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15 December, 2017

Professor Oluyemisi A. Bamgbose FC Arb
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Dear Professor Bamgbose FC Arb,

LETTER OF ACCEPTANCE

Please be informed that your manuscript titled: "The Theories, Laws and Practice of Juvenile/Child Justice System in Nigeria" submitted for consideration in a book project has been accepted for publication as a chapter in a Book of Readings for postgraduate School, University of Ibadan.

Thank you and best wishes.

Prof. Adeniyi Olatunbosun
General Editor

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THE THEORY, LAW AND PRACTICE OF JUVENILE/CHILD JUSTICE SYSTEM IN
NIGERIA**

By

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Department of Public Law

2016

** The content of this chapter include majorly my unpublished work and a minor part of my published work

Bamgbose Oluyemisi. (2008) Unpublished Lecture Notes, Saint Louis University School of Law, Saint Louis, Missouri, USA. Fall Semester 2008

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

Bamgbose Oluyemisi. (2014) Re-evaluating the Juvenile/Child Justice System in Nigeria. Nigerian Institute of Advanced Legal Studies 2014

Abstract

This chapter in this book seeks to examine the different theories and causes of juvenile delinquency, with the aim of enhancing legal education for both the teacher and the student, towards building a better oriented society for the child and the adult on the short term and a crime free society on the long term.

PART 1

Introduction

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

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

At the regional level, the African Charter on the Rights and Welfare of the Child³ reiterated the above statement.

However, despite this special position, the child has, throughout history of mankind, been abused, treated unkindly and their rights violated. This is one of the world's social problems and it has attracted serious concerns. As far back as the 2270 BC, references were made generally to children and young persons in laws and the law provided for ways of dealing with erring children. This did not mean that at that period in time there was a separate law or system for this category of persons within the society.

The Code of Hammurabi over four thousand years (4000) ago in 2270 BC included references to runaways, children who disobeyed their parents and those who cursed their fathers.⁴ The Roman Civil Law and the Church Law over 2000 years ago distinguished between juveniles and adults based on the age of responsibility.⁵ Early Jews Law, the Talmud, gave conditions under which immaturity was to be taken into account in giving punishment.⁶ Bernard in his book also stated that Moslem Law provided for leniency in awarding punishment to a

¹ Okonkwo C O (1997) Administration of juvenile justice in Nigeria · Constitutional Rights Project

² Ibid

³ OAU DOC CAB/LEG/24.9/49. 1990 Entered into force November 29 1999

⁴ Lawrence R & Craig Hemmen. 2008. History and Development in Juvenile Justice: A text/reader. Chapter 1 Sage Publishing co. Retrieved from http://www.sagepub.com/upm_data/19434_section1.pdf

⁵ Ibid

⁶ Ibid

young offender and they were also not to be punished to death.⁷ Under the Roman law, children under the age of seven were classified as infant and not criminally responsible. The Anglo Saxon Common Law of the 11th and 12th Centuries in England, influenced by Roman Civil Law made reference to American Juvenile Justice: because it has its roots in English Common Law.⁸

The provisions providing for ways of dealing with children was based in part on the idea that youth offenders were particularly malleable and would be more responsive than adults to individualized treatment effort.⁹ The modern Juvenile Justice System is a relatively recent invention as the history can be traced to the late 1800s. This was a period in the history of Britain, that crimes and misbehavior by children and young were redefined as separate and distinct from adult offending.¹⁰

In Nigeria, at the Federal and State levels, steps have been taken and are still being taken to ensure that the rights of children and young persons are enforced in order to meet the international standards on the rights of the child as provided for by the United Nations and other International and Regional bodies.

Despite all the efforts at the various levels, children and young persons are yet to be properly positioned. The protection of children is still an issue of concern.

This chapter is divided into ten parts.

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

PART 11

Juvenile Justice System in the traditional Nigerian Society**

Under the traditional Nigerian system, the child is regarded as the pride of the family.

This fact was recognized in the African Charter on the Rights and Welfare of the Child.¹¹

The fifth preamble of the regional document states thus:

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

Prior to colonization, the country now known as Nigeria consisted of small traditional communities. Pre-colonial Nigeria witnessed little or no juvenile related offences. Cases of children beyond parental control were rarely heard of. Children abandoned or found wandering without any family tie was rare. This was due to several factors. One crucial factor was the extended family system and the traditional community structure. The extended family system ensured that all family members were responsible for the training of and upbringing of a child.

⁷Bernard 1992 The Circle of Juvenile Justice. New York: NY: Oxford University Press

⁸Lawrence R & Craig Hemmens 2008 (supra)

⁹Taylor T. The Juvenile Justice System: Oxford bibliographies online Research guide. Oxford University Press.

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

¹¹OAU DOC CAB/LEG/24.9/49. 1990 Entered into force November 29 1999

Generally, the traditional communities curtailed delinquent acts of children and crime through religious and social values and systems which was known and acceptable by members of each community and religion.

Summarizing the treatment of children under the traditional system, it can be stated thus. It was not problematic. It was guided by traditional standard and values. The standards were informal and well understood and obeyed. According to Bamgbose, the extended family system was looked upon to find solution to the social problem arising out of anti-social activities and the family regarded it as a shame and stigma for any of its offspring to violate societal norms.¹²

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

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

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

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

¹² Bamgbose Oluyemisi 1991 *Juvenile Justice System in Nigeria. A case for urgent Reform* in Akinyele 1.0 et al (eds). *Economic and Democratic Reforms in Nigeria's Development*. Ibadan: Tenton Book Makers for Society for International Development and Friedrich Ebert Foundation. Pp 45

Generally, there were striking similarities in the traditional method of handling cases and issues involving children in different communities within Nigeria in particular and Africa as a whole. The structure of the traditional justice paradigm was well captured by Melton¹³ thus:

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

According to her, this hinders resolution process and delays restoration of relationship and communal harmony.¹⁴ On the adjudication method adopted under the traditional paradigm Melton further stated thus:

*"The contributing factors are examined, underlying issues addressed and all involved and affected by the problem participate in the process. An individual's misconduct affects the wider kins-group and the offender and kinsmen are held accountable and responsible for correcting the behavior and repairing relationship"*¹⁵.

The need for probation offices did not arise under the traditional juvenile justice system. Compliance to sanction was effectively monitored by family members and community members. The traditional societies in Nigeria still maintain the simple and informal system for addressing delinquent and protection cases involving children and young persons.

PART III

Theories of Delinquency in the Child/Juvenile Justice System

According to Palmerin¹⁶, understanding the motives and rationale of the juvenile delinquent thus precipitates the need for a study of the theories and causes of Juvenile Delinquency. She therefore classified the theories under three categories which are the Biological, Sociological and Psychological theories of juvenile delinquency.

Biological Theory of Juvenile Delinquency: The theory also referred to as positivism, was propagated by **Caesare Lombroso** and revolved around the idea that children are born to be criminals¹⁷. Lombroso claims that individuals who grow up committing crimes have certain biochemical and genetic factors. He says criminals tend to have certain facial features that are considered a predisposition to commit crimes. Such features are flattened nose, bulging eyes, supernumerary teeth and other features. **Sheldon**, another criminologist found that different criminals have different body types which inform criminal tendencies.¹⁸ For example he believed that metamorphs who were more athletic had higher tendencies of committing crimes as

¹³ Melton Ada Pecos. (2005) *Indigenous Justice System and Tribal Society*. In Wanda D McCaslin, (ed) *Justice as Healing: Indigenous ways, writing on community peacemaking and restorative justice from the native law center*. St Paul MN: Living Justice Press 108-120.

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

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Mayra Palmerin "Juvenile Delinquency Theories", an article published on Sunday, October 28, 2012, retrieved online on January 12th, 2016

¹⁷ Lombroso & Gina Ferrero (1911/1972) *Criminal Man According to the Classification of Cesare Lombroso* New York: Putnam; Montclair, N.J.: Patterson Smith

¹⁸ Sheldon, W 1949 *Varieties of delinquent Youths*. New York. NY: Harper and Row

compared to endomorphs that were just fat. By the middle of the twentieth century, the biological theory fell out of favour as an explanation for delinquency. In contemporary times however, biological theory was resuscitated under the 'Biosocial Theory'; this states that adolescent thought and behaviour have biological and social bases.¹⁹ This theory states that genetics and social environment are primary factors determining whether a child will turn out to be a delinquent. Biosocial theory states that together with poor environment, disrupted socialization, inadequate parenting, genes, which ultimately is responsible for the uniqueness of individuals, determines the response of children to delinquent behaviour. For example, a kid with a pathological trait such as a disability, an abnormal personality, brain damage or low IQ may be at high risk for committing crime. This risk is then increased by environmental stressors such as failure in school, bad parenting, substance abuse and delinquent peers.

Sociological Theory of Juvenile Delinquency: there are many social factors that are believed to cause or affect delinquent behaviour such as social relations, community conditions and level of violence, poverty and racial disparity. There are a number of sociological theories that can describe the different ways a child can become delinquent. Some of them are:

Social Disorganization theory - this is when a community reduces the chances of advancement for children. For example, schools have high level of dropouts, high level of graffiti, high poverty levels and so on. Residents in these areas experience conflict and despair and as a result turn to antisocial behaviour.

Strain theory- when an individual has goals or wants that the economic mainstream is desirable and is unable to achieve the goals set before them in a legitimate way, the individual(s) will find alternative ways to achieve these goals, usually turning to criminal behavior.

Cultural Deviance theory- due to the straining lifestyle of kids living in deteriorated neighbourhoods they turn to social isolation and delinquent behaviour. These behaviours explained by cultural deviance create subcultures such as gangs and cults in which these adolescents join to feel accepted, loved and part of a group. When the society is creating conflict for a youth to achieve success, these teens experience frustrations because they are not allowed to reach goals set by the society.

Psychological Theory of Juvenile Delinquency: Psychology is essentially concerned with the individual himself and is addressed centrally to the processes within and around the individual which give rise to specific forms of behaviour²⁰. There are two major theories under this heading; the Psychodynamic theory and Social learning theory.

Social Learning theory- criminal behaviour is learned through close relations with others. It asserts that children are born good but learn to be bad. It goes further to state that all people have

¹⁹Larry J. Siegel and Brandon C. Welsh, "The Juvenile Delinquency: Theory Practice and Law, (2012), 12th Ed Wadsworth Press, USA

²⁰ John McDavid and Boyd R. McCandles, (1962) Psychological Theory, Research and Juvenile Delinquency." *The Journal of Criminal and Police Science*"54.1: 1-14.

the potential to be criminals because the modern society provides numerous opportunities for illegal activity, but one has a choice not to engage in them. Thus, if a child grows in a home and environment where strong and positive moral ideals are drilled into the child, the child is likely to grow achieving his or her goals and thus has a reduced tendency of committing crime. In contrast, a child brought up in a poor environment; such that is surrounded by gangs, drugs and violence every day, it is very likely that the child will grow up committing crimes.

Psychodynamic theory- this places emphasis on the notion that one of the main causes of juvenile delinquency is the children's abnormal personalities that were created and developed in their earlier life. Since then, these 'unconscious mental processes' have been controlling adolescent criminal behaviour. The Id is the drive for immediate gratification and can explain delinquent acts such as shoplifting or burglary. The ego is the realization of real life and helps control the id. The superego develops through interactions with parents and other responsible adults and develops the conscience of moral rules. This psychodynamic approach states that traumatic experiences during early childhood can prevent the ego and superego from developing properly, therefore leaving the Id with greater power.

Janell Blanco²¹ supplies three common theories on juvenile delinquency. They are; the Anomie theory, the Subculture theory and the Differential personality theory.

The Anomie or Strain Theory of Juvenile Delinquency: this was first written by **Robert Merton** in **1940**. The theory postulates that juvenile delinquency occurs because the juveniles do not have the means to make themselves happy. Their goals are unattainable within legal means, so they find unlawful means by which to attain their goals. An example would be a juvenile who has a goal to get a job and purchase a car. The juvenile is unable to find a job and get the car, so they either steal a car or steal money to get the car.²²

The Subculture Theory of Juvenile Delinquency: this was developed by **Albert Cohen** in **1955**. It is a culmination of the founder's theories. The theory states that juveniles who do not meet the social standards seek validation from a subculture. The subculture group is formed of other juveniles who also do not meet the social standards. These groups then act in manners that are not socially acceptable and rebel against socially acceptable standards. According to **Cohen**, juvenile delinquency is a product of the society. The juveniles commit crimes such as stealing, because it is not a social norm, and they do it to fit into their subculture.²³

The Differential Opportunity Theory of Juvenile Delinquency: this theory is at variance with Cohen's subculture theory that juveniles become delinquent when they do not meet society's

²¹ Janell Blanco "What is Juvenile Delinquency? Definition, Theories and Facts", a study guide published in www.study.com, retrieved online January 2nd, 2016.

²² Ibid

²³ Op cit note 36

standards. This theory was developed by **Richard Cloward** and **Lloyd Ohlin**, in 1960.²⁴ They believe that opportunity plays a vital role in juvenile delinquency. This theory idealizes that if juveniles have more opportunities to succeed, then they would be less likely to turn to subculture groups for validation. Additionally, the differential opportunity theory believes that there can be other circumstances other than social factors that add to a juvenile's delinquency. A juvenile might be successful during school, but may fail to find gainful employment, which can lead to juvenile delinquency and not the social factors. This theory differs from the subculture theory in that; there are reasons other than social factors that can lead a juvenile to be delinquent. If the juvenile has more opportunities, they are more willing to succeed than to join a subculture.²⁵

Alemika²⁶ has identified two other theories. They are:

Control Theories of Crime and Delinquency²⁷ - several theorists have argued that crime and delinquency are produced by weak personal self or social control. The propounders of this theory are **Reiss**²⁸, **Nye**²⁹, **Reckless**³⁰ and **Hirschi**³¹. These theorists consciously or unconsciously assume that human beings are naturally aggressive and require control. Where control is absent or weak, the human impulses towards aggression and crime are increased. For **Reiss**, personal or self-control is "the ability of the individual to refrain from meeting needs in ways which conflict with the norms and rules of the community". On the other hand, social control is "the ability of social groups or institutions to make norms or rules effective". To him, social control precedes self-control., thus when adequate social values and norms are not inculcated to the individual through the society and family system, the individuals are more likely to develop self-control. **Nye** on the other hand identifies four dimensions of self-control; *conscience*- that results from the internalization of social norms and rules, *affection*- shared by children and parents, *parental regulation* of children's choices and associations; and *availability of alternate means* to fulfill or accomplish goals. The presence and effectiveness of these dimensions will strengthen self-control, induce compliance and reduce delinquency. According to **Walter Reckless**, delinquency is the "lack of well-defined limits to behaviour, breakdown of rules, and the absence of definite rules for adolescents to play. **Travis Hirschi** developed his social control and bonding theory around four concepts- attachment, commitment, involvement and belief. The implication of the theory is that crime and delinquency are reflections of the society's failure to create enabling conditions for attachment to people (i.e. family, friends), commitment to and involvement in

²⁴ Cloward R.A. & Ohlin L.E. (1960) *Delinquency and Opportunity: A Theory of Delinquent Gangs*, New York, N.Y: The Free Press

²⁵ Ibid

²⁶ Alemika E.E.O, I.C. Chukwuma "Juvenile Justice Administration in Nigeria: Philosophy and Practice" (2001) Cleen Foundation Publishers, Lagos, Nigeria.

²⁷ Ibid

²⁸ Reiss A.J. and Rhodes A.L. (1961) "The Distribution of Juvenile Delinquency in the Social Class Structure". *American Sociological Review* 26: 720-73.

²⁹ F. Ivan Nye (1958) *Family Relationship: and Delinquent Behaviour*, Greenwood Press, West Port, CT

³⁰ Reckless W.C. (1962) A Non-causal Explanation: Containment Theory" *Excerpta Criminologica* 1: 131-134

³¹ Hirschi, T. (1969) *The Causes of Delinquency*, Berkeley Cal.: University of California Press

conventional activities (schooling, employment, recreation and leisure), and belief in conventional values, norms and rules.³²

Radical and Conflict theory of crime: the theorists in this school argue that the criminal laws that define certain acts as crime or delinquency do not represent the consensus of the society. These theorists explain crime and delinquency in terms of inequality in the distribution of socio-economic opportunities and political power. As such, crime and delinquency can only be minimized with the enthronement of social justice and democracy in the society. They opine that the idea of correcting or reforming individual juvenile offenders without restructuring the society is to sociological criminologists ridiculous, and its implementation can only lead to further oppression, impoverishment and further drift into criminal and delinquent character.

PART IV

Causes of Juvenile Delinquency

Juvenile delinquency is a consequence of various causes, whose origins date back years before the commission of the offence and others whose origins are more closely connected with the act of the delinquency. It has been shown that a different set of causes is involved in each individual case. The factors which determine the actions of juvenile delinquents are sometimes ambiguous and not easily spotted by professionals, such as expert sociologists, psychologists, physiologists and others. The juvenile justice field has spent so much time and energy attempting to understand the causes of delinquency. These factors have been grouped as: physical causes, psychological causes, economic factors, educational factors or political factors.

Physical Causes

The bodily condition of a child may affect his behavior in one or more of three ways. First, it may be the direct cause of delinquent behavior. Secondly, it may form a handicap to the child's achievement or favorable relationship with other children and adults, as in the case of malnutrition and defects. Delinquency may result as an attempt on the part of the child to compensate for these disabilities. Thirdly, bodily conditions such as certain developmental aberrations and physical exuberance may supply a superfluity of energy which finds outlet in delinquency.³³

Thus factors like malnutrition, lack of sleep, developmental aberrations, sensory defects, speech defects, endocrine disorders, deformities, nervous diseases, physical exuberance, drug addiction, or effects of weather can result in juvenile delinquency.

Several studies have linked prenatal and perinatal complications with later delinquent or criminal behavior. Prenatal and perinatal complications can lead to a range of health problems that negatively influence development.³⁴

³² Op cit note 40

³³ McCord, J., Widom, C.S., and Crowell, N.A., eds. 2001. *Juvenile Crime, Juvenile Justice. Panel on Juvenile Crime: Prevention, Treatment, and Control*. Washington, DC: National Academy Press.

³⁴ K.M. Banham Bridges op cit. note 1. See also Kandel, E., and Mednick, S.A. 1991. Perinatal complications predict violent offending. *Criminology* 29 (3):519-529; Fergusson, D.M., Horwood, L.J., and Lynskey, M.T. 1993. Maternal smoking before and after pregnancy: Effects on behavioral outcomes in middle childhood. *Pediatrics*

Lack of sleep, like malnutrition, may cause feelings of drowsiness and inertia, but in addition to this, it increases irritability, excitability and nervousness. The child, feeling he is handicap, may suffer from mental conflict and take refuge in delinquency. Or, he may exhibit bad behavior due to impulses which are easily stimulated and hard to control under a condition of hyper-excitability and fatigue³⁵. Also, developmental aberrations may result in juvenile delinquencies. These may be as a result of delayed, premature, or abnormal pubic development. This may be due to glandular disorders, malnutrition or physical diseases, or retarded, excessive, or abnormally disproportionate growth of frame or organs of the body, or poor development, or excessive development of muscular strength, which depends upon other developmental factors, nutrition, and opportunity for vigorous exercise.

Delinquency may result where development is delayed and poor, the boy wishing to prove his manhood to himself and others and the girl wishing to prove her womanhood. Sex offenses may be of this kind. Abnormal growth and development, particularly excessive growth and strength, may also result in delinquency through the overwhelming energy and impulses to action which they generate.³⁶

Physical disabilities can also cause juvenile delinquency. Juveniles that are physically or mentally handicap usually want to take revenge from other people for their complexes. They want to achieve success in life using negative means.³⁷

Psychological Causes

Mental factors, like physical factors, may determine delinquent behavior in one or more of three ways: delinquency may be the direct response to, or expression of, a particular mental state, for example, obsessive imagery; or delinquency may be the expression of certain impulses or emotions left uncontrolled or stimulated by a special mental condition; or it may be a symbolic representation of such impulses. Likewise, delinquency may be an attempt at adjustment or compensation for certain mental peculiarities.³⁸

Mental disability is a big cause of juvenile delinquency. Mentally ill boys or girls can commit any crime without knowing the consequences of it. Statistics show that mental illnesses are one of the biggest reasons behind juvenile delinquency in America and other developed countries.³⁹ Several individual-specific characteristics are linked to delinquency. Tremblay and LeMarquand remarked that "the best social behavior characteristic to predict delinquent behavior before age 13 appears to be aggression."⁴⁰ In addition, Hawkins and colleagues reviewed several studies and

92(6):815-822; Hawkins, J.D., Herrenkohl, T.L., Farrington, D.P., Brewer, D., Catalano, R. F., and Harachi, T.W. 1998. A review of predictors of youth violence. In *Serious and Violent Juvenile Offenders: Risk Factors and Successful Interventions*, edited by R. Loeber and D.P. Farrington. Thousand Oaks, CA: Sage Publications, pp. 106-146.

³⁵ K.M. Banham Bridges, op cit.

³⁶ ibid

³⁷ See *Causes and Solutions of Juvenile Delinquency*, available at <http://readingcraze.com/index.php/cause-and-solution-of-juvenile-delinquency/> retrieved on 10/6/2015

³⁸ K.M. Banham Bridges op cit.

³⁹ Available at <http://readingcraze.com/index.php/cause-and-solution-of-juvenile-delinquency/> retrieved on 10/6/2015

⁴⁰ Tremblay, R.E., and LeMarquand, D. 2001. Individual risk and protective factors. In *Child Delinquents: Development, Intervention, and Service Needs*, edited by R. Loeber and D.P. Farrington. Thousand Oaks, CA: Sage Publications, pp. 137-164.

reported "a positive relationship between hyperactivity, concentration or attention problems, impulsivity and risk taking and later violent behavior."⁴¹

Low verbal IQ and delayed language development have both been linked to delinquency; these links remain even after controlling for race and class.⁴² Similarly, problems at school can lead to delinquency. Herrenkohl and colleagues noted that "children with low academic performance, low commitment to school, and low educational aspirations during the elementary and middle school grades are at higher risk for child delinquency than are other children."⁴³

Parental Deviance

If criminal tendencies are inherited, then the children of criminal parents should be more likely to become law violators than the offspring of conventional parents.

Some of the most important data on parental deviance were gathered by Donald J. West and David P. Farrington, these cohort data indicate that a significant number of delinquent youths have criminal fathers.⁴⁴ Whereas 8.3 percent of the sons of non-criminal fathers eventually became chronic offenders, about 37 percent of youths with criminal fathers eventually were multiple offenders.⁴⁵ Although there is no certainty about the relationship between parental and child deviance, it is possible that at least part of the association is genetic.⁴⁶

Twin Behavior

Johannes Lange, a German Physician, carried out the first twin study in 1929. It involves the study of sets of twins either identical that is Monozygotic (MZ) twins or fraternal i.e. Dizygotic (DZ) which have only half of their genes in common.⁴⁷ If heredity determines criminal behavior, we should expect that MZ twins would be much more similar in their anti-social activities than DZ twins.

Studies conducted in twin behavior detected a significant relationship between the criminal activities of MZ twins and a much lower association between those of DZ twins, and these genetic effects can be seen in children as young as three years old.⁴⁸

Although the behavior of twin pairs may be influenced by their environment, since twins share behavior similarities that can only be explained by their genetic similarity. A study was carried out on Minnesota twins reared apart. The research compared the behavior of MZ and DZ twin pairs that were raised together with others who were separated at birth and in some cases did not

⁴¹ Hawkins, J.D. op cit

⁴² Moffitt, T.E., Lynam, D., and Silva, P.A. 1994. Neuropsychological tests predict persistent male delinquency. *Criminology* 32(2):101-124.

⁴³ Herrenkohl, T.L., Hawkins, J.D., Chung, J., Hill, K.G., and Battin-Pearson, S. 2001. School and community risk factors and interventions. In *Child Delinquents: Development, Intervention, and Service Needs*, edited by R. Loeber and D.P. Farrington, 1477-1486.

⁴⁴ D.J. West & D.P. Farrington, "Who Becomes Delinquent?" in *The Delinquent Way of Life*, eds. D.J. West and D.P. Farrington (London: Heinemann, 1977), pp 1-28; D.J. West, *Delinquency: Its Roots, Causes and Prospects* (Cambridge, Mass: Harvard University Press, 1982)

⁴⁵ *ibid*

⁴⁶ David Rowe and David Farrington, "The Familial Transmission of Criminal Convictions", *Criminology* 35 (1997): 177 - 201

⁴⁷ Cohen, D.J. et al., (1975), "Reliably Separating Identical from Fraternal Twins", *Archives of General Psychology*, 32, pp. 1371-1375.

⁴⁸ Edwin J.C.G. Van den Oord, Frank Verhulsi, and Dorret Boosma, "A Genetic Study of Maternal and Paternal Ratings of Problem Behaviors in 3-Year-Old Twins", *Journal of Abnormal Psychology* 105 (1996): 349-359

know of each other's existence. The study showed some striking similarities in behavior and ability for twin pairs raised apart. An MZ twin reared away from a co-twin in terms of personality, interests and attitudes as one who has been reared with his or her co-twin.⁴⁹ Thus one can safely conclude that similarities between twins are due to genes, not the environment.

Adoption Studies

Several studies indicate that some relationship exist between biological parents behavior and the behavior of their children even when they have had no contact.⁵⁰

In a study of male adoptees born in Copenhagen, Denmark (Danish Adoption Studies) carried out by Hutchings and Mednick, 1,145 male adoptees were analyzed between 1927 and 1941. Of these, 185 had criminal records. After following up on 143 of the criminal adoptees, they found that the biological father's criminality strongly predicted the child's criminal behavior. When both the biological and the adoptive fathers were criminal, the probability that the youth would engage in criminal behavior greatly increased.⁵¹

The findings of the twin and adoption studies tentatively support a genetic basis for criminality. However, those who dispute the gene-crime relationship point to inadequate research designs and weak methodologies in their supporting research.⁵²

PART V

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

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

National/ State laws

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

Constitution of the Federal Republic of Nigeria 1999 as Amended⁵³

The Constitution is the supreme law in Nigeria. It takes precedent over all laws in the country. Any law which contravenes the provision of the Constitution is to that extent null and void. With regard to some provisions of the Constitution, it refers to all persons irrespective of whether the person is an adult, child or young person. Specifically, provisions on the fundamental rights in Chapter IV refer to all Nigerians irrespective of age, status, sex, religion. With reference to children or young persons, there are some provisions specifically relevant to such category. Section 36 (4) (a) provides that juveniles should be excluded from public trials.

⁴⁹ Larry J. Siegel op cit

⁵⁰ R.J. Cadoret, C. Cain, and R.R. Crowe, "Evidence for a Gene-Environment Interaction in the Development of Adolescent Antisocial Behavior", *Behavior Genetics* 13 (1983): 301 – 310.

⁵¹ Barry Hutchings and Samoff A. Mednick, "Criminality in Adoptees and Their Adoptive and Biological Parents: A Pilot Study", in *Biological Bases in Criminal Behavior*, eds. S.A. Mednick and K.O. Christiansen (New York: Gardner Press, 1977).

⁵² Larry B. Siegel op cit.

** This part contain in part Bamgbose O. (2008) unpublished Lecture notes, Saint Louis University School of Law, Saint Louis, Missouri, USA. Fall semester 2008

⁵³ C23 L.F.N. 2004. Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010

Children and Young Persons Act/law:

The main law that governed the juvenile justice system in Nigeria was the Children and Young Persons Act/laws. The Act, a product of colonial influence emphasized that welfare was to be the principal consideration in dealing with juveniles. Originally passed by the British Colonial government in 1943, The CYPA, a federal legislation was the first major legislation dealing with Juvenile Justice and Welfare of children. The CYPA 1943 was later revised in the revised laws of Nigeria in 1948 and incorporated into the Nigerian Federal Law in 1958 as chapter 32 of the Laws of Federation of Nigeria and Lagos. This law was made applicable to Lagos, the states forming the then Eastern and Western regions of Nigeria in 1948. In 1958, the states of the then Northern region received a similar law. All the States of the Federation enacted similar laws which governed the juvenile justice administrations within the States. This is because the matter of Juvenile Justice is listed as a residual power under the Constitution of the Federal Republic of Nigeria 1999 and therefore only states can legislate on such matters.

Childs Rights Act

Children and Young Persons Act has now been repealed by the Childs Rights Act which Nigeria domesticated after being a signatory to the Childs Rights Convention 1990. The history of the enactment of the Childs Rights Act in Nigeria is long and complex as it met with a lot of opposition. The genesis of the enactment could be traced to 1988, when the Nigerian Chapter of the African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) a nongovernmental organization, a few government agencies namely, Ministry of Justice, Ministry of Health and Ministry of Social Welfare and UNICEF organized a conference to look into the issue of protecting the Nigerian child and to produce a new draft law to protect Nigerian Children. The draft Childs Rights Bill produced after the conference was aimed at enacting as law in Nigeria, the principles in the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The draft bill could not be passed at the National Assembly due to oppositions based on religious, customary and cultural grounds.⁵⁴ A committee was set up to harmonize the Bill, taking into cognizance religious and customary beliefs. In October 2002, the Bill when represented to the parliament again was rejected still based on the same ground especially the clause setting eighteen (18) years as the minimum age for marriage. This was opposed, especially because it was said to be incompatible with religious laws.⁵⁵ In an article titled "Muslim Council in Nigeria Protest Childs Rights Act", the Supreme Council for Sharia in Nigeria said that any law that seeks to give equal rights to male and female children in inheritance, seeks to give an illegitimate child the same right as a legitimate one and established Court (family court) that oust the jurisdiction of a Sharia Court on all matters

⁵⁴ Bamgbose O. (2008) unpublished Lecture notes, Saint Louis University School of Law, Saint Louis. Missouri, USA. Fall semester 2008

⁵⁵ Bamgbose Oluyemisi. (2008) *ibid*

affecting children, is unacceptable to Muslims.⁵⁶ The aftermath of these conferences was the draft of the Child Rights Act.

After Nigeria ratified the Childs Rights Convention which is a comprehensive international instrument on all matters relating to children, she domesticated it in Nigeria by the enactment of the Childs Rights Act. This is a Federal Statute applicable to the Federal Capital Territory. The States were empowered to enact it as laws to be applicable in the State or as an alternative, make the Childs Rights Act directly applicable in the State. More than twenty six States of the Federation including Lagos and Oyo have the State laws. The Childs Rights Act was enacted in May 2003. This Act is a great improvement on the CYPA and CYPL of the various States in Nigeria. Many rights which were not in these former legislations are present in the 2003 Act. The Child Rights Act 2003 is a federal law which is not binding on the states because the matter it deals with is on the residual list which only states can legislate on. There has been appeals by both the federal government NGOs and human rights activist to States in Nigeria to pass the Bill into Law in the different states. Since 2005 there has been an appeal by the Minister of Women Affairs to the governors and Houses of Assembly nationwide to move quickly on the early passage of the Child Rights Law.⁵⁷

The Childs Rights Act is a great improvement and comprehensive law. However, there is room for improvement and some suggestions for improvement are made in this work.

The Criminal Code Act

This Act is the main code that governs criminal law, what constitutes crime and offences in Nigeria. A breach of the law of crime is governed by the Criminal Code Act. This Act has provisions which relates to children and young persons. For example, the age of criminal responsibility in Section 30 of the Act is fixed at seven years in Nigeria and it varies from one country to another. Sections 216, 217, 218, 219, 222, 222A, 222b, 225, 300- 301, 306, 307, 328 and 329 particularly deal with children. The Child Rights Act⁵⁸ and the Child Rights Law⁵⁹ recognizes the continued application of all criminal law provisions securing the protection of the child whether born or unborn and also adopts the laws.

Criminal Procedure Act/Criminal Procedure Code

The Criminal Procedure Act⁶⁰ applicable in Southern Nigeria and Criminal Procedure Code in Northern Nigeria⁶¹ governs the procedure in which criminal trials are conducted in the different regions. As much as children and young persons do not come under the criminal justice system which is meant for adult offenders there are certain instances when juvenile offenders commit

⁵⁶ <http://www.africainews.com/stories/20050823009.html>; see also

http://religionclause.blogspot.com/2005/08/muslimcouncil_Nigeria_protest.htm Wednesday August 24 2005

⁵⁷ The Guardian Tuesday, November 22 2005 "Minister wants speedy passage of Child Rights Law" reported by Seun Adeoye. Page 7.

⁵⁸ Section 40 Child Rights Act;

⁵⁹ see also Section 35 Child Rights Laws of Lagos State

⁶⁰ Chapter 80. Laws of the Federation of Nigeria 1990. Cap. C 41 LFN 2004.

⁶¹ Cap 30 Law of Northern Nigeria (as applicable in the different states) See Cap 42 Law of Yobe State; cap 37 Laws of Kano State

offences with adults and in very serious cases, may come under the criminal justice system. In such cases, the provisions of these laws apply.

Evidence Act⁶²

The Evidence Act applies to all judicial proceedings in or before any court established in the Federal Republic of Nigeria.⁶³ However, there are exceptions.⁶⁴ The juvenile court/family court is not one of the exceptions. Sections 175 and 209 of the Act particularly apply to children.

African Charter on Human and Peoples Right (Ratification and Enforcement) Act

The above Act is a domestication of the African Union Charter on Human and Peoples Right. The Act provides for the protection of rights of all persons irrespective of status.⁶⁵ The fact that a person is a child does not exclude such a person from the provisions of the Act.

Borstal Institutions and Remand Centers Act⁶⁶

This Law establishes Borstal Institutions and Remands in Nigeria and provides for the regulation and governance of the Institution. This is an institution which originated in Britain for offenders aged 15 to 21 to be detained for corrective training. In England, Borstals have been replaced by Youth Custody Center, now called a Young Offender Institution.⁶⁷ In Nigeria, they are still called Borstals or Remand Homes for persons between the ages of less than 16 but under 21 for different category of offence.⁶⁸ There are a few Borstal institutions located in different parts of the country. Therefore a committal to a Borstal Institution by a juvenile Court in a town where there is no Borstal, means transportation of the child to the Borstal institution near to it.

Police Act⁶⁹

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

Regional Laws

At the regional level, there are laws that relate to the Juvenile Justice System. Nigeria is a signatory to the following

1. *African Charter on the Rights and Welfare of the Child (ACRWC)*. It entered into force on November 29 1999. Nigeria is a signatory to the ACRWC as at 13 July 1999. The government of Nigeria ratified it on 03 July 2001 and deposited it on 02 May 2003.⁷⁰ This charter is modeled on the United Nations Convention on the Rights of the Child. It

⁶² Cap E.14 2011

⁶³ Section 256

⁶⁴ Section 256 (1) a-b

⁶⁵ Article 2

⁶⁶ Cap B11 LFN 2004

⁶⁷ www.thefreedictionary.com

⁶⁸ Section 3 (1) (a)

⁶⁹ Cap P19 1990; Cap P. 19 Laws of the Federation of Nigeria 2004

⁷⁰ http://www/achpr.org/english/_info/index_ratifications_en.html.

is adapted to meet African needs and culture of the African Child. It also contain provisions for the fair and human treatment of the African Child who come into contract with the Criminal Justice System.

2. African Charter on Human and Peoples Rights (ACHPR) otherwise known as the Banjul Charter.⁷¹ This Charter was adopted on the 27 of June 1981 by the OAU DOC CAB?LEG?67?3. Rev. 5, 12 LM 58 (1982). It entered into force on 21 October 1986. Nigeria signed this Charter on 31 August 1982 and ratified it on 22 June 1983. Nigeria domesticated the African Charter on Human and Peoples Rights (ACHPR). It is now in a National Law known as The African Charter on Human and Peoples Rights Ratification and Enforcement Act formerly chapter 10 of the Laws of the Federation of Nigeria 1990 but presently in the Revised Laws of Nigeria known as The Laws of Federation of Nigeria 2004.

International Instruments

There are international laws and instruments relating to the Juvenile Justice System: Nigeria is a signatory to some of these laws/instruments and ratified or acceded to the instruments, therefore bound to them under the rule of "*Pacta Sunt Servanda*" a fundamental principle of international law. By signing a Convention, a State expresses, in principle, its intention to become a Party to the Convention. However, signature does not, in any way, oblige a State to take further action (towards ratification or not). Ratification involves the legal obligation for the ratifying State to apply the Convention. Some of the international instruments are discussed below

1. Declaration on the Rights of the Child (DRC)

In 1959, the United Nations adopted the Declaration on the Rights of the Child (DRC), which affirmed the rights of children everywhere to receive adequate care from their parents and the community. The United Nations Declaration of the Rights of the Child (DRC) builds upon rights that had been set forth in a League of Nations Declaration of 1924. The Preamble notes that children need "special safeguards and care, including appropriate legal protection, before as well as after birth," reiterating the 1924 Declaration's pledge that "mankind owes to the child the best it has to give,"⁷²

2. Convention on the Rights of the Child⁷³

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

⁷¹http://www.africa_union.org/official_documents/Treaties_%20conventions%20protocols/Banjul_%20charter.pdf

⁷² Library of Congress. Retrieved in <http://www.loc.gov/law/help/child-rights/international-law.php>. accessed on 16 November 2014

⁷³ GA RES 45/25 of 20 November 1989; entered into force on 2 September 1990. Nigeria signed without reservation on 26 January 1990 and ratified 19 April 1991

3. *United Nations Standard Minimum Rules for the Administration of Justice (The Beijing Rules)*.⁷⁴

Beijing Rules is the first comprehensive attempt by the international community to look at the problem of children in conflict with the law from human right perspective. At the sixth United Nations Congress on Prevention of crime and treatment of offenders in 1980, it was expressed that there is need for an internationally acceptable minimum standard for the development of model standard minimum rules for the administration of justice for member States. This was to protect the fundamental human rights of young offenders. The draft was approved at the 7th United Nations Congress on crime and treatment of offenders in 1995 and became Beijing Rules.

4. *United Nations Covenant on Civil and Political Rights*⁷⁵

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

5. *United Nations Rules for the Prevention of Juveniles Deprived of their Liberty*⁷⁶

The instrument was alarmed at circumstances under which juvenile are deprived of their liberty, the vulnerability of such juveniles and was concerned on the non-segregation of adult from young offenders. The rules were made to protect young people

6. *African Charter on the Rights and Welfare of the Child*⁷⁷

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

7. *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*⁷⁸

This instrument protect the human rights of children deprived of their liberty by order of the court. The Rules took into consideration all other instruments relating to the child especially the Convention on the Rights of Child, the ICC, Political rights, Universal Declaration of Human Rights and other International Instruments relating to the protection of the rights and wellbeing of young person's and other rules on the treatment of offenders, United Nations standard minimum rules for the administration of juvenile justice.

⁷⁴ GA RES 40133 of 29 November 1985, adopted on that day

⁷⁵ GA RES 2200A (XXI) of 16... ratified by General Assembly on 16 December 1966; entered into for 23 March 1976

⁷⁶ GA RES 45/113 of 14 December 1990

⁷⁷ OAU DOC.CAB/LEG/24.9/149 (1990) entered into force November 29 1999:

⁷⁸ A/RES/43/113. 14 Dec 1990

8. *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing rules)*⁷⁹.

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

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

9. *United Nations Guidelines for the Prevention of Juvenile Delinquent*⁸⁰(*The Riyadh Guidelines*)

The instrument took into consideration all International Instruments relating to human, economic, political, social rights including Declaration of the rights of the child, the Convention on the Rights of a Child. **It was adopted in 1990 as a preventive rather than curative mechanism for dealing with the problem of children in conflict.**

10. *Administration of Juvenile Justice*⁸¹ (*Vienna Guidelines*)

It provides an overview of the report received from government about how juvenile justice is administered in their countries. The document contains as an annex a draft of action on children in the criminal justice system at the meeting of experts in Vienna in February 1997; provides comprehensive set of measures that need to be implemented in order to establish a properly function system of juvenile justice administration. In this guideline of Action, earlier International guideline including the Beijing Rules, the Riyadh guidelines and the United Nations Rules for the protection of Juveniles Deprived of their Liberty, are all together referred to as the United Nations Standards and Norms in Juvenile Justice.

11 *The United Nations Rules for Non-custodial measures (Tokyo Rule)*⁸²

Article 4.1 is relevant.

PART VI

The Modern Juvenile/Child Justice System in Nigeria

The juvenile justice system also known as the Child Justice System in Nigeria⁸³ is expected to emphasize the wellbeing of the child and young person, while at the same time

⁷⁹ A/RES/40/33 29 November 1985

⁸⁰ A/RES/45/112 14 December 1990 (adopted as a preventive rather than curative mechanism for dealing with children in conflict)

⁸¹ UN Resolution 1997/30

⁸² RES 45/110 of 14 December 1990

ensuring the protection of their rights to due process, fair hearing and protection of privacy. The juvenile justice system comprises all those involved in dealing with children and young persons, the relevant agencies and institutions working towards the same goal.

The family plays a vital and major role in the training of a child. Under the traditional systems in Nigeria, this role was not contested. It was accepted and it was the norm. At a point in history, the traditional approach to the protection of juveniles proved inadequate as a result of growing complexity due to urbanization, civilization and migration.⁸⁴

The modern juvenile/child justice system in Nigeria cannot be adequately discussed without reference to the English Legal system. It suffices to note that with the advent of the Europeans into what is known as Nigeria and the expansion of the traditional communities, the laws governing the people and the administration of justice became more complex. At first customary laws of the different communities continued to exist alongside with the English laws introduced by the British.

The treaty of cessions was in 1861. The colony of Lagos in what became Nigeria was ceded to the British crown under this treaty. In 1862, the British administration made Lagos a British colony and in 1863 introduced the English law into the colony of Lagos. The common law of England, doctrines of equity in force in England, statutes of general application were laws introduced by the British administration into the new colony with the existing complex traditional laws of the diverse communities.

In 1906, the Southern Protectorate merged with the colony of Lagos and in 1914, there was the amalgamation of the Northern Protectorate which resulted in the emergence of the country, Nigeria. Nigeria became a Federation by the Nigeria Order-In-Council (Statutory Instrument) No 1146 of 1954 with three regions and a Federal Capital Territory of Lagos.

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

The modern juvenile/child justice system is statutorily founded on the Children and Young Persons Ordinance enacted in 1943.⁸⁵ This Act was a transplantation of the English 1933 Act. The 1943 Act in Nigeria was to make provisions for the welfare of the young offenders and the establishment of the juvenile court in Nigeria. Enacted as chapter 32 of the then Laws of the Federation and Lagos of 1952, provision was made for its adoption as a regional law, when Nigeria was divided into regions. It is important to note that issues relating to the welfare of

⁸³ Section 204 Child Rights Act 2003; Section 192 Child Rights Law, Laws of Lagos State

⁸⁴ Bamgbose Oluyemisi (1991) Juvenile Justice System: A Case for urgent reforms Op cit note 26

⁸⁵ Ordinance No 41 1943

children and young persons, the treatment of young offenders and the establishment of the juvenile court are on the residual list in the Nigerian Constitution.⁸⁶ The implication is that it is only the State that can legislate on matters affecting children and young persons in Nigeria.

After the enactment of the 1963 Children and Young Persons Act, the different States of the federation either adopted the Act or enacted it as laws in the States with minor variation in the provisions. It is apt to state that while the States comprising of the South of Nigeria had their individual laws, in Northern Nigeria, the States of the old Northern region enacted its law which was Children and Young Persons Law Cap 21 of the Laws of Northern Nigeria 1963. With the creation of more States from the Northern region, each State enacted its own laws.⁸⁷ In Nigeria, the enactment of the Child Right Act and applicable laws in the states in May 2003, was a giant stride in the development of the law relating to children and young persons in Nigeria.⁸⁸ This Act is a great improvement on the CYPAs and CYPL of the various States in Nigeria. Many rights which were not in these former legislations are present in the 2003 Act. The Child Rights Act 2003 is a federal law which is not binding on the states because the matter it deals with is on the residual list which only states can legislate on. There has been appeals by both the federal government NGOs and human rights activist to States in Nigeria to pass the Bill into Law in the different states. Since 2005 there has been an appeal by the Minister of Women Affairs to the governors and Houses of Assembly nationwide to move quickly on the early passage of the Child Rights Law.⁸⁹

As at May 2013, twenty-four States of the thirty-six States in Nigeria had adopted the Childs Rights Act as law.⁹⁰ However according to a 2014 report; only twenty-six States have either adopted or enacted the Childs Rights Act as laws in their States.⁹¹ The Childs Rights Act is a great improvement and comprehensive law. However, there is room for improvement.

Agencies, Institutions and persons responsible for Family Justice System in Nigeria and their powers

In Nigeria, the juvenile justice system is undertaken majorly within and by three core criminal justice institutions.⁹² These are the police, the courts and the prison. Other institutions and agencies involved in the system include government agencies at both the Federal and state levels such as the Ministries of Justice, Education, Women Affairs, Social welfare, probation

⁸⁶ Sections 7(a) and 7 (b) 1999 Constitution of the Federal Republic of Nigeria. Cap C23 LFN 2004;

⁸⁷ See CYPA cap 26 Laws of Yobe State. (formerly Cap 1 Laws of Bornu State) see also CYPA cap 22 Laws of Kano State 1983

⁸⁸ For more details see Child's Rights Act in Part iv

⁸⁹ The Guardian Tuesday, November 22 2005 "Minister wants speedy passage of Child Rights Law" reported by Seun Adeoye. Page 7.

⁹⁰ Aminu Augustine 2013 FIDA Chairperson calls for Domestication of Childs Rights Act. Daily Times. Retrieved in <http://www.dailytimes.com.ng/article/fifa-chairperson-calls-domestication-child-Rights-Act>

⁹¹ Ezeamalu Ben 2014. Nigeria's Childs Rights Act non-functional, activist says. Premium Times of May 27, 2014. Retrieved in <http://www.premiumtimes.com/news/161510-nigerias-child-rights-act-non-functional-activist-say.html>. Accessed on 30/10/14

⁹² Alemika E. E. O. and Chukwuma I. C. (2001) Juvenile Justice Administration In Nigeria: Philosophy and Practice Centre for Law Enforcement Education. Lagos, Nigeria. Retrieved in <http://www.cleen.org/Juvenile%20Justice%20Report.pdf>. Accessed on 17 November 2014

officers and social workers, non-governmental agencies and professional bodies like the Nigerian Bar Association. Collectively, all these institutions and agencies and persons play important roles in juvenile justice administration. A few of these agencies and institutions will be discussed.

The Police

The police is the first entry point for an offender in the Criminal Justice System. This is the same under the juvenile justice system. The Nigeria Police Force has wide functions and powers. Those functions are to prevent, investigate and detect crimes; apprehend offenders, protect life and property, preserve law and order, enforce all laws.⁹³ The Children And Young Persons Act (now repealed) and the applicable laws in the states where the Children And Young Persons Laws still applies, recognizes the above functions of the police, especially where the offender apprehended is a juvenile or young person.⁹⁴ The police may directly apprehend a child or young person found committing an offence, or may have contact with such persons when an official report is made that such persons have infringed a law. Under the Police Act, there are provisions for Juvenile welfare units and special police units for children, to be established and managed in major divisional police offices. In order to best fulfill their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime are to be specially instructed and trained. In Nigeria, the practice is that female police officers are often deployed to juvenile welfare departments in divisional and state police command headquarters. However, more often than not, they are not given specialized training. Assignment to the unit is considered a general duty posting and officers are frequently transferred in and out of the unit.⁹⁵ These units which had long been neglected are now being given some attentions in most police stations in Nigeria.

Under the repealed Children and Young Persons Act and applicable laws, the Inspector General of Police or police officers in states, are to make arrangements for preventing so far as practicable, a child or young person while in custody, from associating with an adult charged with an offence.⁹⁶ This provision is to prevent the criminal contamination or indoctrination of young offenders by adult criminals and it is said to be a measure desirable for the protection of young offenders from abuse and exploitation by adult criminals.⁹⁷ However, in reality, this provision is not always enforced, especially in police cells. According to Akinseye - George, children in conflict with the law are usually ascribed adult age by the police to justify their detention.⁹⁸ Under the Child rights Act and applicable Child rights Laws in the States, there are duties and powers given to the police. It is expected that there would be established in the State, a specialized Children Police Unit⁹⁹ The roles of the police officers in the unit, who are

⁹³ Section 20 The Police Act Cap P19 LFN 2004

⁹⁴ Sections 3 – 5 CYPA. See also Section 3 -- 5 CYPL Laws of Northern Nigeria.

⁹⁵ Alemika E. E. O. and Chukwuma I. C.(2001) op cit

⁹⁶ Section 5 CYPA; See section 5 CYPL Laws of Northern Nigeria

⁹⁷ Alemika E. E. O. and Chukwuma I. C.(2001) op cit

⁹⁸ Akinseye George Y. (2009) Juvenile Justice System in Nigeria. Center for Socio- Legal studies. Abuja : Nigeria

⁹⁹ Section 207 Child Rights Act

supposed to be specially trained, are spelt out in the Act and applicable laws.¹⁰⁰ The need for specialized police officers to deal with cases involving children is imperative. Under the Child Rights Act there are now more responsibilities given to police officers.¹⁰¹ Police officers now have the power to use their discretion to dispose of cases involving child offenders without resort to a formal trial by using restitution, compensation as means of settlement. The exercise of this discretion must be in the best interest of the child and the parties involved.

It is also expected that all rights under the Constitution, International instruments and Laws applicable to adults with respect to any contact with the police, will be applicable to a child or young offender.¹⁰² The need for humane treatment and consideration must be given to a child or young person who comes in contact with the police.

Court

The court responsible for dealing with children is the juvenile/family court.**The Juvenile Court established under the Children and Young Persons Act, now known as the Family Court under the Child Rights Act and also the laws in the States has the same philosophy, as the juvenile court in England. It was established to protect the children and young persons and their welfare.

The guiding philosophy behind a separate justice process is the desire to treat children and young offenders with a certain degree of care and attention so that they are not alienated from the society but rather reformed and rehabilitated.¹⁰³ This philosophy was reinstated in 1990 in the African Charter on the Rights and Welfare of the Child; that the essential aim of treatment of every child during the trial and if found guilty of infringing the penal laws shall be his or her family and social rehabilitation.¹⁰⁴

The juvenile courts/family courts are special courts where issues relating to children and young persons are heard. There is a misconception that these courts are for children and young persons in conflict with the law, who have done delinquent acts, which if done by adults, would have amounted to a crime. The truth is that the courts hear cases relating to children and young person whether as victims, offenders or for welfare and protection. The court is a special court because special procedure is adopted different from a regular adult court. The Juvenile court is a court of summary jurisdiction under the Children and Young Persons Act, but the newly constituted Family Court under the Child Rights Act or law is a court with unlimited¹⁰⁵ and exclusive¹⁰⁶ jurisdiction. The Family / Juvenile Court is governed by the Child Rights Act or law or by the Children and Young Persons laws of different States. Children are regarded as human beings with human, civil and constitutional rights. Children are also considered as being in a

¹⁰⁰ Section 44(1) – (10) Child Rights Act; see also Section 39 (1) – (11) Child Rights Law, Laws of Lagos State

¹⁰¹ Section 209 Child Rights Act

¹⁰² Adeyemi A.A (1992) Juvenile Justice Evaluation, policies and Programmes. In Okonkwo, C.O (ed) *Contemporary Issues in Nigerian Law, Essays in Honour of Judge Bola Ajibola p.45*

¹⁰³ See also Principle 2 of the Declaration of the Rights of the Child. Proclaimed by the General Assembly Resolution 1386 (xiv) of 20 Nov 1959

¹⁰⁴ Article 17 (3)

¹⁰⁵ Section 151 (1) Child Rights Act; Section 140 (1) Child Rights Law of Lagos State 2007

¹⁰⁶Section 162 Child Rights Act; section 151 (1) Child Rights Law of Lagos State 2007

special class of persons that need to be treated specially, because they are vulnerable. In administering justice in relation to crimes committed by a child or against the child, called juvenile/child justice system, which is distinguished from the regular criminal justice system for adults, the status of the child must be put into focus.¹⁰⁷ The above facts must be taken into consideration by the family/juvenile court. A new development came up under the Child Rights Act which was not emphasized in the Children and Young Persons Law. This has to do with the specialization of persons sitting over cases in the Family Court and professionalization and training of court personnel.¹⁰⁸ Presently this is generally lacking in the family courts in States where they have been established. It is common to find Judges who are posted for a specified period to sit in juvenile proceeding or who switch between trials of adult offenders with little or no specialization in the work with children making them insensitive to plight of the vulnerability and needs of children. The absence of specialized judges, police and other personnel handling cases involving juvenile offenders is not in the best interest of the child.

Jurisdiction the Court

As mentioned above, the juvenile court under the repealed Children and Young Persons Act is a court of summary jurisdiction. However, under the Childs Rights Act and laws, the family court has unlimited and exclusive jurisdiction¹⁰⁹. Under the repealed Children and Young Persons Act, and in the States where the Children and Young Person's Law apply, the court is under the jurisdiction of the State. It is the Chief Judge of the State that has power to constitute the court.¹¹⁰ This is still the position under the Childs Rights Act.¹¹¹ The establishment of the family court is under the jurisdiction of each State of the Federation and the Federal Capital Territory.¹¹² Unlike the position in most States in Southern Nigeria where the Child Rights Laws have been enacted and the Children and Young Persons Laws repealed, most of the States in Northern Nigeria still operate under the Children and Young Persons Law. Surprisingly, the Laws of Northern Nigeria does not categorically provide for the establishment of a juvenile court. What exists in the form of the Juvenile court in most States in Northern Nigeria is a court so implied, under the jurisdiction of the Magistrate court, designated as such by the Chief Judge of the respective State and manned by a magistrate so designated. This practice was confirmed by Akinseye-George in his study of juvenile Justice System in some States in Nigeria. In Kano State, the study revealed that "an experienced Magistrate was designated to handle juvenile cases."¹¹³ The establishment of the family court is to hear and determine matters relating to children. The family court has civil and criminal jurisdiction in matters relating to children.

However, unlike the Juvenile court under the repealed Children and Young Persons Act, which was a court under the division of the magistrate, the new constituted family court under

¹⁰⁷ Bamgbose Oluyemisi 2008. Unpublished Lecture note: Saint Louis University School of Law, Saint Louis Missouri, U.S.A Fall Semester 2008

¹⁰⁸ Section 154 (1) &(2) Child Rights Act

¹⁰⁹ Op cit note 71 and 72

¹¹⁰ Section 6 (1) Children and Young Persons Act

¹¹¹ Section 152 (2) and 153(2)

¹¹² Section 149 Child Rights Act; see section 138 (1) Child Rights Law of Lagos State

¹¹³ Akinseye -George Y (2009) Juvenile Justice System in Nigeria op cit p66

the Childs Rights Act is at two levels. This is the division under the High Court at the High Court level and the Court as a Magistrate Court at the Magistrate level.

The jurisdiction of the Family Court at the High Court level covers such areas as constitutional matters of rights of the child on enforcement, redress or infringement, offences punishable by death, terms of imprisonment for a term of ten years and above, child related matters where claims involve an amount of fifty thousand naira and above, divorce and custody of the child, appeals from the magistrate court.

An appeal can lie to the Court of Appeal from the High Court on such matters listed above. At the Magistrate level, the family court is properly constituted by a magistrate who must not be below the rank of a Chief Magistrate, two assessors, one of whom must be a woman and the other person must be an expert in child matters, preferably in the area of child psychology education.

Composition of the Court

The composition of the juvenile courts determining the cases of children under the repealed Children and Young Persons Act differs slightly from that of the family court under the Childs Rights Act. The juvenile court under the Children and Young Persons Act and applicable laws is established only at the magisterial level and constituted by a magistrate and at least two assessors, one of whom is usually a woman. Persons constituting the courts are all appointed by the State Chief Judge.¹¹⁴ However under the Childs Rights Act and Laws of the States, the Family Court is at two levels. The family Court at the High and Magistrate court levels. The court is duly constituted at the High Court level by a Judge and two assessors, and at the Magistrate Court level by a magistrate and two assessors. They are all appointed by the chief Judge of the State.¹¹⁵ One of the assessors at both levels must have attributes of dealing with children and matters relating to children preferably in the area of child psychology education.

Procedure in the Court

The procedure adopted by the court under the repealed Children and Young Persons Act and the Childs Rights Act is simple and informal. The proceeding must be conducive and the best interest of the child is paramount. Due to the philosophy of the Juvenile or family court for the welfare and rehabilitation of the child or young offender, undue exposure of the child or offender to public glare is generally avoided. Thereby, the proceeding of the Juvenile or Family court is not made public in the sense that not anybody can be allowed during court proceeding.¹¹⁶ This practice which existed under the repealed law still exists under the Childs Rights Act. The child is expected to participate in the whole proceeding. The provision under the repealed Act is more explanatory as to the procedure to be followed than the Childs Rights Act which states generally that it should be conducive and in the best interest of the child.

¹¹⁴ Section 6 (1) Children and Young Persons Act. For Northern Nigeria see generally the Criminal Procedure Code

¹¹⁵ Section 152(2) and 153(2) ; see also Section 141(2) and 142(2) Child Rights Act; also Child Rights Law of Lagos State

¹¹⁶ Section 156 Child Rights Act; See also Section 145 Child Rights Law of Lagos State; Section 6(2) CYPL Laws of Yobe State; Section 6 (2) CYPL Laws of Kano state Section 6(2) CYPL and Section 225 Criminal Procedure Code Laws of Northern Nigeria

Parties in Court Proceedings

Therefore as a general rule, only officers and members of the court, the parties to the case including their parents and guardian counsels in the case, persons specifically authorized are allowed in the family court proceedings. In other cases, by the special leave of the court, other persons such as newspaper reporters may be allowed.¹¹⁷ Under the Childs Rights Act,¹¹⁸ it is specifically stated that members of the press are excluded from attending a family court proceeding while in Northern Nigeria, bonafide representative of a newspaper is allowed.¹¹⁹ In both the Childs Rights Act and the Children and Young person's Law of Northern Nigeria, it is provided that no person shall publish the name, address, school, photograph or anything likely to lead to the identification of a child whose matter is before the court, except in so far as is required by the provision of the Act.¹²⁰ Contravention of this provision attracts a fine or a sentence to a term of imprisonment or both.

A significant improvement under the provision of this law compared to the repealed Children and Young Persons Act is the review in the punishment for contravention of the law from 100 naira fine to 50,000 naira under the Childs Rights Act¹²¹ and an addition of a term of imprisonment for a term of five years or both to the provision in Section 157 (2) of the Childs Rights Act.

Venue of Court Proceedings

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

Prisons

The Child Rights Act¹²², the Child Rights Law¹²³ and the Children and Young Persons Laws¹²⁴ provide against imprisonment of a child. However, the Child Rights Act¹²⁵ and the Child Rights Law¹²⁶ provides for exception of imprisonment for the child in certain cases of crimes. These include cases of attempted treason, murder, robbery manslaughter, wounding to cause grievous harm. The Children and Young Persons Law also provides for imprisonment as a method of

¹¹⁷ Section 6 (5) Children and Young Persons Act

¹¹⁸ Section 156(d) Child Rights Act

¹¹⁹ Section 6 (2) Children and Young Persons Laws of Northern Nigeria

¹²⁰ Section 157 Child Rights act; section 6(3) CYPL Laws of Northern Nigeria

¹²¹ See Section 6 (6) Children and Young Persons Act

¹²² Section 221 (1) (a) Child Rights Act

¹²³ Section 209 (1) (a) Child Rights Law, Laws of Lagos State 2007

¹²⁴ Section 12 (1) of CYPA Laws of Northern Nigeria; section 12 (1) CYPL Laws of Kano State and Section 12 (1) CYPL Laws of Yobe State

¹²⁵ Section 222 (1) and (2)

¹²⁶ Section 210 (1) and (2) Child Rights Law, Laws of Lagos State

dealing with a young person and **not a child** (emphasis mine) found liable for an offence.¹²⁷ Under the Children and Young Persons Law, there is a distinction between a child and a young person.¹²⁸ This in practice is usually applied in violent cases of murder, wounding and serious cases of treason or rape. The Law further provides that a young person can be only be ordered to prison as a last resort if it is in the opinion of the court, that no other method of treatment is suitable for the young offender.¹²⁹ However, inadequate remand centers, approved schools and Borstal institution have led to the detention and imprisonment of young offenders in the prisons when the offence does not deserve it.

The Children and Young Persons Law further states that the young person so imprisoned "shall not be allowed so far as is practicable to associate with adult prisoners."¹³⁰ This it is believed is to buttress the fact that they are malleable and can be rehabilitated to be useful in the society. However, it appears that in reality, it is not practicable for the officers of the prisons to segregate young offenders from the adults due to problems of overcrowding.¹³¹ The Nigerian prisons are said to contain a large number of young offenders, and often they are not separated from adult inmates on the basis of age or other relevant classifications. According to a 2009 study by Akinseye-George, 'great majority of children in conflict with the law are held together with adults in regular prison' He further noted that twenty one percent of persons in Kuje prisons in the Federal Capital territory are children,¹³² that there is a high population of children in Kano prisons¹³³ and that rivers State had the highest number of children in regular prisons compared to four (4) other states where the study was conducted.¹³⁴

Treatment of Juvenile Offenders in Nigeria

The colonial government established the first juvenile justice custodial institution in 1937 as a wing of the Enugu Prison. Inmates from the various Regions were sent to this institution for several years. The Children and Young Persons Act empowered the establishment of remand homes and approved institutions. Under the applicable laws, there are various treatment methods and interventions available for the child or young offender. It ranges from dismissing the charge to committal to custody in detention.¹³⁵ The disposition methods under the Children and young Persons Act and Laws were punitive in nature. There is provision for the establishment of Borstal institutions.¹³⁶ It is a federal juvenile correctional institution. According to the regulation,

¹²⁷ Section 10 (i) CYPA Laws of Northern Nigeria; See section 10 (i) CYPL Laws of Kano State; section 9 (i) CYPL Laws of Yobe state

¹²⁸ See Section 2 of the CYPL of Kano and Yobe States

¹²⁹ Section 11 (2) CYPA Laws of Northern Nigeria; See section 12 (2) CYPL Laws of Kano State; section 12 (2) CYPL Laws of Yobe state

¹³⁰ Section 12 (3) of CYPA Laws of Northern Nigeria; section 12 (3) CYPL Laws of Kano State and Section 12 (3) CYPL Laws of Yobe State

¹³¹ Article 10(3) and 14(3)(d) International Covenant on Civil and Political Rights

¹³² Akinseye-George Y (2009) op cit p 64

¹³³ Ibid pp 68

¹³⁴ Ibid pp 73

¹³⁵ Section 223 Child Rights Act; Section 111 Child Rights Law of Lagos State; Section 9 Of the CYPL Laws of Northern Nigeria

¹³⁶ Borstal Institutions and Remand Centre Act cap B11 LFN 2004

the purpose of the institution is to “bring to bear upon the inmates every good influence which may establish in them the will to lead a good and useful life on release and to fit him to do so by fullest development of his character, capacities, and sense of personal responsibilities”. A

Borstal Remand Center was established as a remand and reception center, prior to the transfer of committed juvenile offenders to the Borstal institution, in Kaduna¹³⁷ Towards the realization of the objectives or goals of reformation, there were provisions for vocational training in tailoring, photography, welding, building (masonry or bricklaying), electrical installation, etc., as well as formal educational instruction, up to General Certificate of Education (ordinary level)¹³⁸ and the facilities were fairly well managed in the 1970’s¹³⁹

It is important to state that the treatment methods under the Child Rights Act and Laws and takes into account treatment methods that are diversionary from custodial treatment. Death penalty has never been recognized as a punishment for a child or young person in Nigeria.¹⁴⁰ The laws generally prohibit imprisonment for a child¹⁴¹ except in certain circumstances. Canning is a method recognized under the Children and Young Persons Act/Law and it is still recognized in the States where the law applies. However it has been banned in the Child Rights Act¹⁴² and laws and international instruments. How feasible the implementation of this provision will this be, it is very difficult to say.

PART VII

Disposition Orders in the Juvenile Justice System

Juvenile courts have a wide range of sentencing options usually called “disposition orders” that they can impose on juveniles or young offenders who are found to be delinquent.¹⁴³ After adjudicating a juvenile as delinquent, a juvenile court may order incarceration as a penalty. There are some ways judges can order confinement for a juvenile who has been found delinquent and can be grouped into two categories; Incarceration and Non-Incarceration Methods.¹⁴⁴ They are also referred to as Custodial and Non-Custodial Dispositions. A Court may decide that a juvenile must remain in custody and will decide whether the juvenile should be placed in secure or non-secure custody.¹⁴⁵

Custodial Dispositions: These are either **Secure** (incarceration of juvenile offender in facility which restricts movement in community; similar to adult penal facility involving

¹³⁷ Alemika, E.E.O. (1978) “A Study of Socio-Cultural and Economic Factors in Delinquency among Kaduna Borstal Inmates.” Unpublished B.Sc. Sociology Original Essay, University of Ibadan, Ibadan Nigeria.

¹³⁸ *ibid*

¹³⁹ *ibid*

¹⁴⁰ Section 221(c) Child Rights Act; Section 270 Criminal Procedure Code, Laws of Northern Nigeria

¹⁴¹ Section 221(a) Child Rights Act; Section 11 (1) Children and Young Persons Law of Northern Nigeria

¹⁴² Section 221(B)

** This part contain in substantial part

¹⁴³ Kathleen Michon, “*Juvenile Sentencing Options: Typical Punishments and Penalties for Juvenile Delinquents and Youth Offenders*” retrieved from www.Nolo.com February 5, 2016.

¹⁴⁴ *Ibid*

¹⁴⁵ State of North Carolina “You and the Juvenile Justice System; A Guide for Youths, Parents and Victims” (2000), 5th edition, published by Governor’s Crime Commission, Raleigh, North Carolina

total incarceration) or **Non-Secure** (where a juvenile is placed in a group home or foster care or other arrangement and is permitted to leave with permission of parents, guardians or supervisors) options resulting from a delinquency adjudication, involving out of home placement, ranch placement, or a Juvenile Custodial Facility Placement.¹⁴⁶

Non-Custodial Dispositions: Non-Custodial measures refer to any decision made by a competent authority to submit a person suspected of, accused of or sentenced for an offence to certain conditions and obligations that do not include imprisonment; such decision can be made at any stage of the administration of criminal justice, the purpose of which is to find effective alternatives to imprisonment for offenders and enable the authorities to adjust penal sanctions to the needs of the individual offender in a manner proportionate to the offence committed.¹⁴⁷ There are certain legal safeguards or criteria required for consideration before a court can resort to the use of Non-Custodial measure, they are;

1. The nature and the gravity of the offence
2. The personality and background of the offender
3. The purposes of sentencing and
4. The rights of victims¹⁴⁸

Often times, the judge places a juvenile under non-secure custody if the juvenile is a runaway and who agrees to the arrangement or the court decides, it is in the best interest of the juvenile.¹⁴⁹

Likewise, for a secure custody, the judge considers matters like the nature of the offence; if the juvenile is charged with a felony and is a danger to persons and property, or the juvenile is charged with a misdemeanor that includes an assault on a person and is a danger to persons, or the juvenile failed to come to court on a pending delinquency charge or the court believes the juvenile will not come to court on a pending charge or the juvenile is capable of harming himself, is a truant and undisciplined.¹⁵⁰

Incarceration Methods

There are a number of methods like;

Home Confinement/House Arrest, Placement with someone other than a parent or guardian, Juvenile Hall/Detention Facility, Probation after Juvenile Hall, Secured Juvenile Facilities, Adult Jail, Juvenile and Adult Jail.

Non-Incarceration Method:

A disposition order may include options other than confinement, including: Verbal Warning, Fine, Counselling, Community Service, Electronic Monitoring, Probation.

Nigeria, having taken ratified the Convention on the Rights of the Child, has taken steps to adopt it through its own legal processes. **Article 40(4) of the UN Convention on the**

¹⁴⁶ Pearson (2011) "*Criminal Justice*"

¹⁴⁷ UN doc. ST/CSDHA/22, "*Community in the United Nations Standard Minimum Rules for Non-Custodial Measures* (the Tokyo Rules), p2

¹⁴⁸ Ibid

¹⁴⁹ Op cit note 3

¹⁵⁰ Ibid

Rights of the Child, specifically provides that “a variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programs and other alternatives to institutional care, shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.” In addition **Article 37** of the Convention requires that detention shall “be used only as a measure of last resort and for the shortest appropriate period of time. Thus the convention, as adopted by Nigeria, promotes the use of alternate placement and treatment over incarceration. On the subject matter, **Iyabode Ogunniran** opines that “The implementation of non-custodial disposition measures that is, counseling and community service will enhance the self-worth of the offenders and reduce the use and escalating cost of maintaining custodial institutions.”¹⁵¹

PART VIII

Recommendations for An Effective Juvenile/Child Justice Administration

Juvenile Justice System has a chequered history. In Nigeria, a lot of reliance is on the received English law as a result of colonization. Whereas in England, a lot of changes have taken place with regards to the juvenile system in Nigeria; the juvenile justice system is the last decade undergoing reforms.

It is not in doubt that socio-economic conditions continue to increase the susceptibility of juveniles to criminal activities in the different communities. Coupled with this fact are advances in science, public attitude especially in respect to corruption and sky rocking cost.¹⁵²

The enactment of the Childs Rights Act in Nigeria was major leap for the juvenile justice system. However, there is the need to reevaluate the laws, the agencies and the system as a whole to have a viable Juvenile Justice System in Nigeria.

Reevaluation of the Laws

The Convention of the Rights of the Child is said to be the most ratified human rights documents and also the most violated¹⁵³

The provision in the Childs Rights Act establishing the Family Court is laudable.¹⁵⁴ There are similar provisions in the laws of states that have enacted or adopted the Act, for example, Lagos State¹⁵⁵

The provision in the Act and Lagos State provides that the Court shall be of two levels which are the Court as a division of the High Court at the High Court level and the Court as a Magistrate Court at the Magistrate level.¹⁵⁶ The family court used to be the juvenile court under the Children and Young Persons Law and in Lagos State, an example of a State that has enacted

¹⁵¹ Iyabode Ogunniran (8th June, 2013) “*Nigeria's Evolving Juvenile Justice System*” published under Justice Policy Journal, Centre on Juvenile and Criminal Justice, University of Nevada, Las Vegas, retrieved February 11, 2016.

¹⁵² Scott Elizabeth & Steinberg Lawrence (2008) *Rethinking Juvenile Justice* – Harvard University Press

¹⁵³ Muncie John (2014) the punitive turn in juvenile Justice: Cultures of control and rights compliance in Western Europe and the USA. Retrieved in <http://y.j.sagepub.com/content/8/2/107.refs>

¹⁵⁴ Section 149 Childs Rights Act 2003

¹⁵⁵ Section 138 Childs Rights Law 2007, Lagos State

¹⁵⁶ See Section 150 Childs Rights Act 2003 & Section 140 Childs Rights Law

the Childs Rights Law 2007; the Children and Young Persons Law of Lagos State has repealed Section 263.¹⁵⁷ The provision of the Children and Young Persons Act which is inconsistent with the Childs Rights Act is void. Section 274 has been repealed by Childs Rights Act.

The family courts as they exist now are not independent courts. They are and can only be divisions under the Magistrate or High Courts. If it is otherwise, their establishment would be unconstitutional as they are not presently recognized under the Constitution of the Federal Republic of Nigeria. This is more so, when Section 152 (5) of the Child's Rights Act 2003 and Section 141 (2) ¹⁵⁸of the Law of Lagos State states that *Appeal will lie from the family court of the High court to the Court of Appeal*. The constitution of the Federal Republic of Nigeria in Section --- lists out courts from which appeal will lie to the Court of Appeal.

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

For the government to show commitment to the cause of children, it is advocated that the family court should be a court of record and given recognition under the Nigerian Constitution. There is need for a constitutional amendment to include family court as a court of record. This will have to follow the trend of the National Industrial Court which is now a court of record recognized by the amendment in the third Alteration Constitutional Amendment.

Apart from the above fact, a proper structured family court should have a Magistrate/Judge depending on the adopted structure, who specializes in Childs law, who is trained and undergoes regular training and refresher courses, to achieve the aim of the court which is towards the welfare and rehabilitation and best interest of the child. The situation in many of the existing family courts where magistrates undergo training in child welfare and are only posted to the family court for a period of time and then reposted out only for a new magistrate to be posted is not the best practice for specialization and continuity.

It is opined that it is only then that the family court will be in the best position to adjudicate on and have unlimited jurisdiction as provided in Section 151 of the Childs Rights Act and Section 140 of the Childs Rights Laws of Lagos State to hear and determine

"any civil proceeding in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim in respect of a child is in issue and any criminal proceeding involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a child, against a child or against the interest of a child"

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

¹⁵⁷ Section 6 of the Children and Young Persons Law Cap 10, Lagos State 2003 now repealed in Section 258 of the Childs Rights Law, Lagos State 2007 and by Section 274 of the Childs Rights Act 2003

¹⁵⁸ There appears to be an error in the numbering of the Law as it should be 141 (5)

In this paper, the present practice in the family court at the Magistrate level in Lagos State is highly commendable. All cases involving a child with a child or a child with an adult of which is within the powers or jurisdiction of the Magistrate Court are heard and completed in the family court. This practice is in line with the aim of the Childs Rights Legislation.¹⁵⁹

Implementation of the Childs Right: Legislation

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

An unstructured interview with some magistrates manning family courts in different states shows that Section 154 (1) and (2) of the Childs Rights Act similar to Section 143 (1) and (2) of the Childs Rights Law of Lagos State is not complied with as much as it should be. This has to do with professionalization and training of court personnel.¹⁶⁰ This is more so with the situation where magistrates and judges are not appointed to the family courts but are posted.

Layout of Family Court

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

The layout of an adult court in this writer's opinion is not conducive for child proceeding due to several factors, and does not eventually meet the need of the child. A thought on this issue is aligned with that of Judge Julia: Mack, one of the first judges in the first juvenile court in Chicago, Illinois in the United States of America about the hearing in the juvenile court compared to the adult court:

"The ordinary trapping of the Court (adult court – emphasis mine) are out of place in such hearing. The judge or a bench looking down upon a boy standing at the bar can never evoke proper sympathetic spirit. Seated at the desk with the child at his sides, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge while losing none of his judicial dignity"¹⁶¹

Governmental Bureaucratic/Proactive Action

The actions of government may hamper or enhance the effective running of the juvenile justice system in the States in Nigeria, creating a hybrid structure of family courts. According to a report by Ogunsola, the Childs Rights Law in Oyo State has been passed twice in less than ten

¹⁵⁹ Section 1 Childs Rights Act; Section 1 Childs Rights Law, Lagos State.

¹⁶⁰ Ezeamalu B 2014 Premium Time of May 27, 2014

¹⁶¹ Mack Julian (190) "The Juvenile Court" Harvard Law Review Vol 23 1909 pp 120.

years and yet the Law is not being implemented in the State.¹⁶² In 2003, a Childs Rights Law of Oyo State was passed. In 2006, a review of that law was done under another government. Presently, the Family Courts provided for under the 2006 Law has not been created. A hybrid structure is in existence. This is because the juvenile courts as operated under the Children and Young Persons Law still exist in structure, layout and composition. However, the magistrates in charge of the court try as much as possible to adopt some provisions of the Childs Rights Law as much as it feasible.

Rather than being bureaucratic, a proactive action on the part of government will enhance the juvenile justice system. Ogun State Childs Rights Law was passed in August 2013.¹⁶³ The enactment of the 2013 Law in Ogun State removed the flaws and lacuna in the 2006 laws. A lacuna in the 2006 Law of Ogun State was the non-provision for the establishment of a family court. With the 2013 Law taking care of this "first and major step towards the protection of Childs rights in the State"¹⁶⁴, the government immediately embarked on the construction of a family court which is now in operation.¹⁶⁵

Overriding Child Interest Versus Religious Interest

The introduction of Sharia Law has brought about a new dimension to the juvenile justice system in Nigeria. While it is generally stated that "every action, concerning a child undertaken by any individual, public or private body, institution, court of law, Administrative or Legislative authority, the best interest of the child shall be primary consideration".¹⁶⁶

The implication of the conflict arising from cultural and religious interest and the child's interest is the non-passage of the Childs Rights Law in some States in the Northern part of Nigeria. In an unstructured interview with government officials in States in Northern Nigeria, it was found that previous attempts to pass the law at the House of Assembly generated a lot of noise and was violently resisted by some members of the house and members of the larger society.

The Childs Rights Act was condemned by the States for not taking into consideration the provision of the Children's Rights Convention which provides that State parties in domesticating the convention should take cognizance of cultural and social conditions.

The argument is that some provisions of the law contravene the Islamic religion especially in relation to marriage.

¹⁶² Ogunsola Oladele 2014 Groups blame Oyo Government over child abuse: *Daily Independent October 6 2014*. Retrieved in <http://dailyindependentnig.com/2014/10/groups-blame-oyo-govt-child-abuse/>

¹⁶³ Adebawale Segun 2013 Ogun Assembly passes Bill on Childs Rights in Eagle online. Retrieved <https://theeagleonline.com.ng/ogun-assembly-passes-bill-on-childs-rights/> August 2 2013. Accessed on 7 November 2013.

¹⁶⁴ Ogunsola Oladele 2014

¹⁶⁵ Ogun news 2013 *Ogun commences implementation of Child Rights Law*. Retrieved in <http://www.ogtv.com.ng/ogun-commences-implementation-of-the-childs-rights-law/October 11 2013>. Accessed Nov 7 2013

¹⁶⁶ Section 1 of the Childs Rights Act; Section 1 Childs Rights Laws of Lagos and Ogun States

It is contended that whilst the Sharia Law provides for the age of puberty in defining a child, the Childs Rights Act on the other hand defines a child as one under the age of eighteen years.

It should be taken into cognizance that culture is dynamic. While realizing that children belong to the society where law will be operated, the child's best interest should override culture and religious interest that may hinder the full harmonious, physical, mental development of the child.

Definition of a Juvenile/Child

The common criterion for the definition of a juvenile is the use of age. For example, under the repealed Children and Young Persons Law of Lagos State, this was the same pattern adopted¹⁶⁷. In section 2 of the above repealed law, a child was defined as a person under the age of fourteen.

The use of age has its advantages and disadvantages. It has been argued that the age fixed in the law contravenes Islamic law as discussed above. Bamgbose also argued that it relying on age fails to take into consideration social, physical and psychological development of the child citing the case of Joseph Uwa V. State¹⁶⁸ where the Supreme Court held that the age of a n Ibo villager who says he is thirteen years old may not actually be thirteen, as would have been, if said by an English boy. According to the Court, this may not be the exact age of the boy as ages are reckoned by certain festivals and by saying he is thirteen years, he may be about twelve years plus and not actually thirteen as in the English sense.

The problem created by the definition of juvenile appears to have been laid to rest in States that adopted the Childs Rights Act and in the States that have put an age in their State laws.

Importance of Parental, Family and Community Values

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

*"In our solicitude to form youths for the duties of evil life, we should not forget the rights which inhere both in parents and children. The principle of the absorption of the child is and its complete subjection to the despotism of, the State, is wholly inadmissible in the modern civilized world. The parent has the right to the care and custody and assistance of his child. The duty to maintain and protect it is a principle of natural law"*¹⁶⁹

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

¹⁶⁷ Cap 10

¹⁶⁸ 1965 ANLR 356

¹⁶⁹ 1466, 58 S. Ct. 1019

*"All the courts or probation scheme on earth, can never effectively correct the faults of the child as long as there remains the fault of those who dealt with children in the home, schools, in neighborhood – in the community itself"*¹⁷⁰

The importance of the family as a social unit cannot be overemphasized especially in the treatment of delinquent children and those in need of protection. Many countries of the world have incorporated the ideals of the family into the child justice system. The Childs Rights Act recognizes the importance of parents in Section 174 (5) of the CRA and family ties in Section 178 (2) (a) (i) & (ii) in the treatment of a child under the child justice system.¹⁷¹ A child rights activist and lawyer has advocated that issues of child and parents are better settled outside the court.¹⁷²

In New Zealand, the youth justice system recognizes that children and young persons cannot be dealt with in isolation and therefore involves families in responding to youth offending.¹⁷³ Except for child offenders between the ages of ten to thirteen who commit murder or manslaughter and are tried in adult courts in all other cases, child offenders are treated by way of a family group conference.¹⁷⁴

This process allows the family, the community, the victim and the offending child or young person to have a say on an issue that may affect all those involved in the conference. This gives the victim a voice which is believed to facilitate healing process. It shifts the burden from the State to the family and community, therefore allowing the State to focus on more serious problems and if necessary intervene.¹⁷⁵ It is a form of restorative justice.¹⁷⁶

The age of criminal responsibility in New Zealand is ten years. Persons between the ages of fourteen to below seventeen who are unmarried are regarded as young persons and may appear before a youth court for offending. Becroft and Thompson argues that research shows that there are four pillars that hold the key to understanding and addressing child and youth offending. These are family, schools, peers and community.¹⁷⁷

There is the need to go back to the basis. The family is no doubt the best unit to settle issues between parents and children. The Yoruba saying "*A ki lo si kootu, ki a tun se ore*"

¹⁷⁰ Becroft A.J & Thompson Rhonda (2006) Youth Offending: Factors that contribute to how the systems respond. Retrieved in <http://www.justice.govt.nz/courts/youth/publications-and-media/speeches/youth-offending-factors-that-contribute-and-how-the-system-respond>

¹⁷¹ See also Section 166 (3)(a); 167 (2)(a)(i)&(ii) and 167 (4)(a)&(b) and 167 (6)(a)&(b). Childs Rights Law of Lagos State 2007

¹⁷² Ogunsola Oladele 2014. Daily Independent Op cit note ____?

¹⁷³ Becroft AJ & Thompson Rhonda

¹⁷⁴ Ibid. See also Young offenders Act 1993 (South Australia. Part 3 DIV 3). This was first Australia Jurisdiction to give statutory backing to conferencing.

¹⁷⁵ Becroft A.J & Thompson Rhonda op cit note ____?

¹⁷⁶ Wundersitz J (1996) *Juvenile Justice* in Hazlehurst K (ed) Crime and Justice: An Australian Textbook in Criminology LBC. Information services: Sydney 1996 137-141

¹⁷⁷ Becroft A J & Thompson, Rhonda paper delivered at a symposium on child and youth offenders: what works Tuesday 22 August 2006 The youth court of New Zealand Retrieved in <http://www.justice.govt.nz/courts/youth/publications-and-media/speeches/youth-offending-factors-that-contribute-and-how-the-system-responds> Accessed on 14 November 2014

literally translated to mean a person who has instituted a case against another in court does not expect that they will ever be friends again.

In Canada, a territory has also adopted a system known as sentencing circles in the treatment of juvenile offenders. It is an updated version of the traditional sanctioning and healing practices of Canada's aboriginal people.¹⁷⁸

In the United States of America, similar community courts have been established in many States and its prominence continues to grow.¹⁷⁹ This has also been introduced in Britain.

There are different models adopted by different countries to suit their legal system. The aims are all the same. The parties are the magistrate youth workers, family members, offender victims and respected elders. The major difference between this form of approach and the family court is that the family courts under the Childs Rights Legislations is that it is no held in a formal court setting, it is informal and it diverts the child from the court system. The belief is that contact with the formal system may contaminate the young offender.

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

Funding

Studies show that institutional facilities for children in Nigeria are in very deplorable conditions and generally lack the minimum comfort. The States are finding it difficult to fund or repair.¹⁸⁰ There is a disparity between the care promised them in court and the care actually provided. It is said to be more abusive than parental. Krisberg described the inhumane living condition as exploitation than training.¹⁸¹

The Act generally frowns at institutionalization as a form of treatment except where it is desirable or unavoidable.¹⁸² It is provided that placement in an approved accommodation or Government Institution shall be a disposition of last resort.¹⁸³ Section 221 (1)(a) of the Childs Rights Act also provides that no child shall be ordered to be imprisoned except where the provisions of Section 222 (1) applies. These include where a child is found to have committed serious offences like treason, murder, robbery, and like offences.¹⁸⁴

In such unavoidable cases, where the child has to be taken into custody, the Childs Rights Act and Law provide different types of custodial facilities. The objective of the institutional treatment is to provide care, education and vocational skills to assist the child to assume socially constructive and productive roles in the society.¹⁸⁵ However, due to budgetary constraints, States are not able to fund or construct the list of laudable custodial facilities in Section 248 and 249 of

¹⁷⁸ Bazemore G and Griffith CT 2003 Conferences Circles < Board and Meditations: The "new wave" of community justice decision making. In McLaughlin G, Fergusson R, Hughes G and Westmarland (ed) *Restorative Justice: Critical Issues*: London: Sage or 1997 Federal Probation 61 (2) December 1996 25-37

¹⁷⁹ Johnstone, Gerry, Daniel W. Van Ness. 2007 Handbook of Restorative Justice. Devon, UK: Willan Publishing, 2007

¹⁸⁰ Akinseye George Y. (2009) Juvenile Justice in Nigeria. Centre for socio-legal studies. Abuja: Nigeria

¹⁸¹ Krisberg B 2005 Juvenile Justice: Redeeming our Children. Thousand Oak, CA: Sage

¹⁸² Section 215 Childs Rights Act

¹⁸³ Section 223 (2) (a) of the Childs Rights Act. See also Section 211 (2) of Childs Rights Law of Lagos State 2007

¹⁸⁴ See also Section 209 of the Childs Rights Law of Lagos State 2007

¹⁸⁵ Section 236 Childs Rights Act: See also Section 224 of the CRL of Lagos State

the CRA.¹⁸⁶ However, the provision creating these Institutions is commendable. The plea is that the government should be committed to the establishment of these Institutions as soon as possible.

Language

It has been argued that the use of gender neutral language may seem unnecessary. It is also argued that the masculine pronoun "he" and "his" refers to both men and women.¹⁸⁷

Arguments like the above cannot stand. It has been said that "there is no good reason for keeping our legal terms anachronistic and with words that do not respect our current contemporary times".¹⁸⁸ This paper agrees with this statement.

In many countries, attempts have been made to pass new laws to root out gender bias from the statute. In many states in the United States of America, this is being done.¹⁸⁹ It is important to note that changing words can change what we think about the world around us.¹⁹⁰

In the repeals and reforms of laws in Nigeria, the legislators should take note of this important but yet ignored issue. In Washington State for example, while the State had passed a law as far back as 1983 requiring that new laws be gender neutral, there is a more pro-active step in "combing through State statutes every law passed since the State's founding in 1854".¹⁹¹ While in this paper, it is not yet advocating that laws passed decades ago should be "tweaked", an attempt should be made to make new laws gender neutral. This especially applies to the Childs Rights Act and Laws. States that are yet to adopt or enact the legislation should take note of this fact.

Functions of assessors

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

¹⁸⁶ Section 236 and 237 of the Childs Rights Law of Lagos State

¹⁸⁷ Grinker, Marc A (1994) Gender Neutral Language. Retrieved in http://www.kentlaw.edu/academics/irw/grinker/lwtaGender_Neutral_Language.htm

¹⁸⁸ Nye James 2013 Farewell to freshman – Washington State to remove 40,000 pieces of legislation of "gender biased language"... but manhole survives in Mail Online July 2 2013. Retrieved in <http://www.dailymail.co.uk/news/article-2353939/farewell-freshman-washington-state-remove-40,000-pieces-legislation-gender-biased-language>

¹⁸⁹ Ibid

¹⁹⁰ Fox news 3 February 2013 *Washington State considers final gender-neutral language bill*. Retrieved in <http://www.foxnews.com/politics/2013/02/03/washington-state-considers-gender-neutral-language-bill/>

¹⁹¹ Scott Dylam 2013 Gender Neutral Language written into State laws. ... in *Governing*, April 2013. Retrieved in <http://www.governing.com/topics/politics/gov-gender-neutral-language-rewritten-into-states-law.html>

More recommendations for a more purposeful juvenile/child justice system include

Collective responsibility

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

Parental involvement in Juvenile system

Parenting process includes protecting, nourishing and guiding the child. It involves a series of interaction between the parent and the child through the life span.¹⁹² In particular, the law should encourage greater parental responsibility as the family unit is critical to much social behavior.

Use of Alternative/Diversory Approaches

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

Juxtaposition of traditional and modern methods

There is the need for a rediscovery of distinctive indigenous system of justice that can be juxtaposed with the modern justice system. The question may be asked if the informal control of juvenile offenders a solution to reoffending. This concept used under the traditional juvenile justice system may be adapted taking into cognizance contemporary trends in addressing youth matters. The traditional concept of controlling children with all its advantages should be considered in developing the juvenile justice program taking into consideration modern trends.¹⁹³ Countries like the United Kingdom and the United States of America have discovered this and used it in the treatment of young offenders with the introduction of family group conferences in the juvenile justice system.

Use of Non-custodial methods

The state of the facilities for young offenders is in a deplorable state. It is therefore advocated that non-custodial remedies should be adopted in the treatment of children and young offenders. As a matter of urgency, it is recommended that the institutions that are to be established under the Act in the Federal Capital Territory by the Minister¹⁹⁴ and in the States by the Commissioner charged with the responsibility for matters relating to children in the state¹⁹⁵ should be established as a matter of urgency.

One of the instances where a child can be deprived of his or her personal liberty is where the case is of a serious nature.¹⁹⁶ It is important that what constitute *serious offences* be properly defined in terms of offences. It is also said that children under the age of 14 years can only be

¹⁹² D'Souza Ajith & D'Souza Renita. Role of parents in upbringing children in <http://www.articlesbase.com/parenting-articles/role-of-parents-in-upbringing-children-543148.html>

¹⁹³ Asuni T 1979 Traditional and Innovation in Child care in Nigeria in <https://www.ncjrs.gov/App/publications/abstract.aspx?ID=49299>

¹⁹⁴ Section 248 Childs Right Act; see also section 277 of the same Act

¹⁹⁵ Section 236 Childs Rights Law of Lagos State; see also section 262 of the same law

¹⁹⁶ Section 215 (d) (i) &(ii) of the Childs Right Act

given a custodial sentences if he or she is a persistent offender.¹⁹⁷ It is also recommended that the definition of persistent offender must be outlined.

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

Reparation as treatment Method

Reparation as a sentence or treatment method was introduced in the English 1998 Act¹⁹⁸ and of Powers of Criminal Court Sentencing Act 2000.¹⁹⁹ Reparation is a non-custodial treatment for a young offender, either to the victim or society at large.²⁰⁰ It is recommended as one of the treatment methods in addition to the numerous ones in Section 223.²⁰¹ It is said to be a valuable way of making young offenders face the consequences of their actions and see the harm they have caused. It can be a catalyst for reform and reforms and rehabilitations can also benefit victims.²⁰²

Coordination of overlapping agencies

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

PART IX

Conclusion

Is juvenile Justice really the unwanted child in the United Nations system?²⁰³ Regardless of the bottlenecks in the juvenile justice system in Nigeria, a lot of improvement has occurred in the juvenile justice system in Nigeria in the twenty first century. There is however need for a periodic review of the law relating to children and young persons in Nigeria and an adoption of a holistic approach in addressing issues of these category of persons in Nigeria in order to fully achieve the aims of or philosophy behind the legislation protecting them.

¹⁹⁷ Section 215 (d) ii

¹⁹⁸ Section 67 and 68 of

¹⁹⁹ See also Section 73

²⁰⁰ See also Government paper in the Home Office 1997 Paragraph 4:14

²⁰¹ Child Rights Act 2003

²⁰² Ashworth Andrew 2000 Sentencing and Criminal Justice 3rd Edition. London Butterworth.

²⁰³ Abramson B 2001. Juvenile Justice: The 'unwanted child' of state responsibilities, International Network on Juvenile Justice, Defence for Children International. Cited in Juvenile Justice: Modern Concepts of working with Children in Conflict with the Law . Retrieved in https://www.essex.ac.uk/armedcon/story.../save_jj_modern_concepts.pdf on 14 November 2014