrate who would now determine the next step to be taken. It was observed that the grim reality is that most children spend more than the 21 days provided by the law.

If the child has been successfully rehabilitated he would still appear before the Magistrate for him to be released. The committal and the removal of a child in the remand home can only be done by the Magistrate and no one else.

The exception to this is if the police arrest the child while committing an offence, or children that are found wandering

by the police. Such children can be taken directly to the remand home by the police pending their appearance before the Magistrate. However the police must provide the “police extract” for them to be accepted in the remand home. If this extract is not provided by the police the children would not be accepted in the remand home. This is an exception to the rule and this is done only when the children cannot be brought to the welfare office and taken before a Magistrate.

**(a) The Police force**

The police are an important arm of the juvenile justice system because they are the first point of contact with a child who is in conflict with the law. This initial contact is very important because of the high vulnerability of the child at this point. The need for humane and fair treatment cannot be over-emphasised considering that the success or failure of further interventions by other arms within the juvenile justice system may be determined by the initial contact.<sup>30</sup>

The police force is the main law enforcement agency recognized by the Constitution. With a higher visibility than other agency, the police bear the onerous burden of crime prevention and law enforcement at every level of the criminal justice system.

The duties of the police do not end after apprehending the child and taking the child to the welfare office. The police carry out the investigation of the case. The out come of the case depends a great deal on the work the police have

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<sup>30</sup> Owasanoye, B and Wernham, M (Eds.), *Street Children and the Juvenile Justice System in Lagos*; Nigerian Report Jan. 2004 p. 25

done. During trial the prosecuting officer who prosecutes the child offender is a police man. The police play a very important role in the trial of the offender.

Unfortunately the police in this country often do not have the requisite skill to handle children in order to minimise the effect of the arrest on the psyche of the child. There are even case when the photographs of children suspected of committing some crimes are splashed on the pages of news papers. Sometimes also, children are paraded on television along with adult suspects. These practices are now widely regarded as the norm but they are clearly in contravention of the minimum standard for treatment of child offenders.

**(b) The Juvenile Court :**

***(i) Composition of the Court***

The Juvenile Court is a court constituted under the authority of each state where the CYPL applies. It consists of either a Magistrate sitting alone or with other persons for the welfare of children in need of care and attention and the treatment of children in conflict with the law. In the jurisdictions where the CRL applies such as FCT, Lagos and Plateau States, the Juvenile Court has been replaced with the Family Court.

***(ii) Age of Criminal Responsibility***

Under the *Sharia* Law that applied in Kano State, the age of criminal responsibility is tied to the age of puberty. However, under the CYPL which continues



to apply in this State, a child is defined as ‘any person who has not yet attained the age of 14 years’ and a young person as a ‘person who has attained the age of 18 years. (Section 2) This definition equally applies to Rivers State.

In the FCT, Lagos and Plateau States, the CRA or Law defines a child as ‘a person who has not attained the age of eighteen years.’ The CRA remove the dichotomy between a child and a young person. It also supercedes the provisions of the Criminal Code, Penal Code and all other laws pertaining to the criminal responsibility of a child.<sup>31</sup>

***(iii) Children Charged with Adults***

For children whose accomplices are adults, the practice is to send the children to the juvenile court for trial rather than try them along with adults in the regular adult courts. However, where there is controversy regarding the age of the child can be legally tried in a regular adult court.<sup>32</sup>

***(iv) Proceedings to be in camera***

Under all the applicable laws in all the focal jurisdictions, court proceedings involving children are to be *in camera* to avoid social stigma. Hence trials are to be conducted in the presence of only members of the court, parties, counsels and persons directly involved in the case. However *bona fide*

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<sup>31</sup> See Adeyemi, A.A. op. cit.

<sup>32</sup> Owasanoye B. and Wernham M (Eds.), Street Children and the Juvenile Justice System in Lagos; Nigerian Report, Jan. 2004 pg 35

representatives of a newspaper or news agency may attend except excluded by a special order of court. Furthermore, the name, address, school, photograph or anything likely to lead to the identification of children before the court should not be published except by the permission of the court.

***(v) Objectives of the Juvenile Court***

The Juvenile Court system goes beyond dealing with criminal cases. The juvenile court's main objective is for the welfare of children in need of care and attention<sup>33</sup> and the treatment of children in conflict with the law.

In Lagos and other places where the CRA/CRL applies, the Family Court's jurisdiction extends to matters involving:

- (1) Children in need of care and protection
- (2) Children who need to be taken in by another family (fostering and adoption)
- (3) Children whose paternity is denied or in dispute
- (4) Truants
- (5) Children 'beyond parental control'
- (6) Children in conflict with the law

Children under categories (1) and (2) above are social welfare cases. Category (3) is civil while categories (4) and (5) are status offences and only category six covers criminal cases. According to international guidelines

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<sup>33</sup> Section 28 CYPL Kano

categories (1) (2) and (3) should be dealt with separately from criminal cases at all times.

This report is concerned primarily with the last category 'Children in Conflict with the Law'

Children in conflict with the law stand in a different category from all other children. These children are alleged to have broken one law or the other. Following investigation and arrest, these children are arraigned in the court by the police. On the day of arraignment and before proceeding to trial, the court orders the investigating police officer to locate and notify the child's parents or guardians of the charge(s) against him or her.

***(vi) Trial procedure***

On the first day of the trial the charges are read out in the language the child understands. The charge(s) are further explained to the child. The significance of this is that the child is given an opportunity to deny or explain if he or she has committed the alleged offence. It is normal for the grant of bail to follow this procedure as described under the criminal procedure law.

Grant of bail is usually delayed for different reasons. The usual reason is that the parents or guardians are absent, could not be located or unable to fulfil the conditions of bail. Consequently, the child may be remanded at a remand home.

However, the remand home may reject a child who is found to be unruly and capable of constituting a threat

to the other children by corrupting them. In that case the child may be institutionalised in a borstal home. As a rule, a borstal home only takes in young offenders between the ages of 16-21.

***(vii) Factors that militate against speedy trial of juveniles***

Magistrates ensure that the due process is followed when dealing with children. However there are some factors that militate against speedy trials and quick completion of cases. These include delay or impossibility of locating or tracing the parents or guardians of the child to stand surety; absence of the complainant in court on trial dates and or reconciliation of the accused and the complainant (i.e. the victims of the crime); delay in investigation by Investigating Police Officer's (IPO) or his absence in court on trial dates due to transfer from the state and lack of interpreter where the accused does not speak English, Hausa or Yoruba language.

***(ix) Legal Representation and legal aid***

Although the constitution provides for the right to legal representation, children offenders are usually without legal representation. The court often asks pertinent questions in order to clear any doubt that may affect the impartiality of the process. NGOs providing legal aid assistance to juveniles are few.

***(x) Methods of dealing with children or young persons charged with offences.***

According to the CYPL<sup>34</sup> where a child or young person charged with any offence is tried by a court, and the court is satisfied of the guilt, the court may:

- (a) dismissing the charge; or
- (b) discharge the offender on his entering into a recognisance; or
- (c) by so discharging the offender and placing him under the supervision of a probation officer; or
- (d) commit the offender by a mandate to the care of a fit person; or
- (e) commit the offender by a mandate to an approved institution; or
- (f) order the offender to be caned; or
- (g) proceed under the provisions of section 10; or
- (h) commit the offender to custody in a place of detention provided under this law for a period not exceeding six months; or
- (i) where the offender is a young person by ordering him to be imprisoned; or
- (j) If the offender is a young person, order him to be imprisoned, subject nevertheless to the provisions of the law; or
- (k) deal with the case in any other manner in which it may legally be dealt with.

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<sup>34</sup> Section 10 CYPL Kano

***(xi) Prohibition of Imprisonment***

Section 12(1) of the CYPL states clearly that a child offender shall not be imprisoned, however in Section 12(2) it further provides that the child should not be imprisoned if he can suitably be dealt with by fine, corporal punishment, committal to a place of detention or an approved institution or otherwise. Section 12(3) further provides that the young offender shall not be allowed to associate with adults.

This means that they could be kept in the same facility with adult offenders once they are not allowed to associate with adult offenders.

**3.3.3 Post Trial Stage**

After the trial, a child offender's guilt or innocence is established. If the child is found guilty of the offence the court orders the appropriate punishment to be given to the child, these punishment must be inline with the provisions of Section 10 CYPL. Although the interest of the child is taken into consideration when such orders are made, there are occasions that children are sent to the approved institution or borstal homes or in serious cases, to prison. The choice is to be made and the treatment of such offences is guided by international rules.<sup>35</sup>

Article 103(3) of the Convention on Civil and Political Rights (C.C.P.R) provides

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<sup>35</sup> Adediran, M.O, "The Law and Imprisonment of Children" in Ogungbe, M.O. (Ed.). *Nigerian Law: Contemporary Issues*, (Igbinedion Univ College of Law, 2003) p.337

*“The penitentiary system shall comprise of treatment of prisoners the essential aim of which shall be reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and status.”*

Article 3(3) of the United Nations Convention extends this welfare issue further by providing that:

*“State parties shall ensure that the institutions services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff as well as competent supervision”*

Article XVII (3) African Charter Caps it all by providing that:

*“The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation”*

When juveniles are sent to institutions these institutions must serve as a form of rehabilitation and not to ill-treat the child offenders. Remand homes and other Approved institutions have been established by the CYPL to deal children in custody

### **3.4 Borstal Institutions in Nigeria**

There are three borstal homes in Nigeria situate in Kaduna, Ilorin and Abeokuta. These institutions are saddled with the responsibility of detaining and caring for young offenders or recidivists who are not allowed by law to be kept in prison custody.

The aim of establishing borstal institutions is to separate young offenders from adults criminals in prison custody, in order not to create a forum for further orientation, of young offenders on the mechanics of indiscipline, criminality and recidivism under the careful tutelage of hardened adult prisoners.<sup>36</sup>

The separation also circumvents the opportunities of young inmates being subjected to all forms of abuse by adult inmates. Borstal homes are in essence reformatory institutions aimed at re-orientating the young persons who stand on the edge of moral precipice, to enable them become once more useful to themselves, their families and society at large upon reintegration.

Borstal Institution law provides for vocational and educational training aimed at the reformation of young offenders. The law provides that a Borstal institution will be a place where offenders who were not less than sixteen but under twenty one years of age on the day of conviction may be detained and given such training and instruction as will conduce to their reformation and the prevention of crime.<sup>37</sup>

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<sup>36</sup> See Francis Moneke Thursday 18, September 2008:

<http://www.vanguardngr.com/content/view/17255/84/>

<sup>37</sup> Ibid.



The Borstal Institution and Remand Centre Act specify a maximum of three years of institutionalization in the Borstal Institution, and with a possible additional one year of after care supervision. However, the laudable goals of the institution are frustrated by lack of proper policy, legal and institutional framework for preventing juvenile delinquency or correcting the juvenile offender.

The insufficient number of borstal homes in Nigeria is obviously incapable of taking care of the urgent need of the high rising increase in the proliferation of juvenile delinquency.





## *Juvenile Justice Administration in the Focal States: Practices, Problems & Prospects*

### **4.1. Introduction**

This chapter contains the findings of the studies carried out by our field researchers who visited the Federal Capital Territory, Abuja and each of the four focal states of this project: Lagos, Kano, Rivers and Plateau for the purpose of assessing juvenile justice facilities. The findings were later presented at a Workshop on Juvenile Justice which took place in Abuja from 8<sup>th</sup> to 10<sup>th</sup> October 2009. Participants at the Workshop consisted of Magistrates, Social Workers, Police, Prison Officials, legal practitioners, media practitioners and others. This report was presented in draft to a second meeting of stakeholders that took place in Abuja from 26<sup>th</sup> to 27<sup>th</sup> May 2009.

### **4.2. Juvenile Justice Indicators**

In the course of this Study we discovered that the United Nations Children Education Fund (UNICEF) had already developed some indicators for assessing the effectiveness of

juvenile justice systems around the world. We attempted to review the practices of the juvenile justice institutions in our focal states against the backdrop of those indicators which are as follows:

- (1) What is the situation of children in conflict with the law in this State?
- (2) What proportion of such children are held in detention?
- (3) What is the proportion of children detainees awaiting trial?
- (4) Is there a specialized system for handling cases of children offenders?
- (5) How do children's contacts with the Justice System affect them?
- (6) Are there cases of children dying in custody? If so, what are the causes of death?
- (7) Is there a system which allows independent bodies to visit children in custody regularly?
- (8) For how long can children offenders be held in custody? What is the average length of pre-trial detention?
- (9) Are there complaint mechanisms for children deprived of their liberty?
- (10) What is the proportion of children held in the same custody as adults?
- (11) Is there a programme in this State for the prevention of Juvenile delinquency?

- (12) Are there facilities providing “aftercare” or rehabilitation programmes for children leaving detention?
- (13) How often do parents or family members visit children in detention?
- (14) What is the budget of the State for Juvenile Justice and how is this shared between budget on custody and alternatives to detention?

The extent to which these standards embodied in these indicators are reflected in the juvenile justice system of our focal states is indicated in paragraph 4.4 below. We trained our field researchers on the use of these indicators during their interaction with juvenile justice administrators.

### **4.3 Applicable international standards**

Further, we reviewed the practices in the focal states against the background of the Universal Standards and Principles embodied in major international instruments on the Rights of the Child and juvenile justice. These are:

- Convention on the Rights of the Child (CRC)
- United Nations Guidelines for the Prevention of Juvenile Delinquency
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty).
- United Nations Covenant on Civil and Political Rights

- African Union Charter on the Rights and Welfare of the Child

Our researchers were briefed on the practical significance and relevance of these instruments to the implementation of juvenile justice in the country. Our major findings are outlined below:

### **General Findings**

#### ***(i) Juvenile Justice is the most neglected aspect of criminal justice system and its wrong classification as social welfare matters***

The Juvenile Justice System is the most neglected aspect of the justice system in Nigeria. This neglect is prevalent at both the federal and state levels. A study of the budget of the Federal Ministry of Justice in the last three years shows that the Ministry made no provision for the implementation of any project in the area of juvenile justice. However, at the state levels, juvenile justice is grouped with social welfare and received the only marginal attention. By classifying juvenile justice as social welfare, the system does not enjoy the same attention as the other aspects of the justice system. Social Welfare appears to be low on the list of government priorities. This practice of classifying child justice issues as social welfare creates an erroneous impression that there is no obligation on the part of the government to really fund it. Consequently, many facilities for child welfare depended mainly on gifts and handouts from charitable organizations.

***(iii) Evident neglect of juvenile justice facilities***

The neglect is evident in the deplorable state of most of the juvenile justice facilities visited. These facilities generally lack the minimum comfort prescribed for juvenile facilities by the Beijing Rules.

In terms of physical conditions and state of sanitation, the homes visited [Identity kept confidential in keeping with the understanding reached with the officials of the homes] were found to be decrepit. The buildings were not well maintained and appeared not fit for human habitation. Ventilation in the hostels was poor as the windows were high and were closed and there were no fans to provide more ventilation. But the ventilation in the common room was a little better.

***(iii) General Lack of facilities for detention of child offenders***

Children in conflict with the law were often arbitrarily ascribed adult age by the Police and presented as adults in order to justify the detention of such children in prisons. This practice is a gross violation of the rights of these children under both domestic law and international instruments. This practice has however persisted because there are few or no facilities for detention of children offenders.

***(iv) Listing of children as adults to justify detention in regular prisons***

The population of children in Remand Homes and Borstal Institutions is not a true reflection of the rate of offending by children and young persons. Despite denial by Prison authorities that they detain children in

Prisons, we found overwhelming evidence of such anti human rights practices. In some of the prisons visited, we saw persons who were clearly infants who were said to be awaiting trial inmates but listed as adults.

***(v) Detention of children in adult prisons***

The great majority of children in conflict with the law were held together with adults in the regular prisons. As the children advance in age behind bars, their association with adult criminals invariably expose them to the danger of aggravated criminal tendencies and recidivism.

***(vi) Lack of skills and facilities for treatment of child offenders***

Child Justice Administrators, Social Welfare and Probation Workers did not possess the specialized skills and facilities for the 'treatment' of Child Offenders. Neither do they possess the necessary skills for diverting juvenile offenders from the criminal justice system. In one facility visited the social welfare workers had no formal training in social welfare and had never undergone any training. There were also no budgetary provision for any form of training.

***(vii) Magistrates lacked specialised skills in juvenile justice matters***

Magistrates in the five jurisdictions and most parts of the country did not specialize in Child Justice Administration which was regarded as merely part of the general duties of Magistrates. They were merely assigned to handle juvenile cases without any training or preparation for the assignment and were often given

other duties or transferred to other locations without regards to the specialised work they were doing. In that event, any other Magistrate was assigned to take over the juvenile cases.

***(viii) Dearth of Knowledge about juvenile justice standards***

A majority of the officials involved in the administration of juvenile justice in the country were not aware of the global indicators and the universal standards and principles embodied in the international instruments noted above.

***(ix) Juvenile proceedings conducted in camera***

On the positive side however, the conduct of Juvenile proceedings is in camera in order to protect the identity of the children concerned. The court is cleared of people who have nothing to do with the proceedings. This is done in order to avoid inflicting social stigma on the child who is undergoing trial.

***(x) Denial of occurrence of death of children in custody***

None of the four states however reported any experience of children dying in custody. The officials attributed this to the practice of early hospitalization of sick children. Sometimes the parents of sick children were invited to take care of them. But in one location visited the record in the home showed that from the year 2005 till the 25<sup>th</sup> of September 2008 there were six deaths in the home. The last death occurred on the 28<sup>th</sup> of July 2008 when a young boy (name withheld) died of tuberculosis. There were still three young children suffering from tuberculosis in the home. These children



were taken to the State Government Hospital for treatment but they were “out patients” because they come from the home to receive treatment. When asked if these children would not infect the other children it was stated that these children were undergoing treatment and so the spread of the diseases was not possible.

During the course of this field work it was also observed that many of the children had skin infection and their bodies were scaled and with sores. Some of these sores were open wounds.

***(xi) Lack of alternatives to custody***

The five jurisdictions studied lacked provision for non-custodial alternatives for children who come into conflict with the law. Although there is statutory authorization of the use of restorative justice measures and such other means of diverting juveniles from custodial sentences such as community service, suspended sentence, etc, there is little evidence of the application of non-custodial and diversionary measures for reducing incarceration of children.

**4.4. Federal Capital Territory of Abuja**

***4.4.1 Child Rights Act not yet being implemented***

The Child Rights Act [Cap. 116 of 2003] being a federal law is applicable in this Federal Territory but the Family court which is the main instrument for implementing child justice under the Act remains to be constituted.

**4.4.2 Lack of juvenile justice facilities**

There were no facilities whatsoever in the Territory for implementing juvenile justice. Cases involving children were assigned to magistrates who have neither training nor specialization in handling child justice matters. Plans were however, under way to establish a Family Court in the territory.

**4.4.3 At least 20% of Kuje Prisons were children**

The Kuje Prison located within the territory, had several children inmates who were arbitrarily assigned adult age by the police in order to justify their detention in the prison.

**4.4.4 Growing problem of abandonment of children and child trafficking**

The FCT Police Command has noted the growth in the problem of child abandonment and child trafficking in the territory. Consequently, the Command has established a Human Trafficking Unit. The major problem of the unit was the inability to trace parents of juveniles. As a result of this, the Inspector General of Police has put in place Children Protection Unit to tackle this problem. Closely related to this is abandonment of children by parents. The police as an institution had few specialists who could deal with matters concerning children. The curriculum of the Police Training Schools made no provision for child justice skills.

#### ***4.4.5 Lack of statistics on child justice matters handled by the police***

Due to the plethora of reports on missing children and issues of trafficking, Juvenile Welfare System was put in place at both States and Divisional level of every Command. The Juvenile Welfare System (JWS) handled the cases of abandoned children, missing children, child labour and other sundry matters relating to children. There was however no statistics provided on these matters.

#### ***4.4.6 Trial of children offenders took place in the regular courts***

After police investigation, culprits were charged to appropriate courts and/or counselled in deserving cases. Trial was usually the last resort and in that case, all the rights (right to remain silent, legal representation) guaranteed by the law were made available to the child. The practice of taking children for trial before the regular courts meant for adults was prevalent owing to the lack of separate facilities for trying children offenders in the territory.

#### ***4.4.7 Trial of Juveniles avoided the usual plea in criminal trials***

However, at such trials, the plea of a juvenile is whether liable or not liable as opposed to the usual criminal nature of plea “guilty or not guilty”. The exception is that where a child is tried jointly with an adult, a regular plea may not be out of place.

#### **4.5 Kaduna Borstal Training Institution**

One of the most important Juvenile Justice facilities in the country is located in the neighbouring territory of Kaduna State. It is a Borstal Training institution which provides custodial facilities for children between the age of 16 and 21.[ There are two other such institutions in the country located in Abeokuta in the South West and Ilorin in the North Central.]

#### **4.6. Kano State**

##### ***4.6.1 Rural-urban drift led to growing juvenile delinquency***

Large population occasioned by rural-urban drift accounted for increase in juvenile delinquency in this state. Measures put in place to stem juvenile delinquency included the establishment of remand homes for re-integration, provision of clothing, feeding and health services by Women Affairs and Social Development Ministry; building of schools with accommodation and recreational activities. The main reasons behind rural-urban migration included inadequate or lack of parental care, peer influence and influence of '*almanjiri*' (street children). Kano State is the commercial nerve centre of the Northern States and it attracts destitutes from all over the northern states.

##### ***4.6.2 Magistrate ensured respect for the rights of juveniles on trial***

An experienced magistrate was designated to handle juvenile cases. On arraignment, the magistrate ensured compliance with Chapter 4, 1999 Constitution by

ensuring that the juvenile's right to presumption of innocence, legal representation, interpretation and consultation with Legal Aid Council for assistance are made available.

#### ***4.6.3 Religious considerations militated against passage of CRA***

Kano is one of the States that are yet to adopt the Child Rights Act (CRA). The prevailing Sharia religious law does not favour the fixing of the age of minority at below eighteen. Under that law it is believed that majority is attained when a child reaches puberty. The provisions of the CRA (sections 22-23) which punish child marriage (i.e marriage of girls below 18) and child betrothal were considered unislamic.

#### ***4.6.4 The Children and Young Persons Law was the applicable law***

The statutory law that applies to the trial of children in conflict with the law remains the Children and Young Persons Law. This law defines a child as a 'person under the age of fourteen years' and a young person as 'a person who has attained the age of fourteen years and is under the age of seventeen years.'

#### ***4.6.5 Of 58 Children in remand home, 18 (or 31%) were awaiting trial***

At the time of our study visit to the state there were fifty-eight (58) children in conflict with the law and these were held in the Remand Home. Out of these, eighteen (or 31 %) are awaiting trial for alleged offences of culpable homicide, criminal conspiracy and armed robbery.

**4.6.6 Offences by juveniles were under-reported**

Given the high population in the state of street children popularly known as '*almanjirii*', it is likely that the involvement of children in crimes was highly under-reported. Respondents to our interviews believed that stealing, disorderly behaviour, assault and other minor offences of these street children were often tolerated by the public who generally view these children as victims of an unfair socio-cultural or religious system.

**4.6.7 High population of children in Kano Prisons**

Although the prison authorities denied having children in their custody, we observed that a significant proportion of the prison population were in the state were children arbitrarily labelled as 'adults' by the police. These were languishing in the Kano prison as awaiting trial inmates.

**4.6.8 Juvenile homes in deplorable conditions**

Like the Prisons, the juvenile homes were in a deplorable condition as there were no facilities for carrying out rehabilitation or reformation of the children held there. We were informed that the government was in the process of establishing well-equipped rehabilitation centres for Children.

**4.6.9 Lack of strategy for prevention of juvenile delinquency**

There was no clear-cut policy or strategy for the prevention of juvenile delinquency although the state government had recently launched a programme of

societal reorientation which has as one of its goals, the reduction of juvenile delinquency. It involves awareness campaigns through the media, vocational training and youth empowerment through the Office of the Special Adviser on Youths. The implementation of this project was yet to commence at the time of our visit. But many commentators expressed the view that it was capable of reducing juvenile delinquency if properly implemented.

## **4.7 Lagos State**

### ***4.7.1 Peculiar nature of Lagos***

The peculiar nature of Lagos State as the trade hub in the West African sub-region and a former Federal Capital Territory has continued to attract an influx into the metropolis of people from far and near. This has put immense pressure on the existing social facilities thereby giving rise to various social problems. It is in recognition of this immense challenge that the Lagos State Ministry of Youth, Sports and Social Development was carved out of the erstwhile Lagos State Ministry of Women Affairs and Social Development.

### ***4.7.2 Responsibilities of the Ministry of Youths***

In order to realize the objectives of its creation, the Ministry was saddled with three major statutory responsibilities:

- (a) Provision of Social Welfare Services
- (b) Youths Development
- (c) Sports Development

Through the Social Welfare Department, the Ministry provides service to the vulnerable members of the society:

- (a) disadvantaged groups
- (b) abandoned children,
- (c) maladjusted and delinquent children,
- (d) children who are criminally inclined and those with criminal charges.

The services offered include:

- (a) Institutional care
- (b) Rehabilitative services
- (c) Counseling services.

#### ***4.7.3 The Remand Home***

The Remand Home was a transit camp for homeless children and deviant juveniles who needed corrective training and re-socialization to make them better citizens. The Remand Home also accommodated two other categories of children, namely: children beyond parental control (BC) and lost but found children and children in need of care and protection. The stay of these juveniles in the home was brief usually not beyond six months.

#### ***4.7.4 Children often overstay at the Remand Home***

However, we found that some of them had stayed for much longer periods owing to delay in the determination of their cases in court. These were mostly criminal cases. We found that the delay was



usually caused by Investigating Police Officers (IPOs) who often delayed in bringing charges against the offenders. Other causes of delay included lack of interpreter, inability to trace the parents, guardians or sureties to stand for juveniles released on bail, lack of legal representation, inability to meet bail conditions.

#### ***4.7.5 Remand homes for boys were overcrowded by over 100%***

There were two Remand Homes each for boys and girls. The capacity of the homes was four hundred. There were however more than eight hundred children held at the time of our visit to the home. Overcrowding and the attendant hygiene problems were common features of the homes. In addressing this problem, the Government has sometimes had to repatriate some of the children to their neighbouring home countries of Togo and Benin Republic. It was common for the remand homes to reject children owing to lack of space. One of the observed consequences of overcrowding was the unfortunate practice of mixing young first time offenders with older children with a history of recidivism.

#### ***4.7.6 Approved Schools***

There were in this state Approved Schools which offered training for the juveniles leaving the Remand Homes with the aim of making them better citizens. Children leaving the homes were either sponsored for formal education outside the Approved School or given vocational training in the Approved School. It is pertinent to mention that these institutions do not

admit directly. They admit only candidates who have passed through the juvenile court.

#### ***4.7.7 Juvenile Court***

The Juvenile court was under the administration of Lagos State Judiciary which posted a Magistrate to administer the court. We found that the Magistrate was not a specialist in child justice matters and lacked experience in handling cases involving children. She stated that she was not aware of the existence of global human rights standards dealing the rights of juveniles. She was however enthusiastic about the assignment. She used the occasion of our workshop to network with her counterpart from Kano who had acquired considerable experience on the job over a long period of time.

#### ***4.7.8 Magistrate was assisted by probation officers and social workers***

There are probation officers and social workers who assist and compliment the effort of the magistrates. They conduct social investigation and submit report with recommendation to the Magistrate. Any matter referred to social welfare department from the legal department was properly looked into. The department creates room for training in approved institution for correction and rehabilitation.

#### ***4.7.9 Beneficial partnership between juvenile court and social welfare department***

The Juvenile court worked hand in hand with the department of social welfare. The Magistrate often

referred cases to the department to conduct in-depth investigation into the circumstances of juvenile offenders. The outcome of such social inquiry often provided a sound basis for the juvenile court's decisions. This partnership constitutes good practice that has brought about considerable success in the administration of Juvenile Justice and enhanced the reformation, rehabilitation and re-integration of many of the Juveniles into the society.

#### ***4.7.10 Instances of exploitation of children by the Police***

We observed that in this jurisdiction, the Police have turned some children in conflict with the law into domestic servants who ran errands for policemen in the premises of police stations and barracks.

#### ***4.7.11 Establishment of family courts***

Happily, the Lagos State Government has domesticated the Child Rights Act by enacting the Child Rights Law of Lagos State, 2008. It is also the first state in the country to establish family courts in line with the provisions of the law (section 141 (2)). The court was in October 2008 inaugurated by the Chief Judge of the State. It will operate from four Magisterial Divisions of Lagos, Ikeja, Ikorodu/Epe and Badagry.

### **4.8. Rivers State**

#### ***4.8.1 Highest population of children in detention***

Of the five focal jurisdictions this state had the highest number of children in regular adult prisons or police cells. Two principal reasons account for this:

- (a) The offences prevalent amongst children in this state are those involving gangsterism, cultism, oil bunkering, violence, militancy, armed robbery, kidnapping and terrorism. These are offences were beyond the jurisdiction of Magistrate. Culprits were however taken before Magistrates for the purpose of being remanded until the accused persons including children were charged before appropriate trial courts; and
- (b) Lack of facilities for treating children offenders held in connection with violent crimes. Such children were regarded as capable of constituting a threat to the well-being of other children detained in remand homes.

***4.8.2 Between 80-90% of juvenile inmates were awaiting trial!!!***

It was reported that always between 80 and 90% of the children in conflict with the law were awaiting trial.

***4.8.3 School Social Work Unit***

There was a unit known as Schools Social Work Unit which send social workers to schools to liaise with the teachers to fish out children who were not regular in school. The parents of such children were then informed and advised to take corrective measures in order to prevent the children from becoming delinquents. This was a way of preventing juvenile delinquency. However, we learnt that there was a dearth of qualified personnel to provide social work to the children in the twenty three (23) local governments

in the state. The physical terrain of the state also posed a major challenge to the deployment of social workers to the riverine areas and crime infested creeks.

#### ***4.8.4 Establishment of vocational centres***

Another preventive measure adopted by the Government was the establishment of vocational centres for the training of children and young persons. At the end of their training, the children were given tools. We learnt however, that this measure has not achieved the intended results as most of the young people either drop out of such programmes in preference for the more lucrative ventures in the oil sector including the illicit practice of 'kidnapping for ransom'. Others, we learnt often sell off their tools in exchange for cash.

#### ***4.8.5 Child Rights Act not yet passed into local law***

The Child Rights Act law was yet to be passed into law in the State. But the office of the Director of Public Prosecutions in the State had begun to apply the Federal Law in some appropriate cases. However, it is necessary to enact the Act into law in the state so that its full benefits could be realized such as the establishment of family courts.

#### ***4.8.6 The only juvenile court was manned by a regular Magistrate***

There was only one juvenile court which was manned by a regular Magistrate who took juvenile matters once a week. This court sat in Port Harcourt, the state

capital. All juvenile cases in other parts of the state were handled by regular Magistrates.

***4.8.7 Good facilities in remand homes underutilized***

The Ministry of Social Welfare and Rehabilitation in this state was responsible for managing the Remand Homes and these homes were well equipped with good facilities for recreation and vocational learning. However, these facilities were not put into optimum use as the police and magistrates continue to send delinquent juveniles to prisons rather than to remand homes and approved institutions. The state proposes a new remand home by 2009 with adequate recreational facilities.

**4.9. Plateau State**

***4.9.1 Pathetic situation of children on remand***

The situation of children in conflict with the law remanded in Young Persons and Children Home in Plateau state was pathetic as the staffing and facilities in the Home were grossly inadequate. Ventilation was poor, lighting was inadequate, water was scarce and sanitation was in a terrible state; the premises were overgrown with bushes and mosquito infested.

***4.9.2 Sectarian crises led to the incarceration of more juveniles***

It is worthy of note that the sectarian crises in the state capital of Jos has contributed to the increase in the number of children in conflict with the law. Many were languishing in prison for their alleged role in the

violence that engulfed the city and caused the death of many innocent persons.

#### ***4.9.3 Lack of specialised courts for juvenile matters***

Unfortunately, there were no specialized courts designated for juveniles justice. All juveniles matters were being handled by regular Magistrates who conducted such proceedings in chambers. After being charged to court, the children were taken to the young people's home. Apart from the government-owned Young Persons and children home, there were a few homes being run by non-governmental organizations churches, groups and individuals etc. Owing to limited space in the government facilities, children were sometimes sent to privately run juvenile homes to be remanded.

#### ***4.9.4 Children remand homes to be brought into conformity with Child Rights Law***

The law in Plateau State provides elaborately for the establishment of special homes for children in different situation and circumstances and the Ministry of Women Affairs was in the process of ensuring that those homes were brought into conformity with the Child's Right Law which had been passed in the state as far back as 2005 but not implemented owing to lack of capacity and facilities.

#### ***4.9.5 Establishment of family courts pending***

Plans were under way to establish family courts in the State with specialization over juvenile justice and allied matters.

**4.9.6 50% of Children on remand were awaiting trial**

We found that there were 48 boys and 8 girls in the Remand Home and their ages range from 11 years to 16 years. The common reasons for holding them were mostly theft, drug abuse, truancy and rape. Over 50% were always awaiting trial at any point in time. Social Workers visited police stations, courts and prisons especially those outside the state capital to intervene in juvenile cases to ensure speedy trial.

**4.9.7 Facilities in the home were grossly inadequate**

There were no health facilities in the home. We learnt that the nurse who was coming to see the children had been transferred. The home had two staff who were also responsible for teaching the children even though there were no teaching facilities. The working condition of the staff in the home was unbearable as the home did not have any vehicle to convey the children to courts. The officials had to use their own vehicles and at times commercial motorcycles to convey the children to court. This was far from the ideal. It was not uncommon for these children to stay in the home for much longer than necessary owing to delays in their trial.

The children in the home were not well catered for and sometimes the judiciary staff had to contribute money from their salaries to buy soap and food for the children. The children relied solely on handouts from individuals and organizations. The subvention from the



state government was so little that it could not meet the basic needs of the children.

#### ***4.9.8 Lawyers pressed for improvement in services***

Some lawyers sometimes met with the management of the children home to press for improvement in their services. They also took up freely some of the cases pending in the juvenile homes. The Legal Aid Council has taken up the cases of many of the juveniles whose cases were pending in court.

#### ***4.9.10 Abandoned cases with no end in sight!!!***

Cases brought to the home included that of two young children who killed an 'okada' man (Commercial motor cyclist) They were charged to court for being in possession of a gun and life ammunition used in killing the 'okada' man. They claimed not to be aware of what happened and that they did not even know it was a gun by reason of their age. These children had been in detention for years.

#### ***4.9.11 Visits were allowed***

Generally parents were allowed to visit their ward twice a week. However parents of children who had stayed longer in remand home were allowed to visit them more frequently. Some of the children in the remand home have not necessarily committed any crime but were kept there because of their stubbornness and the need to be rehabilitated and so their parents were allowed to see them.

***4.9.12 Need to create enabling environment for implementation of CRL***

Since the Child Rights Law (CRL) had been passed in this state since 2005, it is surprising that nothing substantial has been accomplished since its passage towards its implementation. However, the office of the Chief Judge in collaboration with the Ministry of Justice and the Ministry of Social Development was in the process of establishing family courts for the state. Already the training of officials had commenced and Draft Rules of Procedure are being prepared. It is imperative that the Plateau State Government should take urgent measures to implement the Child Rights Law as that could help to enhance the rights of children and resolve the problem of rape and sexual assault on children which was rife in the State.

***4.9.13 Lack of systematic preventive measures against juvenile delinquency***

There was no systematic programme in place for the prevention of juvenile delinquencies.





## *Child Justice Administration in Nigeria under the Child Rights Act 2003*

### **5.1 Children not to be subjected to criminal justice process**

The Child Rights Act (CRA) 2003 has introduced a Juvenile Justice System known as Child Justice Administration. Under S. 204, the Act specifically removes a child from the purview of the criminal justice process or criminal sanctions. It provides that “no child shall be subjected to the criminal justice process or to criminal sanctions, but a child alleged to have committed an act which would constitute a criminal offence if the child were an adult shall be subjected only to the child justice system and the process set out in the Act.

### **5.2 Guarantee of the child’s right to privacy**

The CRA clearly maintains the age-long practice of protecting the privacy of any child being processed through the child justice system. The reason for this as stated in Section 205 is the need to avoid harm being caused to the child by undue publicity or by the process of labeling. Therefore, no information that may lead to the identification of a child offender shall be published. An records of such a child shall be

kept strictly confidential and closed to third parties; made accessible only to persons directly concerned with the disposition of the case at hand or other duly authorized persons; and not be used in adult proceedings in subsequent cases involving the same child offender (S. 205).

### **5.3 Competence of child justice administrators**

The CRA lays profound emphasis on the competence, training and professionalism of all persons dealing with child offenders. It provides in S. 206 (1) that professional education, in-service training, refresher courses and other appropriate mode of instructions shall be utilized to establish and maintain the necessary professional competence of all persons dealing with child offenders. Such persons are listed in the section to include:

- Judges
- Magistrates
- Officers of the specialized children Police unit,
- Supervisors and
- Child Development Officers.

It further provides that every Judge, Magistrate and other Judicial Officer, appointed to the court shall be trained in sociology and behavioural sciences to ensure effective administration of the child justice system (S. 206 (2)).

In addition to professional training and competence persons employed in the child justice system shall reflect the diversity of children who come into contact with the system.

Women and minorities shall be given a fair representation in such appointments.(S.206 (3))

In view of the fact that women constitute about half of the total population of the country, it is suggested that not less than half of those employed to handle child justice issues should be women. This suggestion is reinforced by the general belief that women are generally more patient and meticulous in handling children.

Furthermore, all forms of discrimination, political, social, sexual, racial, religious, cultural or any other kind shall be avoided in the selection, appointment and promotion of persons employed in the child justice system. This is to achieve impartiality in the administration of the child justice system.(S.206 (4)).

#### **5.4 Specialized children Police Unit**

The Act establishes in the Nigeria Police Force, a specialized unit of the Force, to be known as the Specialized **Children Police Unit** which shall consist of police officers who:

- (a) Frequently or exclusively deal with children;
- (b) Are primarily engaged in the prevention of child offences. (S. 207 (1)).

#### **5.5 Functions of the specialized children police unit**

- (a) The prevention and control of child offences.
- (b) The apprehension of child offenders
- (c) The investigation of child offenders and

- (d) Such other functions as may be referred to the unit by the Act or by regulations made under the Act or any other law (S. 207 (2)).

The Act emphasizes in S. 207 (3) the need for continual training and provision of special instruction to members of the specialized children police unit.

### **5.6 Exercise of Discretion**

In view of the varying special needs of children and the variety of measures available, a person who makes determination on child offenders shall exercise such discretion, as he deems most appropriate in each case, at all stages of the proceedings and at the different levels of child justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions. (S. 208 (1)).

In order to ensure that such discretion is judiciously exercised, the Act stresses the need for special qualification or training of the functionaries concerned (S. 208 (2)).

### **5.7 Power to dispose of case without resort to formal investigation or trial**

Under section 209, it is provided that in offences of a non-serious nature, the police or prosecutor or any other person dealing with a case involving a child offender shall have the power to dispose of the case without resorting to formal trial by using other means of settlement including:

- (a) Supervision
- (b) Guidance

- (c) Restitution and
- (d) Compensation of victims and
- (e) Encourage the parties involved in the case to settle the case.

It should be noted that this power may only be exercised where the offence involved is of a non-serious nature and:

- (a) there is need for reconciliation or
- (b) the family, the school or other institution involved has reacted or likely to react in an appropriate or constructive manner, or
- (c) where, in any other circumstance, the police, prosecutor or other person deems it necessary or appropriate in the interest of the child offender and parties involved to exercise the power.

The Act in section 209 (3) emphasizes that the use of police investigation and adjudication before the court shall be a last resort.

### **5.8 Legal status and fundamental rights of the child**

In administering child justice, the Act provides that the legal status and fundamental rights of the child must be respected. These include:

- (a) the presumption of innocence;
- (b) the right to be notified of the charges;
- (c) the right to remain silent;
- (d) the right to the presence of a parent or guardian;  
and

- (e) the right to legal representation and free legal aid.

Other rights of the child are set out in full in part II of the Act. It seems therefore that failure to respect any of these rights would be a ground for review of any decision taken in respect of a child.

### **5.9 Procedure for handling a child offender**

The procedure for handling the child's initial contact with the law is set out in section 211 of the Act as follows:

- (1) On the apprehension of a child:
  - (a) the parents or guardian of the child shall:
    - (i) be immediately notified or
    - (ii) where immediate notification is not possible, be notified within the shortest time possible after the apprehension, of the apprehension.
  - (b) the court or police, as the case may be, shall, without delay, consider the issue of release.
  - (c) contacts between the police and the child shall be managed in such a way as to:
    - (i) respect the legal status of the child,
    - (ii) promote the best interest and well-being of the child,
    - (iii) avoid harm to the child, having due regard to the situation of the child and the circumstances of the case.



(2) In this section:

*“Harm” includes the use of harsh language, physical violence, exposure to the environment and any consequential physical, psychological or emotional injury or hurt.*

### **5.10 Detention pending trial only to be used as a last resort**

The vexed question of detention pending trial is well addressed by the Act in section 212 to the effect that—

- (a) detention pending trial could be used (a) only as a measure of last resort and for the shortest possible period of time; and
- (b) wherever possible, be replaced by alternative measures, including close supervision, care by and placement with a family or in an educational setting or home.

The framing of subsection 1 leaves the length of pre-trial detention open-ended. The phrase ‘for the shortest possible period of time’ used in the subsection is rather elastic and may be used to justify unnecessary pre-trial detention. Having regard to the fact that pre-trial detention has always been the major problem of our criminal justice system including juvenile justice, one would have expected that a reforming statute of this nature would not leave such a loophole for the continuation of unnecessary pre-trial detention.

However, realizing this possibility, the Act goes on in subsection 2 to provide for the manner in which a child subjected to pre-trial detention shall be treated:

(2) While in detention, a child shall be given care, protection and all necessary individual assistance, including social, educational, vocational, psychological, medical and physical assistance, that he may require having regard to his age, sex and personality.

(3) Where the court authorizes an apprehended child to be kept in police detention, the court shall secure that the apprehended child is moved to a State Government accommodation, unless it certifies:

- (a) that, by reason of such circumstances as specified in the certificate, it is impracticable for him to do so; or
- (b) in the case of an apprehended child who has attained the age of fifteen years, that no secure accommodation is available and that keeping him in some other authority's accommodation would not be adequate to protect the public from serious harm from the child. "

It is unclear what the Act means by a 'State Government accommodation' in this context. It certainly does not include

prisons which are federally owned. The implication of this provision therefore is that children, who have attained fifteen years of age and are authorized to be detained in police detention, should no longer be sent to federally owned prisons. The State Government is now obligated by the CRA to establish 'State Government Accommodation' for receiving children of fifteen years who are leaving police detention.

The Act further provides in section 212 (4) that classification in the place of detention pending trial shall take account of the social, educational, medical and physical characteristics and condition of the child including his age, sex and personality.

It seems that the 'place of detention' referred to in section 212(4) includes 'State Government accommodation' referred to in section 212 (3).(b).

As a matter of urgency, it is necessary that the states that have passed the Child Rights law and even those that are yet to should take steps to provide 'State Government accommodation' referred to section 212 to serve as a place of detention for awaiting trial children who are leaving police detention. Such accommodation would be required for keeping children who have attained the age of fifteen years and who either on account of their violent tendency could not enjoy the alternative measures referred to in section 212 (1).

### **5.11 Adjudication in the case of child offenders**

Section 213 provides that—

- (1) A child who is accused of having committed an act such as is contemplated in Section 209 of this Act shall be tried in the Court.

- (2) The terms “conviction” and “sentence” shall not be used in relation to a child dealt with in the Court and any reference in any enactment or other law to a person convicted, a conviction or a sentence shall, in the case of a child, be construed as including a reference to a person found guilty of an offence, or to a finding of guilt or to an order made upon such a finding, as the case may be.

### **5.12 Rights to fair hearing**

Section 214 guarantees the right to fair hearing and due process. It provides that—

- (1) In the trial of a child under this Act, the observance of his rights to fair hearing and compliance with due process shall be observed.
- (2) The procedures established by the child justice system under this Act shall, in relation to the trial of the child offender, as during the initial contact with the child under section 216 of this Act:
  - (a) Respect the legal status of the child
  - (b) Promote the best interest and well being of the child; and
  - (c) Avoid harm to the child, having due regard to the situation of the child and the circumstances of the case.

### **5.13 Guiding principles in adjudication**

Section 215 provides for the observance of the following principles of adjudication in the trial of child offenders—

- (1) Where a child offender is brought before the court, the court shall ensure that:
  - (a) The proceeding is conducive to the best interests of the child and is conducted in an atmosphere of understanding which allows the child to participate therein and express himself freely.
  - (b) The reaction taken is always in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and needs of the child and the needs of the society.
  - (c) The personal liberty of the child is restricted only after careful consideration of the case, including the use of alternative methods of dealing with the child and the restriction is limited to the possible minimum.
  - (d) The child is not deprived of his personal liberty unless he is found guilty of:
    - (i) A serious offence involving violence against another person or
    - (ii) Persistence in committing other serious offences and there is no other

appropriate response that will protect the public safety.

- (e) The well-being of the child is the guiding factor in the consideration of his case.
- (2) The court has the power to discontinue any proceedings at any time if circumstances arise which make discontinuation of the proceedings the best way to dispose of the case.
- (3) The court shall handle each case brought before it expeditiously without unnecessary delay.

#### **5.14 Parents, Guardians to attend court**

Under section 216, it is required that—

- (1) The parents or guardian of a child offender who is charged before the court for an act which constitutes a criminal offence, shall attend all stages of the proceedings and shall be entitled to participate in the proceedings.
- (2) The court may, where necessary, make an order to enforce the attendance of a parent or guardian before it.
- (3) Notwithstanding subsection (1) of this section, where in the opinion of the court, it is not in the interest of a child that his parent or guardian should attend the court shall, by order, exclude the parent or guardian from so attending.

### **5.15 Child justice procedure in Court**

The court procedure for conducting child justice is stated in section 217 thus-

- (1) Where a child is brought before the Court, the Court shall, as soon as possible, explain to him and his parents or guardian in a language the child and the child's parents or guardian understand, the substance of the alleged offence.
- (2) Subject to the provisions of section 152 (4) (b) (i) of this Act, where a child is brought before the Court for an offence, the case shall be finally disposed of in the Court, and it shall not be necessary to ask the parent or guardian of the child whether he consents that the child be dealt with in the Court.
- (3) If the child does not admit the facts of an alleged offence, the Court shall proceed to hear the evidence of the witnesses in support of the facts and at the close of the evidence of each witness, the court shall ask the child or if the court sees fit, the parent or guardian of the child, whether he or she wishes to put any questions to the witnesses.
- (4) If the child, instead of asking questions, wishes to make a statement, the child shall be allowed to do so and it shall be the duty of the Court to put to the witnesses such of the questions as appear to be necessary and the Court may put to the child such questions as may be necessary to explain anything in the statement of the child.

- (5) If it appears to the court that a *prima facie* case is made out against the child, the evidence of the witnesses for the defence shall be heard, and the child shall be allowed to give evidence or to make any statement.
- (6) If a child admits the offence or the Court is satisfied that the offence is proved, the Court shall then ask the child if he desires to say anything in explanation of the reason or reasons for his conduct, and, before deciding on how to deal with him, the Court:
  - (a) Shall obtain such information as to his general conduct, home surroundings, school record, including the social inquiry reports referred to in section 224 of this Act and medical history, as may enable it deal with the case in the best interests of the child and
  - (b) May put to the child any question arising out of such information.
- (7) For the purposes of obtaining information under subsection (6) of this section or for special medical examination or observation, the Court may from time to time, remand the child on bail or to a place of detention.
- (8) If a child admits the offence or the Court is satisfied that the offence is proved, and the Court decides that a remand is necessary for purposes of inquiry or observation, the Court may cause an entry to be made in the Court records that the charge is proved and that



the child has been remanded for enquiry or observation.

- (9) The Court before which a child who has been remanded is brought may, without further proof of the Commission of the offence, make any order in respect of the child which could have been made by the Court which remanded the child.

### **5.16 Remands and committals to State Government accommodation**

Section 218 provides that—

- (1) Where the Court does not release on bail, a child who admits to committing one or more offences charged against him, the Court shall remand the child to a State Government accommodation.
- (2) A Court remanding a child to a State Government accommodation shall designate the authority which is to receive him and that State Government shall:
- (a) in the case of a child who is already being looked after by a State Government, be that State Government; and
  - (b) in any other case, be the Government of the State within which it appears to the court that the child resides or in which the offence or one of the offences was committed.
- (3) Where a child is remanded to a State Government accommodation, it shall be lawful for any person acting on behalf of the designated State to detain him.

- (4) Subject to subsection (5) of this section, the Court remanding a child to a State Government accommodation may, after consultation with the designated State Government, require that the State Government complies with a security requirement, which is that the person in question be placed and kept in secure accommodation.
- (5) A court shall not impose a security requirement except in respect of a child who has attained the age of fifteen years, and then only if:
  - (a) He is charged with or has been found to have committed a violent or sexual offence, or an offence punishable in the case of an adult with imprisonment for a term of fourteen years or more or
  - (b) He has a recent history of absconding while remanded to a state government accommodation, and is charged with or has been found to have committed an offence punishable with imprisonment while he was so remanded and
  - (c) The Court is of the opinion that only such a requirement would be adequate to protect the public from serious harm from the child.
- (6) Where a Court imposes a security requirement in respect of a child, it shall:

- (a) State that if is of such opinion as is mentioned in subsection (5) of this section and
  - (b) Explain to the child in ordinary language the reason the Court is of that opinion, and the Court shall cause a reason stated by it under paragraph (b) of this subsection to be specified in the warrant of commitment and to be entered in the Court register.
- (7) A court remanding a child to a State Government accommodation without imposing a security requirement may, after consultation with the designated State Government, require that the child complies with any such conditions as could be imposed if he were being granted bail.
- (8) Where a Court imposes on a child any condition as is mentioned in subsection (7) of this section, it shall explain to the child in ordinary language the reason it is imposing the condition, and the Court shall cause a reason stated by it under this subsection to be specified in the warrant of commitment and to be entered in the court register.
- (9) A court remanding a child to a State Government accommodation without imposing a security requirement may, after consultation with the designated State Government, impose on that State Government requirements:
  - (a) For securing compliance with any condition imposed on that person under subsection (7) of this section or

- (b) Stipulating that he shall not be placed with a named person.
- (10) Where a child is remanded to a State Government accommodation, the Court may:
  - (a) On the application of the designated State Government, impose on that child any condition as could be imposed under subsection (7) of this section, as if the Court were then remanding him to such accommodation and
  - (b) Impose on that State Government any requirement for securing compliance with the condition so imposed.
- (11) Where a child is remanded to a State Government accommodation, the Court may, on the application of the designated State Government vary or revoke any condition or requirement imposed under subsections (7), (9) or (10) of this section.

### **5.17 Social inquiry report**

Under section 219 (1) The appropriate officers shall, before a case, other than that involving a minor offence, is finally disposed of by the Court:

- (a) Properly investigate:
  - (i) The background of the child
  - (ii) The conditions under which the offence has been committed.

- (b) Inform the Court of all relevant facts, relating to the child, including his social and family background, school career and educational experience, arising out of the investigation under paragraph (a) of this subsection.

### **5.18 Power of court to order parent or guardian to pay fine**

Under section 220,

- (1) Where a child is charged before the Court with an offence and the Court decides that the case would be best disposed of by the imposition of a fine, damages, compensation or costs, whether with or without any other measure, the Court shall order that the fine, damages, compensation or costs awarded be paid by the parent or guardian of the child instead of the child, unless the Court is satisfied that:
  - (a) The parent or guardian of the child cannot be found or
  - (b) The parent or guardian has not condoned to the commission of the offence by neglecting to exercise due care, guidance of and control over the child.
- (2) Where a child is charged with an offence, the Court may order his parent or guardian to give security for his good behaviour.
- (3) Where the Court thinks that a charge against a child is proved, the court may make an order on the parent or guardian under this section for the payment of damages or costs or requiring him to give security for

good behaviour, without proceeding to find that the child committed the act.

- (4) An order under this section may be made by the Court against a parent or guardian who, having been required to attend the Court failed to do so, but no such order shall be made without the Court giving the parent or guardian an opportunity of being heard.
- (5) A sum imposed and ordered to be paid by a parent or guardian under this section or any forfeiture or any security as given under this section, may be recovered from the parent or guardian by distress in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged.
- (6) A parent or guardian may appeal against an order under this section to the Court at the High Court level or the Court of Appeal, as the case may be.

### **5.19 Restriction on punishment**

Section 221 places restriction on the kind of punishment a court may impose on a child. Thus

- (1) No child shall be ordered to be:
  - (a) Imprisoned; or
  - (b) Subjected to corporal punishment; or
  - (c) Subjected to the death penalty or have the death penalty recorded against him.

- (2) No expectant mother or nursing mother shall be subjected to the death penalty or have the death penalty recorded against her.
- (3) A court shall, on sentencing an expectant or a nursing mother, consider the imposition of a non-institutional sentence as an alternative measure to imprisonment.
- (4) Where institutional sentence is mandatory or desirable, an expectant or nursing mother shall be committed to and be held or detained at a Special Mothers Centre.
- (5) No mother and child shall be held or detained at a Special Mothers Centre for a period longer than the time the child would have attained the age of six years.
- (6) Where:
  - (a) A mother is released from a Special Mothers Centre due to the age of her child being six years before she has completed her sentence or
  - (b) A child dies while with the mother at a Special Mother Centre, the mother shall be brought before the court which passed the original sentence to review the case and deal with her as appropriate, having regard to all the circumstances of the case.
- (7) Where a mother is further given a sentence or imprisonment as a result of a review under subsection (6) of this section, the child shall be treated as a child

in need for purposes of section 178 of this Act and may be committed to the care of either:

- (a) His father or
- (b) A fit and proper person, by a committal order.

### **5.20 Detention in case of certain crimes**

However, section 222 provides for detention in certain cases. It says that-

- (1) Notwithstanding anything in this Act to the contrary, where a child is found to have attempted to commit treason, murder, robbery or manslaughter, or wounded another person with intent to do grievous harm, the Court may order the child to be detained for such period as may be specified in the order.
- (2) Where an order is made under subsection (1) of this section, the child shall, during that period, notwithstanding anything in the other provisions of this Act, be liable to be detained in such place and on such conditions as the Court may direct, and the child whilst so detained shall be deemed to be in legal custody.

### **5.21 Methods of dealing with child offenders**

Section 223 details the methods for dealing with a child offender as follows-

- (1) Where a child charged with an offence is tried by a Court and the Court is satisfied that the child actually



committed the offence, the Court shall take into consideration the manner in which, under the provisions of this Act, the case should be dealt with, namely, by:

- (a) Dismissing the charge; or
- (b) Discharging the child offender on his entering into a recognizance; or
- (c) Placing the child under care order, guidance order and supervision order including:
  - (i) Discharging the child offender and placing him under the supervision of a supervision officer, or
  - (ii) Committing the child offender by means of a corrective order to the care of a guardian and supervision of a relative or any other fit person, or
  - (iii) Sending the child offender by means of a corrective order to an approved accommodation or approved institution or
- (d) Ordering the child offender to:
  - (i) Participate in group counseling and similar activities.
  - (ii) Pay a fine, damages, compensation or costs or
  - (iii) Undertake community service under supervision or

- (e) Ordering the parent or guardian of the child offender to:
    - (i) Pay a fine, damages, compensation or costs or
    - (ii) Give security of his good behaviour or
    - (iii) Enter into a recognizance to take proper care of him and exercise proper control over him or
  - (f) Committing the child offender to custody in place of detention provided under this Act or
  - (g) Making a hospital order or an order prescribing some other form of intermediate treatment or
  - (h) Making an order concerning foster care, guardianship, living in a community or other educational setting or
  - (i) Dealing with the case in any other manner in which it may be legally dealt with under this Act.
- (2) The placement of a child in an approved accommodation or Government institution shall:
- (a) Be a disposition of last resort and
  - (b) Not be ordered unless there is no other way of dealing with the child, and the Court shall state, in writing, the reason or reasons for making the order.

- (3) Where an order under this section is made by the Court, the order shall, for the purpose of:
  - (a) Reverting or restoring stolen property and
  - (b) Enabling the Court to make orders as to the restitution or delivery of property to the owner and as to the payment of money upon or in connection with the restitution or delivery, have the like effect as a restitution order upon a conviction of an adult offender, subject however, to any protection provided for the child offender under this Act.
- (4) A court shall not make an institutional order in respect of a child unless it is satisfied that there is a vacancy in the approved institution to which it intends to commit the child.
- (5) An approved institution may refuse to accept or admit a child where there is no vacancy in the institution for the child notwithstanding an order of a Court committing the child to that institution.

Subsection 5 empowers the authorities of an institution to refuse to admit a child committed to the institution where there is no vacancy. This is to enable the institutions prevent overcrowding. But the Act is silent as to what would happen to a child who is rejected by an institution on the ground of lack of space.

## **5.22 Government to provide accommodation**

Under section 224 ,

- (1) Every State Government shall secure that it is in a position to comply with any security requirement which may be imposed on it under this Act.
- (2) A State Government may discharge its duty under subsection (1) of this section by providing secure accommodation itself or making arrangements with any other authority or State Government for the provision of the accommodation.
- (3) The Minister may by regulations make provision as to the co-operation required of State Governments in the provision of secure accommodation.

### **5.23 Procedure on failure to observe condition of recognizance**

Under section 225,

- (1) If the Court before which an offender is bound by his recognizance to appear to be further dealt with, is satisfied by information on oath that the child offender has failed to observe any of the conditions of his recognizance, it may issue:
  - (a) A warrant for the apprehension of the child or
  - (b) A summons to the child and his sureties, if any, requiring him and them to be present at the Court and at such time as may be specified in the summons.
- (2) A child offender, when apprehended, shall, if not brought forthwith before the Court before which he

is bound by his recognizance to appear to be further dealt with, be brought before another Court.

- (3) The Court before which a child offender on apprehension is brought, or before which he appears in pursuance of a summons, may, if it is not the Court in which the child offender is bound by his recognizance to appear to be further dealt with, remand him in custody or on bail until he can be brought before the Court in which he is bound by his recognizance to appear.
- (4) The Court before which a child is bound by his recognizance to appear to be further dealt with shall, on being satisfied that the child has failed to observe any condition of his recognizance, forthwith without any further proof of his having violated the law or otherwise, deal with him as for the original offence.

#### **5.24 Binding over of a parent or guardian**

Section 226 provides that-

- (1) Where a child is found to have committed an offence, the powers conferred by this section shall be exercisable by the Court before which the case is brought, and the Court shall:
  - (a) Exercise those powers if it is satisfied, having regard to the circumstances of the case, that their exercise would be desirable in the interest of preventing the commission by the child of any further offence and
  - (b) Where it does not exercise those powers, state that it is not satisfied as mentioned in

- paragraph (a) of this subsection and why it is not so satisfied.
- (2) The powers conferred by this section on the Court are as follows:
- (a) With the consent of the parent or guardian of the child, to order the parent or guardian to enter into a recognizance to take proper care of the child and exercise proper control over the child and
  - (b) If the parent or guardian of the child refuses to give consent and the Court considers the refusal unreasonable, to order the parent or guardian to pay a fine not exceeding ten thousand naira.
- (3) An order under this section shall not require the parent or guardian to enter into a recognizance:
- (a) For an amount exceeding thirty thousand naira or
  - (b) For a period exceeding three years or, where the child will attain the age of eighteen years in a period shorter than three years, for a period not exceeding that shorter period.
- (4) The court has the power to declare the recognizance entered into by virtue of subsection (2) of this section to be forfeited, and adjudge the parent or guardian of the child to pay the whole sum in which is bound or part of the sum and the payment of the sum so adjudged to be forfeited shall be enforced by means of a

- warrant of distress to be levied against the property of the parent or guardian.
- (5) Section 225 of this Act shall apply for the purposes of subsection (2) (b) of this section as if the refusal to enter into a recognizance were a summary offence punishable by a fine not exceeding ten thousand naira, and a fine imposed under that subsection shall be deemed for the purpose of any enactment to be a sum adjudged to be paid by virtue of a conviction.
- (6) In fixing the amount of a recognizance under this section, the Court shall take into account, among other things, the means of the parent or guardian of the child so far as they appear or are known to the Court and this subsection applies whether or not taking into account the means of the parent guardian has the effect of increasing or reducing the amount of the recognizance.
- (7) A parent or guardian may appear to:
- (a) The Court at the High Court level against an order under this section made by the Court at the magistrate level and
  - (b) The Court of Appeal against an order under this section made by the Court at the High Court level.
- (8) A Court may vary or revoke an order made by it under this section if, on the application of the parent or guardian, it appears to the Court, having regard to any change in the circumstances since the order was made, to be in the interest of justice to do so.

### **5.25 Forms for corrective orders**

Section 227 provides that

- (1) A corrective order under this Act shall be in such form as may be prescribed.
- (2) One copy of the corrective order, duly completed, shall be kept by the Court which issued the corrective order the second copy shall be sent to the appropriate State Commissioner and the third copy shall be sent with the child named in it to the approved institution to which or the person to whom the child is to be sent under the corrective order.

### **5.26 Operation of corrective order may be suspended**

Under section 228, the operation of a correction order may be:

- (a) Suspended pending completion of arrangements for the reception of the child into an approved institution or
- (b) On account of ill-health of the child or
- (c) For any other good and sufficient reasons, and in such case, the Court may remand him in custody or may order him to be committed to the care of some fit and proper person willing to undertake his custody, or may release him on bail.



### **5.27 Power to vary corrective order in certain cases**

Section 229 provides that-

- (1) The Court which issued a corrective order may:
  - (a) If it is satisfied that the corrective order is about to expire and that the child would benefit by further care or training, extend the period of the corrective order subject to the provisions of this Act.
  - (b) Order a child:
    - (i) Whose period of detention has exceeded twelve months to be discharged.
    - (ii) To be released from an approved institution on condition that the child shall be of good behaviour and live under the charge of any trustworthy and respectable person named in the order of release who is willing to receive and take charge of the child and keep the child at school or employed at some trade, occupation or calling.
    - (iii) To be released from one approved institution or person to another institution or person.
- (2) An order made under this section may, in the discretion of the Court making the order, be revoked

and thereupon the original corrective order shall remain in full force and effect.

### **5.28 Power of manager of an approved institution to grant leave of absence to a child in detention**

Section 230 provides that-

- (1) At any time during the period of a child's detention in an approved institution, the manager of the approved institution may grant leave to the child to be absent from the approved institution and the manager may, at any time, require him to return to the approved institution.
- (2) During the period of leave granted a child under subsection (1) of this section, the child shall, for the purposes of this Act, be deemed to be under the care of the manager of the approved institution and the manager may, at any time, require him to return to the approved institution.

### **5.29 Apprehension without warrant**

Under section 231, a child shall, whilst he is detained in or on leave from an approved institution in accordance with the provisions of this Act and also being conveyed to or from the institution, be deemed to be in legal custody and, if the child escapes, he may be apprehended without warrant and brought back to the approved institution.

### **5.30 Procedure in case of unruly or depraved person**

The procedure for dealing with a child found to be unruly or depraved is provided for in section 232-

If the manager of an approved institution is satisfied that a child committed to the approved institutions is of so unruly or depraved a character that it is undesirable that for the child to remain at that institution, he may cause the child to be brought before:

- (a) The Court which made the committal order and that court may make such further order which it has power to make under this Act or
- (b) The court having jurisdiction in the place where the institution is situated, and the court may, in respect of the child, make an order or further order which could have been legally made by the Court which made the committal order under the provisions of this Act.

### **5.31 Non-institutional treatment**

Under section 233(1) The Federal or State Director responsible for child matters shall:

- (a) have the responsibility for ensuring the implementation of every non-institutional order of the Court and
  - (b) make quarterly reports to the Court having jurisdiction in the area on how the order to be implemented, on the progress of the implementation of the non-institutional order, including the response of the child offender, to the treatment specified in the order.
- (2) The Court to which a report is made under Subsection (1) of this section has the power to modify the non-

institutional order, from time to time, as it deems fit, having regard to the circumstances of the case.

### **5.32 Assistance during rehabilitation**

Under section 234, a child in respect of whom an order referred to in section 227 of this Act is made, shall be provided, where appropriate, with necessary assistance, including accommodation, education or vocational training, employment and any other helpful and practical assistance, during the period the order is in force.

### **5.33 Mobilization of voluntary service**

Section 235 provides that voluntary and other organizations and agencies, individuals and communities shall be encouraged by the Government Departments and agencies responsible for child welfare to contribute effectively to the rehabilitation and development programmes for child offenders.

### **5.34 Institutional treatment aimed at child's all round development**

Section 236 provides that

- (1) The objective of training and treatment of a child offender placed in an institution shall be to provide care, protection, education and vocational skill with a view to assisting the child to assume socially constructive and productive roles in the society.
- (2) A child offender in an institution shall be given care, protection and all necessary assistance, including social, educational, vocational, psychological, medical

and physical assistance, that he may require, having regard to his age, sex, personality and in the interest of his development.

- (3) A female child offender placed in an institution shall:
  - (a) Be treated fairly.
  - (b) Receive no less care, protection, assistance, treatment and training than a male child and
  - (c) Be given special attention as to be her personal needs and problems.
- (4) The parents and guardian of a child offender placed in an institution shall have the right to access to the child in the interest and well-being of the child.
- (5) Inter-Ministerial and Inter-Departmental co-operation shall be encouraged for the purpose of providing adequate academic or vocational training for any child offender placed in an institution or ensure that the child does not leave the institution at an educational disadvantage.

### **5.35 Recourse of conditional release**

Under section 237

- (1) The Court shall use conditional release from an institution to the greatest possible extent and grant it at the earlier possible time.
- (2) A child granted a conditional release from an institution shall be assisted and supervised as provided under Part XXI of this Act.

### **5.36 Research, Planning, Policy Formulation and Evaluation**

Section 238 provides that-

Without prejudice to section 207 of this Act, the Federal and every State Government shall:

- (a) Organize and promote necessary research as a basis for effective planning and policy formulation on child justice administration.
- (b) Review and appraise periodically the trends, problem and causes of child delinquency and crime and the varying particular needs of children in custody.
- (c) Establish a regular evaluation research mechanism built into the child justice administration system.
- (d) Collect and analyze relevant data and information for appropriate assessment and future improvement and reform of the child justice administration system and
- (e) Systematically plan and implement, as an integral part of national development efforts, the delivery of services in child justice administration.

### **5.37 Appointment of supervision officer**

Under section 239 (1) the appropriate Commissioner of a State may appoint:

- (a) Fit and proper persons by name of ex-officio to be supervision officers for such areas as may be specified in each letter of appointment.
  - (b) Deputy supervision officers to assist and also act in the absence or during the illness or incapacity of supervision officers and
  - (c) Assistant supervision officers to assist supervision officers in the performance of their functions.
- (2) A supervision officer shall, when acting under a supervision order, be subject to the control of the Court in the State in which he is appointed.

### **5.38 Supervision inspectors and supervision inspection service**

Under section 240,

- (1) The Commissioner may appoint such number of supervision inspectors, as he may, with the approval of the Governor of the State, determine for all purposes of this Part of this Act.
- (2) The supervision inspectors appointed under subsection (1) of this section, together with the supervision officers appointed under section 243 of this Act, shall constitute the State Supervision Inspection Service (in this Part of this Act referred to as “the Supervision Service).
- (3) The Commissioner shall appoint one of the supervision inspectors to be the Chief Supervision Inspector of the Supervision Service.

- (4) The supervision inspector shall:
  - (a) Inspect and report to the Commissioner on the activities of Supervision Service and the activities carried out by or on behalf of Supervision Service and
  - (b) Discharge such other functions in connection with the provision of supervision or related service, whether or not provided by or on behalf of the Supervision Service for any area, as the Commission may, from time to time, direct.
- (5) The Commissioner may make to or in respect of supervision inspectors such payments by way of remuneration, allowances or otherwise as he may, with the approval of the Governor, determine.

**5.39 Default power where the supervision service fails to discharge its statutory duty**

Under section 241,

- (1) The Commissioner may make an order under this section if he is of the opinion that, without reasonable excuse, the Supervision Service:
  - (a) Has failed to discharge any of its duties under this Act or any other enactment or
  - (b) Has so failed and is likely to do so again.
- (2) An order under subsection (1) of this section shall -



- (a) State that the Commissioner is of the opinion referred to in subsection (1) of this section and
  - (b) Make such provision as is considered requisite for the purpose of securing that the duty is properly discharged by the Supervision Service.
- (3) The Supervision Service shall comply with the provisions of any order made under subsection (1) of this section.

#### **5.40 Power of court to make conditional discharge order and supervision order**

Section 242 provides that-

- (1) Where a child is charged with an offence, other than homicide and the Court is satisfied that the charge is proved, the Court may make an order discharging the child offender conditionally on his entering into recognizance with or without sureties to:
  - (a) Be of good behaviour; and
  - (b) Appear to be further dealt with when called upon at any time during such period, not exceeding three years, as may be specified in the order.
- (2) A recognizance entered into under subsection (1) of this section shall, if the court so orders, contain:
  - (a) A condition that the child offender be under the supervision of person as may be named in the order during period specified in the order; and

- (b) Such other conditions for securing such supervision as may be specified in the order.
- (3) An order containing a condition that a child offender be under supervision in his recognizance shall in this Act be referred to as supervision order.

#### **5.41 Person named in supervision order**

Under section 243,

- (a) A supervision officer appointed by the appropriate Commissioner of the State in or for which the Court acts; or
- (b) If the Court considers it expedient on account of the place of residence of the offender or for any other special reason, a supervision officer appointed by the Commissioner of some other state; or
- (c) If the Court considers that the special circumstances of the case render it desirable, or if no person has been appointed supervision officer, any other person who has not been appointed supervision officer for any state.

#### **5.42 Supervision officer may be relieved of duties**

Section 234 provides that-

A supervision officer shall, subject to the discretion of the Court:

- (a) Visit or receive reports from the child under supervision at such reasonable intervals as may be

specified in the supervision order or, subject thereto, as the supervision officer may think fit.

- (b) See that the child observes the conditions of his recognizance.
- (c) Make a report to the Court on the behaviour of the child and
- (d) Advise, assist and befriend the child and, when necessary, endeavour to find the child suitable employment.

#### **5.43 Power of Court to vary suspension order**

Under section 246, the Court before which a child is bound by his recognizance under this Act to appear to be further dealt with may, on the application of the supervision officer, and after notice to the child offender, vary the conditions of the recognizance and may, on being satisfied that the conduct of that child has been such as to make it necessary that he should remain under supervision, discharge the recognizance.

#### **5.1 Conclusion**

The Child Rights Act has introduced far-reaching innovations which could completely transform the administration of child justice in the country. Already, the provisions of the Act have been enacted into the domestic law of no less than twenty two states. The challenge however is to move beyond mere enactment of the legal provisions and take practical measures toward the implementation of the reform measures. Some of the immediate measures that must be put in place include the following:

- Establishment of a Family court (Section 149,CRA).

- Establishment of the specialised children police unit;
- Development of the professional competence of all persons, including Judges, Magistrates, police officers of the specialised unit, supervisors and child development officers;
- Training of judges and officials in sociology and behavioural sciences;
- Establishment of children's homes;
- Establishment of State Government Accommodation;
- Establishment of approved institutions.

The CRA introduces a completely new legal regime and procedures for dealing with juvenile matters including child justice administration. In the next chapter we offer some suggestions on practical measures for reversing the ugly state of child justice administration in the country.





## *Recommendations for Improving Child Justice Administration in Nigeria*

### **6.1 Passage of Child Rights Law by all States**

All states of the Federation should endeavour to pass the Child Rights Act into law. The punishment-oriented Children and Young Persons Laws must be gradually replaced by the treatment and rehabilitation-oriented justice system.

### **6.2 Reform of CYPL of Kano State**

In the case of Kano State, the strong opposition to the passage of the Child Rights Law should not be a barrier to the reform of the Children and Young Persons Law. This could be done by extracting the provisions of the CRA pertaining to child justice administration and incorporating them into the CYPL until such a time that the State would be able to overcome the current opposition to the passage of the CRL.

### **6.3 Need for Public enlightenment on the CRA**

Meanwhile, there is need for enlightenment activities aimed at promoting a better understanding of the provisions of the CRA and the rationale behind them. On the issue of prohibition of forced marriage of girls, there is need for

intensive media campaign aimed at sensitising the general public on the adverse health effects of early marriage.

#### **6.4 Removal of all children from detention places**

As a matter of urgency, all children in custody should be removed from the prisons and other detention places and taken to suitable accommodations to be provided by the government. Such children should be treated in accordance with the provisions of the Child Rights Act and CRL as may be appropriate. Under section 248 of the CRA the Minister is obliged to establish approved children institutions in different parts of the country such as Children Attendance Centre, Children Centre, Children Residential Centre, Children Correctional Centre, Special Children Correctional Centre and such other institutions as the Minister may, from time to time establish. The functions of each of these institutions are defined in section 250 of the Act.

#### **6.5 Establishment of family courts**

Family courts should be established to handle cases involving children in accordance with the principles embodied in international human rights instruments and guidelines for the treatment of children and provisions of the CRA or CRL. From the onset, the family courts must be adequately informed about their role not as law enforcers simpliciter but as social workers and conciliators. Under section 151 (3) (b) the court must be guided by the principle of conciliation of parties at all stages of proceedings with a view to promoting amicable resolution amongst all parties even in criminal matters.

## **6.6 Value re-orientation of Youths**

In line with the saying that ‘prevention is better than cure’ government and civil society actors should embark on educational and enlightenment campaigns and other activities designed to improve the values of young people, improve their personality, talents, mental and physical abilities to the fullest. These would go a long way in reducing the population of children coming into conflict with the law.

## **6.7 Improved dissemination of the CRC and Riyadh Guidelines**

The various Ministries of Social Development should make deliberate efforts to disseminate the principles embodied in the UNCRC and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines). Any prospective child justice worker must be adequately educated about all the applicable international instruments. Since most law faculties and the Nigerian Law School do not teach child rights, any lawyer or magistrate who is to be engaged in child justice implementation must undergo a course in child rights law.

## **6.8 Need for comprehensive multi-sector perspective plan**

The federal and state governments are enjoined to develop a comprehensive multi-sector four-year plan for the prevention of child and youth crime. The objective of such a plan would be to mobilise all stakeholders toward the prevention of delinquency. Such plan should

- involve children, juveniles, parents, voluntary organizations and groups;

- increase collaboration between local, state and federal authorities; and
- promote inter-sector collaboration between various authorities and services such as schools, police, social welfare, health services, youth psychiatry, entertainment organisations, film makers, etc.

The plan should also involve inter-ministerial collaboration under the Ministry of Justice and Ministry of Youth and Social Development.

#### **6.9 Overhaul of existing juvenile institution**

Remand Centres, Approved Schools and Borstal Institutions should be overhauled and upgraded to the level of recommended by the relevant international instruments such as the UN Rules for the Protection of Juveniles deprived of their liberty. They could then be integrated into the institutions established by the CRA for the implementation of that law.

#### **6.10 Periodic Nation-wide Audit of Juvenile facilities and Progress Tracking and Performance Rating**

A national review or audit of all juvenile facilities in the country should be carried out annually or bi- annually to ascertain the progress being made (if any) in the improvement of child justice facilities and in the implementation of child rights generally. States performance in this regard should be rated and those who show evidence of progress in meeting pre-determined benchmarks should be lionised and celebrated. Certificates of performance as well as trophies should be set



apart for this purpose and the event should be widely publicised on local and national news media. This would be a good project for civil society organizations and other voluntary bodies with national focus.

### **6.11 Capacity-building**

As a matter of urgency the federal and state governments must commence capacity-building programmes for the development of a new, informed and well-motivated corps of child justice administrators and children police unit with specialised skills for administering the provisions of the CRA or CRL as the case may be.

### **6.12 Greater emphasis on Family-based juvenile welfare**

An unstable family background is an important factor in the anti-social behaviour of children. It is therefore necessary emphasise the role of families in preventing delinquency and facilitating the rehabilitation of children leaving detention. But more importantly, 'family-based juvenile welfare... should be preferred to formal judicial interventionist measures.'<sup>1</sup>



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<sup>1</sup> Adeyemi A.A. "Juvenile Justice: Evaluation, Policies and Programmes" In Okonkwo, C.O., SAN (ed.), *Contemporary Issues in Nigerian Law: Essays in Honour of Judge Bola Ajibola* (Toma Micro Publishers, Lagos 1992): p. 396.

## GENERAL INDEX

### **A**

Abeokuta – 54,66  
Accommodation –  
88,89,95,96,97,98,105,106,1  
14,122,124  
Adediran M O – 9  
African Charter on the  
Rights and Welfare of  
Children – 59  
*Almajiri* – 10,66,68  
Anette Storgaad - 11  
Approved school – 71  
Arrest – 35,36,37,38,39,49  
Ayua – 6

### **B**

Bail – 35,39,71,94,95,97,110  
Beijing Rules – 8,22,25,40,  
58,60  
Benin Republic – 71  
Bola Ajibola – 35  
Bolaji Owasanoye – 12,45  
Borstal institution –  
3,54,55,126  
Bostal Homes – 50, 52,54,55

### **C**

Canadian – 11  
Child Abuse – 7  
Child justice –  
59,61,64,72,81,83,84,85,90,  
92,121,122,125,126,127  
Child Labour – 7,65  
Child offenders –  
50,52,53,61,81,82,83,84,95,  
89,90,91,92,102,103,104,10  
6,107,114,115,119,120,121  
Child Rights Act –  
63,67,81,89  
Child Rights Law – 80,89  
Child Trafficking – 64  
Child Welfare – 7  
Children and Young  
Persons Law – 46,67  
Committal order – 1133  
Conviction – 54,90, 100  
Correctional facilities – 15

Corrective order –  
103,110,111  
Custody –  
54,58,63,68,110,112,124

**D**

Dambazau – 6  
Denmark – 11  
Detention –  
51,58,60,64,79,87,88,94,96,  
102,104,111,112,127

**F**

Family court –  
63,73,77,80,121,124  
FCT – 5,46,56,64,69  
Finland – 11

**H**

Harm – 87,88,90

**I**

Igbinedion G O – 9  
Imprisonment –9,52, 96,  
101  
Incarceration - 15  
Institution –  
52,53,64,70,71,105,110,111,  
112,113,114,115,122  
Institutional order – 105

**J**

Judicial Welfare System  
(JWS) – 65

**K**

Kaduna Borstal Institution  
– 5

Kaduna State – 54,66

Kano State –  
3,4,32,56,66,67,68

**L**

Lagos State – 3,4,32,56,69

Lagos State Ministry of  
Women Affairs and  
Development- 69

Legal Aid Council – 79

Legal status – 18

**M**

Marie Wernham – 12,45

Ministry of Justice – 59,80

Ministry of Youth, Sports  
and Social Development –  
69

Mohammed T Ladan – 10

**N**

Nigerian Police Force – 83

Non- institutional order –  
113

NORAD – 3

Norway – 11

**O**

Ogungbe M O – 9

Okagbue – 6

Okonkwo SAN – 8,13

**P**

Parade – 46

Plateau State – 3,4,32,56

Police raid – 38

Poroma Joe Phillip – 2

Port Harcourt prisons -2

**R**

Recognizance –  
51,104,106,107,108,109,119  
,120,121

Rehabilitation –  
2,3,11,15,44

Remand centre – 126

Remand facilities – 12

Remand home –  
3,60,70,71,74,78,79

Restitution – 85,105

Rivers State – 3,4,32,56

**S**

Scandinavia – 11

Sentence – 90

Sharia – 10

Street children – 12, 66,68

Supervision –

116,117,118,119,120,121

Sweden – 11

**T**

The principle of  
proportionality – 25

Togo – 71

Trial – 9,43

Tuberculosis – 62

**U**

UNCRC – 12,19,58

UNDP – 3

UNICEF – 5,17,56

United Nations Covenant  
on Civil and Political  
Rights – 58

United Nations Guidelines  
for the Protection of  
Juvenile Delinquency - 58

United Nations Rules for  
the Protection of Juveniles  
Deprived of Their Freedom  
– 58

**V**

Vocational training – 28