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ECONOMIC AND DEMOCRATIC REFORMS IN NIGERIA'S DEVELOPMENT

**ECONOMIC AND  
DEMOCRATIC  
REFORMS  
IN NIGERIA'S  
DEVELOPMENT**

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## Preface

For the last few years, Nigeria has witnessed and is still experiencing co-ordinated economic and democratic programmes aimed at revitalizing the economy and development of a viable political and administrative system.

In line with a general fundamental transformation of the world economy and the international political order, the reform measures being used by the present administration in Nigeria recognizes the essence of capital formation, entrepreneurship, organization, management and political as well as policy stability as important ingredients of development. Competitive political system, women's rights and equal status are also regarded as the desired standard in the development process.

While the linkages between economic democracy and political democracy are by all means clear, the fact that political reform and democratic accountability are pre-requisites for sustained liberal economic reform and that market-oriented economic policies places major strains on newly adopted democratic arrangements are obviously major issues that deserve attention.

The Society for International Development (SID) Ibadan Chapter in the light of the above and in view of its commitment to supporting governments which are taking measures to change their structures and to move ahead in economic and democratic reforms which respond to the aspirations of the people, seeks to provide a forum for the examination and analysis of the Nigerian political and economic policies and programmes with a view to ensuring that our plan and programmes are properly articulated and synchronized to the greatest benefits of all and the rapid development of our economy.

Thus a three-day workshop was organized with financial support from the Friedrich Ebert Foundation in Lagos and the SID Headquarters in Rome. The Workshop examined the role of Women, Non-governmental Organizations, legislation and government in the economic and democratic reformation of Nigeria. The compatibility and/or conflicts of these reforms with the felt needs of the people were analysed.

This publication documents the major output from the workshop which we hope will benefit the readers.

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## Juvenile Justice System in Nigeria - A Case for Urgent Reforms

O. Bamghose

### Introduction

In contemporary times, there has been increased awareness for the need to make special provisions for the protection of children and young persons known as juveniles. This trend sharply contrasts with the universal position before the end of the nineteenth century when childhood was generally seen as a brief and unimportant phase of life.

Initially, the problem posed by juveniles in Nigeria was approached from the traditional point of view. The extended family system was looked upon to find solution to the social problem arising out of anti-social activities of juveniles. It was then regarded as a stigma on the family for any of its offsprings to violate societal norms. This traditional approach though simplistic, went a long way in catering and checking anti-social behaviours of the juveniles. However, the traditional approach to the protection of juveniles has proved inadequate for today. This is more so as a result of the growing complexity of our time due to urbanization and civilization both of which has now been compounded by the economic hardship following recession and the introduction of the Structural Adjustment Programme (S.A.P.).

With the shift of the juvenile justice system in Nigeria from the simplistic traditional concept to a more defined legal concept, the Nigerian government has attempted to meet the challenges of protecting juveniles by focusing on this most vulnerable group in the society and the problems posed by them in contemporary times.

This paper emphasizes the need for urgent reforms in the juvenile justice system in Nigeria by both the Federal and State Governments. In the process of high-lighting the needs for such reforms, this paper will analyse the laws governing juveniles and juvenile courts in Nigeria and the various treatment methods for juveniles in order to pin-point areas begging for urgent reforms. Some proposals already made by the government and other committees towards improving the juvenile justice system in Nigeria will be considered and a case made for an immediate execution of these reforms.

In spite of the series of proposals that have been witnessed after diverse calls have been made for urgent reforms in the Nigerian juvenile justice system, the mark or ideal situation has not been reached. The essential

goals which the different United Nations conventions are scheduled to achieve for the young ones in the world have not been realized. The position remains unchanged although the proposals are reiterated from time to time. A case will therefore be made in this paper for immediate execution of these proposals.

Finally it is hoped that the ideas and recommendations which emerge here will provide assistance in the urgent implementation of the reforms of our juvenile justice system.

### The Juvenile and The Law

Juveniles are the future leaders of the nation. Hence it is the duty of the society and its lawmakers to aim at their total development. It is therefore not surprising that 1985 was designated "International Youth Year". Juveniles in the context of this paper includes children and young persons. It also includes, juvenile offenders, juveniles in need of care and protection and juveniles beyond parental control.

In Nigeria, a child is classified as a person below the age of fourteen years while a young person is a person below the age of seventeen years.<sup>1</sup> The legislature in recognition of the underlying tenets of the juvenile justice system which does not allow that a juvenile should be stigmatized by his/her involvement in the criminal justice system which is reserved for adults in the country, provides that a child below the age of seven years is *Dolis Incapax*; that is, incapable of criminal responsibility. A child between the ages of seven and twelve years is presumed (although it is rebuttable) to lack the criminal knowledge of the effects of his acts and omissions, that is to say he is "not criminally responsible for an act of omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission". Also, a male child below the age of twelve years is presumed incapable of having carnal knowledge.<sup>2</sup>

The presumption of innocence or presumed lack of criminal intent in the legal sense is matched by the notion that a young child cannot be pronounced to behave either in a social or anti-social manner in the absence of the ability to perceive and understand the social setting to which he belongs and can identify with the rules that govern it.

The law exempts from death sentence a juvenile below the age of seventeen years.<sup>3</sup> Apart from the laws of the different states of the federation, the 1989 Constitution which is the supreme law in Nigeria and applicable to all the states, in recognition of the special status of children provides<sup>4</sup> that juveniles should be excluded from public trials. The main law that governs

juvenile justice in Nigeria is the Children and Young Persons Act<sup>5</sup>.

### The Children and Young Persons Act

Nearly all the states of the federation have largely similar laws with slight differences. The act provides that every court in dealing with a child or young person who is brought before it either as an offender or otherwise shall have regard to his or her welfare and shall in proper cases take steps for removing him/her from undesirable surroundings or securing that proper provision is made for his education and training. The Act lays down clearly and unequivocally that welfare was to be the principal consideration in dealing with juveniles although the term juvenile is not defined in the Act<sup>6</sup>. The Act seems to have anticipated the "Beijing rules" the latter were rules so named upon the recommendation of the seventh United Nations congress on the prevention of crime and treatment of offenders in 1985.<sup>7</sup>

### Juvenile Courts

The Children and Young Person Act makes provision for the creation, composition and functions of the Juvenile Court and the various treatments that could be adopted by the court for the welfare of the juvenile<sup>8</sup>. The juvenile courts are charged with the responsibility of adjudication and disposition of cases involving young persons under the age of seventeen years. They constitute a separate juvenile justice system for the trial and regulation of juvenile conduct. The ultimate aim of such a court has always been to ensure that offenders were treated in a way which would prevent them from becoming criminals later in life. The main purpose of a juvenile proceeding is not penal but protective, aimed at checking juvenile delinquency as well as discourage youths from falling into a life of crime.

### Treatment Methods

The primary purpose of the treatment of any juvenile who has appeared before the juvenile court is not to punish but to prevent the juvenile from becoming a hardened criminal in adulthood. In Nigeria, the Act provides different methods of treatment. These can be classified under institutional and non-institutional methods<sup>9</sup>. The non-institutional methods of treatment include fines, probation, committal to the care of a fit and proper person, flogging and discharge. Death sentence cannot be pronounced or recorded against any offender who has not attained the age of seventeen years. This is so, because it is believed that such a person is not beyond salvation and redemption<sup>10</sup>. The institutional method is a custodial method of treatment adopted for juveniles as a last resort after consideration of the physical and

mental health of the juvenile.

There are three main institutions for the detention and treatment of juveniles in Nigeria. They are Remand Homes,<sup>11</sup> Approved Schools<sup>12</sup> and Borstal Institutions<sup>13</sup>. The fourth type which is not common is the Prison. This is usually used as a last resort where other disposition methods are not suitable to deal with the juvenile. The purpose of establishing the three aforementioned institutions is not to punish the juveniles, rather it is to teach them to be useful citizens such that by the time they leave such institutions, they would have been weaned of the desire to engage in anti-social acts detrimental to the well-being of the society as a whole.

### The Present Position - Case for Urgent Reforms

The general objectives of the juvenile justice system include the furtherance of the well-being of the juvenile.<sup>14</sup> Our juvenile justice legislations and its various provisions are designed to avoid the intervention of criminal process meant for adult offenders. It adheres to this underlying tenets and objectives, but there are still areas of inconsistency in the provisions of our legislations in this regard.

#### Association of Juveniles with Adult Offenders

The Law<sup>15</sup> provides that :

- (a) it is the duty of the police officer in charge of any police station to make arrangements to prevent juveniles from associating with adults charged with an offence while in police custody;
- (b) juveniles should be prevented from associating with adults charged or convicted of an offence whilst such juveniles are being conveyed to or from court or whilst waiting before or after attendance in court<sup>16</sup>; and
- (c) in the trial of a child or young person, the court should sit either in a different room or building from that in which the ordinary sittings of the court are held or on different days or at different times from those at which the ordinary sittings are held<sup>17</sup>.

It is however surprising and disheartening to note that the same sections that contain the above provisions which appear to be protective of the juvenile also allow children to associate with adults charged or convicted of the same offence with which the juvenile is charged whilst such juveniles are being conveyed to or from court or whilst waiting before or after their attendance in court. The same aforementioned<sup>18</sup> law provides that the juveniles may be present in a regular court where he is the person charged with the offence or his presence is required as a witness. It is therefore not an

uncommon practice to see juveniles in regular courts meant for adult offenders and even associating with them.

It will appear that all the protections which were made are only operational where a juvenile is charged alone for an offence. The protection does not cover a juvenile who is charged jointly with an adult. Such juveniles (in effect, from the wordings of the provisions) will now be treated as an adult although he is a juvenile. If the sole purpose of the juvenile justice system is to protect the juvenile from the adult world, to prevent stigmatization and prevent such juveniles from becoming hardened criminals, there should not be any demarcation between a juvenile who commits an offence alone and one who commits an offence with or in the company of an adult. The trial of a juvenile at a regular court amounts to child abuse<sup>19</sup>.

#### Trials of Juveniles

The Act which established the juvenile courts has undergone a series of amendments, but the essential goals which the legislators had in mind have not been achieved. The juvenile court is usually the first contact of the juvenile with the judicial system. The semi-public nature of the juvenile court in spite of the fact that the law provides<sup>20</sup> that the public should be excluded and the simplicity of procedure, does not erase the look and atmosphere of some of the dramatic rituals which typifies adult justice. The position of the juvenile court in Nigeria is as depicted by Denise Fears, and Roger Fuller :

The court procedure for a juvenile court was a drama. The Bench itself is raised a step or two above the level of the court room and the front of it is almost always totally enclosed in contrast to the tables behind which other servants of the court sit. The dramatic elements of this physical setting are sometimes heightened by the abrupt entries and departures of the magistrate accompanied by loud commands to rise or be seated. No effort is made to acquaint the child with the identities of all the numerous officials present: The magistrates often raises and lower their eyes in unison to scrutinise the child in front of them. They peer at his face when the charge is read and he makes his plea<sup>21</sup>

The above description is certainly not the right setting to deal with juvenile cases. This set-up could be considered hazardous to the treatment of timid and hardened juvenile offenders alike and more so a child in need of care and protection. It is to be noted that cases of juveniles (who constitute the most vulnerable group in the society) should be approached with sympathy and understanding. The set-up quoted above does not conform with the Beijing Rules. The rules require that such trials should be conducive to the best

interest of the juvenile and should be conducted in an atmosphere of understanding<sup>21</sup>.

Another notable feature of our juvenile courts which is detrimental to the welfare of juveniles brought before it, is the practice where juvenile offenders mix with juveniles who are not offenders but only in need of care and protection. The two groups of juveniles are allowed to intermingle while waiting for proceeding to start. The intermingling of the criminal and welfare proceedings serves to compound the confusion of juveniles awaiting care proceedings who have to mix with lawyers and policemen as if they have committed an offence. The intermingling of the two proceedings has been identified as a major weakness in the operation of the juvenile courts in Nigeria<sup>22</sup>. Another demerit is the long waiting period for cases to be called. This is a weakness of our juvenile justice system caused by shortage of magistrates many of who have piles of juvenile cases to attend to. This disrupts schooling and sometimes apprenticeship programmes of such juveniles and the day-to-day activities of parents and guardians as well.

#### Lack of trained Personnel and Necessary Facilities

Personnel concerned with the juvenile justice system in Nigeria are not adequately trained for the job. Such personnel need have some basic training in law, child psychology, sociology and other related subjects. A commendable practice which albeit cannot take the place of trained personnel is the appointment of members of the panel which sits in the juvenile courts by the Governor of the State on advice. The panel is constituted of people of special suitability who are also responsible, matured and experienced parents in the society.

The different disposition methods available to the court for the treatment of juveniles are aspects of the juvenile justice system that need immediate attention. The juvenile court, it appears is only concerned with making orders. How effectively these can be carried out is another thing. It is contended<sup>24</sup> in some sectors of the Nigerian community that the judicial process obtained in our juvenile courts are inadequate deterrent. The contention is that a juvenile delinquent is not dealt with drastically, imprisoned or given a bad time. It should be noted however that the detention in a juvenile institution as is being done now is a bad time on its own and since the aim of the juvenile justice system is to reform the juvenile, treatment specifically designed for punishment should be disallowed<sup>25</sup>.

Probation is a method freely used in the Nigeria juvenile courts. The attendant problem is the insufficiency in the number of trained probation

officers available to achieve the desired result. There is the non-compliance of supervision order and it is known that there are cases where the probationer and his parents move away from their known address without contacting the probation officer.

The fit person's order is one treatment method available at the court's discretion but which is not frequently applied. If this non-institutional treatment method is frequently used it will go a long way in relieving our juvenile justice system of the problems of excessive work-load.

The different institutional methods of treatment of juveniles available to the court are not in the form they should be. Remand homes which are supposed to be transition camps pending the final determination of a juvenile case has turned into a poor substitute for approved schools and borstals.

Due to shortage of accommodation, confirmed juvenile offenders are housed in remand homes alongside juveniles in need of care and protection. This is not ideal in view of the attendant risks of contamination. In Bendel state, the Sapele Remand Home serves the dual purpose of remand centre and an approved institution in contradiction of its basic role as a centre for the diagnosis of juvenile delinquents. This situation allows for recidivism as lenient treatment would be meted out to young offenders.

In Nigeria, the law creates borstal institutions for young juvenile offenders, but there is at present only one such institution in Kaduna to serve the twenty-one states of the federation. As a result such young offenders (who should rightly be taken to borstal institutions) are placed in remand homes, approved schools and sadly in prison. Although the law provides that no person under the age of fourteen may be imprisoned. Conditions under which a juvenile can be imprisoned are stated. There is evidence that some inmates of the prisons are juveniles who did not meet these conditions. It is also not uncommon to find juveniles sharing the same cells with adult criminals because classification in such adult prisons are not possible due to shortage of accommodation facilities.

The situation in the country's juvenile institutions is fast deteriorating. The equipment and facilities for training are broken down, buildings are dilapidated, and officers employed to see to the welfare of the juvenile do not have access to adequate training in form of seminars and refresher courses due to lack of funds. A majority of the staff of these juvenile institutions live outside the institutions, hence supervision of inmates is inadequate. Criminal habits are known to be rampant which confirms the conclusion of a research that "Institutionalisation has led to criminalisation of inmates. In fact the

most hardened criminals appear to be produced by the prison system"<sup>26</sup>. According to Oloruntimehin,<sup>27</sup> the treatment of children at present has not achieved its goals. Those who give the treatment tend to regard the individual delinquent as a unit to be worked with rather than the family as a whole. The goals, (to her) can only be achieved if the cause of the juveniles problem is worked out and the factors modified.

### Contemplated Reformatory Proposals

The federal and a few of the state governments in Nigeria and different committees involved in the juvenile justice system have already made certain proposals for the reformation of the system. There is however the need for the urgent execution of such proposals which are hereafter enumerated.

#### Transformation of National Child Welfare into a Commission

The Federal Government has stated that it will continue to do its best to safeguard the interest of Nigerian children by extending all the goodies of life, particularly the right to decent living. In its bid towards achieving this goal, it has decided to transform the National Child Welfare Committee into a full-fledged Commission which will operate under the office of the President.

This decision of the Federal Government was announced during the launching of 'The State of the World's Children's Report 1991' in Lagos on the 19th of December 1990. The transformation of the Committee into a Commission will no doubt yield more positive reformatory results in the welfare of the Nigerian child. It is hoped that by placing the Commission in the office of the President, the Nigerian child will receive more attention from the government. There is however the need for the Commission to be constituted immediately.

#### Incorporation of the United Nations Agreement into our Laws

The Federal Government also promised to incorporate into our laws all the provisions of the United Nations General Assembly Agreement on the rights of the child which was signed by the country in September 1990. The convention is aimed at improving the position of children. The incorporation of these provisions into our laws should be given priority by the government and those concerned with its implementation.

#### Local Legislations

Furthermore, the Federal Government has implored all the States of the federation yet to take strong measures such as legislating against child abuse to do so immediately and without delay. It is disheartening that in spite of calls from different quarters over the years for an improvement in our juvenile

justice system, there are still some states in Nigeria that do not have juvenile courts. The Chief Judges of such States should take immediate action towards the creation of such courts as the absence of such courts in the states amount to child abuse.

#### Provision of More Borstal Institutions

It gladdens the heart to learn that plans have reached advanced stage for the establishment of at least three additional borstal institutions by the Federal Government.<sup>28</sup> This issue has been so much delayed that further foot dragging in the establishment and operation of these institutions may bring about irreparable damage to juvenile delinquents in opposition to the reformatory aim of the juvenile justice system.

While credit is given to the government for the different proposals towards improving the juvenile justice system, there are still many areas in need of reforms. Reforms along this line would remove the inefficiency which assails the juvenile justice system in Nigeria.

### Recommended Reforms

#### Change of Terminology

It has been observed that the present set-up of our juvenile courts is more like an adult court. It will be suggested that the atmosphere of such courts should be made less formal. There is need to reconsider the term "Juvenile Court" and replace same with terms such as "Juvenile Forum". Private homes or any other public building other than a magistrate's chambers should be used for such a forum.

Furthermore the number of officials should be reduced to make the forum more conducive.

#### Creation of a Family Council

It is further suggested that a family council should be constituted to deal with juveniles in need of care and protection as well as those beyond parental control to avoid contamination with juvenile offenders. More serious cases should be left to the juvenile forum.

#### Evolution of Preventive Mechanism

In a country like Nigeria which is still in the process of development, a preventive mechanism approach should be adopted with a view to reducing the conditions and factors responsible for juvenile delinquency in the immediate environment. Activities that are illegal or detrimental to the



welfare of juveniles such as hawking or selling of alcohol and cigarettes by juveniles should be eradicated by legislation.

#### Improving Juvenile Institutions

Whilst juvenile institutions should not be turned into holiday camps; it should also not be turned into prisons. The present state of most of these institutions is regrettable. Poor sanitation and living conditions, absence of vocational training equipment and lack of recreational facilities are not conducive for reformatory purposes

#### Funding of Juvenile Institutions

To compliment the funding of these institutions by the government, voluntary organizations and religious bodies which has been well scrutinized and which should be governed by legislation should help at providing children's homes and orphanages, for orphans, instead of mixing such unfortunate children with delinquents.

The government should make more funds available towards improving the juvenile justice system. This will enable personnel involved in the system to embark on researches aimed at improving the system. Seminars, workshops and refresher courses should also be organized periodically by the Child Welfare Commission which the government has promised to set up for such personnel.

#### Public Sensitization to the Role of the Family

The role of the family in checking juvenile delinquency cannot be over emphasized. Parents need be alive to their responsibilities of giving their children proper training. Also, public enlightenment programmes should be organized for members of the public in this regard.

#### Use of Non-Institutional Methods of Treatment

The cost of running juvenile institutions is high, to this end, it is advisable that as much as possible juveniles should not be removed from parental supervision, whether partly or entirely, unless the circumstances make it necessary. More application of non-institutional treatment methods is recommended, especially those that have recorded high rates of success in our society. The Fit Persons Order which can be regarded as a traditional treatment method of juveniles in Nigeria should be more frequently used because in our society it is not uncommon to see children being taken care of by relatives and God's servants. It is believed that such people instil discipline in the young ones.

#### Training of Juvenile Magistrates

To facilitate quick dispensation of juvenile cases in our juvenile courts, fit

and proper persons trained in law, child psychology and sociology should be appointed to adjudicate over juvenile matters. This will also ensure that magistrates who are trained to sit in the regular courts do not sit over juvenile cases.

#### Conclusion

It is beyond dispute that the juvenile justice system in Nigeria is due for overhaul. There is room for improvement and it is hoped that the various proposals and recommendations that have emerged here will provide necessary assistance in future reforms of the juvenile justice system in Nigeria.

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