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Juvenile Justice Administration in Nigeria and Contemporary International Standards

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Abstract

The age of Criminal responsibility in Nigeria is to protect the Rights of Children, in which case the Juvenile. There are other laws which deal with Juvenile administration in Nigeria, such as the Constitution of the Federal Republic of Nigeria, 1999, the Penal Code Law, Criminal Code, the Children and Young Persons Law (applicable in the various states) the Child Rights Act, which have been domesticated by some states etc. However, the institutions involve in Juvenile administration like the Police, the Court, the Prisons are established for the purpose. But the question therefore is, whether these agencies have met the contemporary international standards in Juvenile administration in Nigeria. This is what this paper seeks to appraise and it was discovered that there are many manifest problems in all the stages of Juvenile administration. It concludes that it is in dire need for reforms in the institutions, adequate funding, capacity building of persons and their specialization in child centered skills.

Keywords: Juvenile, Administration of Juvenile Justice in Nigeria, Juvenile Justice Administration at International level.

Introduction

Nearly every society since the dawn of history has looked on youth crime as a serious problem, and our society is no different. The underlining philosophy of juvenile justice as the history of child welfare in Nigeria became very interesting and of concern for all because it touches every human life; the government, the homes/family and the stakeholders. The various issues that will be examined in this paper are geared to introduce the background on juvenile justice administration in Nigeria, the concept of the juvenile justice administration in Nigeria.[3] Also, the legal and institutional framework involved in juvenile justice administration, Nigerian legislation on juvenile justice administration, the international framework i.e. Child Rights Act, Child Right Law, conventions and treaties which include; United Nations Convention on the Rights of the Child 1989, Africa Charter on the Rights and Welfare of the Child, 1990, United Nations Standards Minimum Rules for Treatment of 0ffenders; the United Nations Standard Minimum Rules for Administrations of Juvenile Justice 1985, (hereinafter referred to as the Beijing Rules), the United Nations Guidelines, for the Prevention of Juvenile Delinquency (hereinafter referred to as "The Riyadh Guidelines"). In the face of the foregoing, child specific laws and international conventions or instruments relating to treatment of children, it could be concluded that, the Nigerian system of Juvenile Justice Administration with all its inadequacies have provided for a system, that in principle, seems to guarantee a peculiar and best treatment for children in conflict with the law or who violate penal provisions. In practice however, the Nigerian system of juvenile justice administration, has left much to the deserved in the treatment of juvenile offenders.[4]

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[3] National Opening University of Nigeria, " Juvenile Institutions and Juvenile Corrections in Nigeria" (2010) <www.nou.edu.ng/index.php/courses/juvenile-institutions-and-juvenile-corrections-nigeriapdf> assessed on 9th August, 2019
[4]AbdullahiWahabZakari, "Justice Administration in Nigeria: A Case Study of Kogi State" (2012) <http:abu.ng.bitstream/juvenile-justice-admin-in-nigeria-a-case-study-of-kg-st.pdf> assessed on 10th August, 2019

Background on Juvenile Justice Administration in Nigeria

The current system of juvenile justice cannot be understood without reference to Nigeria's justice administration systems which were entrenched by the British, Nigeria's colonial master "whose system operates with oppressive penal institutions whose aim was to deter and punish offenders, as their disobedience to law was deemed detrimental to colonial interest.

"Reformation of such offenders, even if they were juveniles, was the least of the problem of the colonial administration. With political independence and with democracy anchored on freedom and human right in place, the need has arisen, perhaps more than ever before, for Nigeria to "radically review its entire juvenile justice system of administration", the concept of juvenile justice is being "anchored on the recognition of the rights of the child to survival, growth, protection and effective participation in the society". Its guiding philosophy in both traditional and modern societies has been corrective, preventive and advocacy oriented. However, the advent of colonialism and the growth of urbanization created new social problems such as over population resulting from rural-urban drift. This in turn led to an unconscious creation of an urban underclass populace that increasingly began to neglect the welfare of their offspring. As a result, these urban poor children resorted to violence, crime and other youthful misdeeds.[5]

In response, the colonial government and Christian Missionary organizations set up "approved schools" and remand homes to cater for delinquent juveniles. But the growth in the number of young persons getting involved in crimes continued unabated, to the extent that the corrective institutions set up to reform these young offenders are now over-stretched with only minimal care available. Which is why a critical examination of the existing framework with a view to addressing areas of shortcomings in it as well as embarking on a pragmatic program of action to achieve desired changes has become imperative?

The Concept of Juvenile Justice Administration in Nigeria

The word "juvenile" has no universal definition. The word juvenile has been defined by Black's Law Dictionary[6], "as a person who has not reached the age at which one should be treated as an adult by the criminal justice system". The Children and Young Persons Law[7] Cap 21 laws of Northern Nigeria, 1963 (hereinafter referred to as CYPL) defines "a 'child' as any person who has not yet attained the age of fourteen (14) years". The CYPL defines a young person as "one who has attained the age of fourteen (14) years but has not attained the age of sixteen (16) years".[8] The Child Rights Act[9], (hereinafter referred to as CRA) defines a child as person under the age of 18 years. The African Union Charter on the Rights and Welfare of the Child 1990 (hereinafter referred to as AUCRWC), defines a Child as every human being below the age of eighteen (18) years. The United Nations Convention on the Rights of the Child 1989 (hereinafter referred to as UNCRC) defines a Child as every human being below the age of eighteen (18) years, unless under the law applicable to the Child, maturity is attained earlier. The United Nations Standard Minimum Rule for the Administration of Juvenile Justice 1985 (hereinafter referred to as The Beijing Rules) defines a juvenile as a child or young person who under the respective legal systems, may be dealt with for an offence in a manner which is different from adult.. For the purpose of this paper a juvenile is any person under the age of 18 years. It is vitally important to note that whether as perpetrators or victims of crime, children and young persons, by virtue of their immaturity and vulnerability occupy a special place in the administration of justice. Most countries in the world in their treatment of children acknowledge the fact that juvenile have peculiar emotional, mental and intellectual capacities quite distinct from those of adults. It is equally observed that the exposure of children to formal criminal processes may have the adverse effect on subsequent attempts at their rehabilitation and reintegration into the society. Simply put, it must be stressed that juvenile criminal justice is a special track of its own in the criminal justice system.[10]

As part of Nigeria, notwithstanding, her colonial history and the legacy of English legal system, the country adopted for the very first time, the Nigeria's Children and Young Persons Act (hereinafter referred to as "the CYPA") or where applicable as "CYPL") in 1943. The CYPA states as its purpose "to make provision for the welfare of the young and the treatment of young offenders and for the establishment of juvenile courts".

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[5] National Open University of Nigeria, *op cit at footnote 1*
[6] Garner B, 10th Edition.
[7] Cap. 21 Laws of Northern Nigeria, 1963.
[8] AbdullahiWahabZakari, *op cit at footnote 2*
[9] Cap. C50 L. F. N. 2004 particularly, s.1 (2).
[10] AbdullahiWahabZakari, *op cit at footnote 2*

The CYPA has been subjected to several amendments and re-enacted by various States of the federation as State Laws in compliance with the principle of federalism. A very careful appraisal of the CYPA, subsequent legislation in Nigeria relating to children as well as International Treaties ratified by Nigeria, it is evident that policies, laws and procedures which apply generally to adults are tampered with when children and Young Persons come into conflict with law. In most cities in Nigeria, the fact remain, that there is increasing prevalence of street children, urban violence, armed robbery cases and other crimes involving children vis-à-vis the fact that juveniles in conflict with the law were routinely handled and treated as adults and subjected to procedure which ought to be applied only to adults". In the face of all these, it is doubtful whether juveniles are reaping the well intended benefits of the child friendly policies, laws and procedures.[11]

Juvenile Justice Administration system is an integral part of the criminal justice system. Juvenile justice system is open to several definitions. Black's Law Dictionary[12] defines juvenile justice system "as the collective institutions through which a youthful offender passes until any charge has been disposed of or the assessed punishment has been concluded. Juvenile justice administration is also defined "as a system of justice, which is applicable to juveniles all over the world and which is different from the justice system applicable to adults". In a nutshell, juvenile justice system is that part of the criminal justice system which pertains to children and young persons.[13]

The philosophy behind a special criminal justice system for juvenile is founded on the recognition, of the fact, that the emotional, mental and intellectual capacities of children are not at the same level of maturity as those of adults, it is also recognized that the exposure of children to formal criminal processes may have an adverse effect on subsequent attempts at their rehabilitation and re-integration into society. Importantly, the goal of juvenile justice system is the establishment of "a pattern of social justice for children brought before courts of law or otherwise coming into contact with law, it seeks to provide separate courts and flexible alternatives to punishment". In the main, this goal is predicated on the fact that the rights and needs of children as well as their dispositions and vulnerability are quite peculiar and unique. It is therefore imperative that these special circumstances are to be considered or taken into account when juvenile offenders are to be managed and treated. The emphasis of juvenile justice administration therefore should be rehabilitation instead of punishment, prevention rather than retribution as the principal goals of the justice system.

Generally, it is the philosophy of concern, care, reformation, rehabilitation and re-integration of juvenile offenders as a cardinal focus in child justice system that necessitated the enactment of Children and Young Persons Laws that are in operation in all the states of the Federation as well as Child Right Act 2003 applicable in the Federal Capital Territory (FCT). The CRA has been adopted in some States of the Federation as Child Rights Laws. Quite central to juvenile justice administration in Nigeria are, the age of criminality for juveniles, and the roles of criminal justice institutions as it relates to pre-trial, trial and post-trial of children in the criminal justice system. Besides, a child specific law which in general regulates administration of criminal justice in Nigeria, other laws which regulates administration of criminal justice in Nigeria has provisions applicable to administration of juvenile justice. In these categories are: Constitution of the Federal Republic of Nigeria, 1999, Criminal Code (CC) Act and Penal Code (PC) Act, the Criminal Procedure Code (CPC) and the Criminal Procedure Act (CPA).[14]

Age of Criminal Responsibility

It is not every juvenile who commits an offence that is liable to punishment under the law. In Nigeria, there are differences in the age and criminal responsibility of juveniles. The provisions of the Criminal Code Act and the Penal Code Law establish that a child under the age of seven (7) years does not have criminal responsibility. These substantive Criminal laws also provide that from 7 – 12 years, a child can only be found responsible if it can be proved that he/she had the capacity to know that the act or omission should not have been carried out.

In addition, both the Criminal Code Act and the Penal Code Laws provide that above the age of 12, the person is deemed to be fully responsible for the act or omission. Of great importance is the provision of the Constitution of the Federal Republic of Nigeria. Though, the Constitution did not specifically set the age of criminal responsibility, it nevertheless, excluded persons who have not attained the age of eighteen (18) years who are charged with a criminal offence from public trials.[15]

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[11] *Ibid.*
[12] Garner B. 10th Edition.
[13] Ibid.
[14] All the various Acts are embedded in the L. F. N. 2004.
[15] Ibid.

At this point, a mention is necessary of the age of criminal responsibility for juveniles under the Sharia Legal System. This is important against the backdrop of the fact that some states in northern Nigeria have adopted Islamic or Sharia Legal System. Notably, under the Islamic or Sharia Law, the age of criminal responsibility is taken to be either eighteen (18) years or puberty. In some Sharia jurisdictions, the age of criminal responsibility is tied to the age of puberty. It may be stressed however, that in terms of application, the nature of the offence, the sex of the juvenile determines the age of criminal liability. For instance, "in cases involving fornication or adultery, which may attract flogging or the death penalty, the age of criminal responsibility is 15 years". Similarly, "the age of criminal responsibility under Sharia Law allows for discrimination against girls because they often achieve puberty earlier than boys". In conclusion, the enactment of Child Rights Act, and its subsequent adoption in some States of the Federation as well as the provisions of the Constitution, the issue of the age criminal responsibility for juveniles appears settled. May it be recalled that the CRA defines juvenile as any person below the age of eighteen (18) years. Though, the Act does not expressly make any provision on criminal responsibility, implies that anyone under eighteen (18) years of age has no criminal responsibility".[16]

It must be made crystal clear that, the CRA remove the dichotomy between a Child and Young Person. By virtue of the provisions of the CRA, the provisions of the Act supersede the provisions of all enactments relating to children. By implication, the provisions of the criminal code, penal code and all other laws pertaining to the criminal responsibility of a child has been superseded. It suffices to state at this juncture that child specific legislation in Nigeria are Children and Young Persons Act, Children and Young Persons Laws of the various States in Nigeria and the Child Rights Act. The Children and Young Persons Act is the premier legislation dealing with matters affecting children and young persons in Nigeria. The Children and Young Persons Law applicable in northern Nigeria and that of the various states in Nigeria, re-enacted the provisions of the CYPA to necessarily take into account their socio-cultural, political and religious peculiarities. Instructively, the provisions of the Child Rights Act relating to child justice administration, is the most comprehensive piece of legislation in Nigeria affecting children. Essentially, the CYPA and the CYPL provide for special handling of matters relating to the welfare and treatment of young offenders through the establishment of juvenile courts. The juvenile courts are established to handle issues, such as: (i) Bail of children arrested. (ii) Custody when children are not taken on bail. (iii) Association of children with detained adults while in custody. (iv) Remand and committal to custody. (v) Conditions under which a parent or guardian may attend court.

Fundamentally, the provision of the Child Rights Act relating to Child Justice Administration is the most comprehensive piece of legislation in Nigeria affecting children. Virtually, all issues affecting a Child are covered by the Act. Specifically, the Act prohibits the subjection of any child to the criminal justice process, and guarantees the due process to any child subjected to the Child Justice System. The guarantee provided by the Act covers all stages of investigation, adjudication and disposition of the Child. Some of the States that adopted the CRA replicated the foregoing provisions of the Child Rights Act. It is important to mention that the Child Rights Act and the States Laws have sought to apply the principles contained in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (otherwise known as the Beijing Rules) in Child Justice Administration. Generally, the Beijing Rules was aimed at developing a child justice system that should be fair and humane, emphasizing the wellbeing and rehabilitation of the juveniles. The overriding principle under the Act and the State Child Rights Laws in Child Justice Administration as it relates every action concerning a Child is that, the best interest of the Child shall be the paramount consideration.[17]

Legal and Institutional Framework Involve In Juvenile Justice Administration

The effectiveness of any criminal justice system depends on the laws in place and the institution saddled with the task of ensuring that the provisions of the laws are given effect. Therefore, this paper will focuse on the legislation that regulates juvenile justice system and the institutions involve in juvenile justice administration. Legislation considered are the Children and Young Persons Law, the Child Rights Act and the Child Rights Law.[18] Further in this paper, the following juvenile justice institutions will be discussed. The institutions are; the police, the court, the prisons and other custodial institutions.

Nigerian Legislation on Juvenile Justice Administration

First and foremost, there are several legislations dealing with juvenile justice administration in Nigeria. Principally, the Constitution of the Federal Republic of Nigeria has provisions that guarantee fundamental rights to Nigerians including children.

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[16]Abdullahi Wahab Zakari, *op cit at footnote 2*

[17]Abdullahi Wahab Zakari, *op cit at footnote 2*

[18] ibid

Similarly the provision of the substantive criminal law, such as the Penal Code Law and the Criminal Code apply to children. This is so, as cases involving children are criminal in nature. In short, there are specific provisions in these laws relating to children. For instance, the age of criminal responsibility provisions strictly applies to children. Further the substantive criminal law has several provisions that protect children against harm and sexual exploitations. The Criminal Procedure Code and the criminal Procedure Act are the procedural laws regulating all criminal trials inclusive of the trial of children. However, in this paper, emphases are on child-specific legislation in Nigeria. To this end, discussion shall center on the Children and Young Persons Law (CYPL) and the Child Rights Act or the Child Rights Law. It may be noted from the onset however, that, the provisions of CRA are in parimateria with the provision of CRL. Some states wholesomely adopted the Child Rights Act and where exceptionally necessary, made additions or subtractions to suit its own peculiarities.[19]

Children and Young Persons Law

In Nigeria, the key legislation which regulates the juvenile justice system is the Colonial Children and Young Persons Acts (CYPA) originally made applicable to the colony of Lagos. Fundamentally, the (CYPA) has remained the reference statute for juvenile justice administration in every state of the federation. In the region of Northern Nigeria, the Children and Young Persons Law, Cap 21 the Laws of Northern Nigeria 1963 is the applicable legislation on juvenile justice administration.[20]

Principally, the law (CYPA) was enacted to "make provision for the welfare of the young and the treatment of young offenders and for the establishment of juvenile Courts". The purpose of CYPA was not quite the same with that of CYPL. The CYPL was enacted "to make provision for the welfare of the juveniles and the treatment of young offenders and to prohibit the participation of juveniles in political activities". Both laws are in agreement as to "the welfare of juveniles or young persons and the treatment of young offenders. Unlike the CYPA, the CYPL clearly prohibit the participation of juveniles in political activities and did not provide for the establishment of juveniles court. As it were, the Law provides for the trial of juveniles in "a Court of summary jurisdiction". Magistrate courts are courts of summary jurisdiction and thereby assume the jurisdiction of juvenile courts when trying young offenders in the Northern Region of Nigeria.

At this juncture, it is important to note that there are differences in the age and criminal responsibility of the juvenile in Nigeria. Both the CYPA and CYPL define a child as a person under the age of 14 years. The CYPA defines a young person as a person who has not attained the age of 14 years, but is under the age of 17 years. The CYPA on its part defines a young person as a person who has not attained the age of 14 years but who has not attained the age of 16 years. In the trial of a juvenile, the question of bail, pre-trial custody and detention as well as the composition and procedure of the juvenile courts are very key issues. On the issue of bail, the provision of CYPA and CYPL are similar. The Laws provided for the release of a juvenile offender, apprehended with or without warrant by a police officer.

Such release may be on a "recognizance entered into by him or by his parents or guardian, with or without sureties, for such an amount as will, in the opinion of the officer, secure the attendance of such person upon the hearing of the charge".[21]
However, the above bail condition does not apply;

(a) to a person accused of homicide or other grave crime or (b) to a situation where it is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute or (c) "to a situation where the officer has reason to believe that the release of such a person would defeat the end of justice.

On the last condition, we are in complete agreement with a scholar who stated that it "appears too vague and be abused to unnecessarily deny bail to young offenders". The import of the foregoing provisions, save in the circumstances that constitute the exception, once a child is placed in police custody upon arrest, the issue of bail ought to arise. Notably, the pre-trial provision on bail pertains only to the power of the police to grant or withhold bail to an accused person. The provisions of CYPA and CYPL concerning bail is in consonance with the provisions of section 35(4) and (5) of the 1999 Constitution and sections 17 and 18 of the Criminal Procedure Act and section 340(1) of the Criminal Procedure Code. These statutory provisions granted the police wide discretionary power on bail. The other crucial issue in juvenile justice administration is the question of pre-trial custody or detention. Both the CYPA and CYPL provide that a child not released on bail by the police is to be detained in a place of detention.

[19]ibid

[20] ibid

[21]AbdullahiWahabZakari, *op cit* at footnote 2

The place of detention recognized by the statutes is Remand Homes. Alternatively, in the absence of Remand Homes or where Remand Homes are not conveniently located, a child may be detained in an Approved Institution, Prison or Police Station or any other suitable place or in the care and custody of such a person as the police officer or court may think proper.

In most jurisdictions, child friendly detention centers as provided by the statutes are not available. For instance, in some States there are no Remand Homes or Approved Institutions. The practice is to remand or detain child offenders in the Police Cells or prisons without regard to the unique status and provision of the law. Notwithstanding the constitutional provisions as to the time limit within which a person who is arrested or detained is to be brought before the court, children are often kept in the custody for quite "unreasonable time". This practice is a violation of the standard set by international instrument which Nigeria subscribed to. The international standard is that detention of a child should only be as a last resort and for the shortest time possible. The third most critical issue in the determination of the effectiveness of juvenile justice administration has to do with the constitution and procedure of the juvenile courts. The CYPL does not expressly make provision for the establishment of juvenile courts. The law only vests jurisdiction on "court of summary jurisdiction" to try juvenile offenders. The way and manner the court of summary jurisdictions are to be constituted for the purpose of trial proceedings in a juvenile case is not contemplated by the CYPL. However, in practice designated Magistrates sit over juvenile matters, having regard to the requirements provided in sections 8,9,10 and 11 of the CYPL respectively. These sections are with respect with the attendance of the parent or guardian of juvenile during trial, method of dealing with juvenile has been established, appropriate alternative orders and restrictions on punishment. This standard, no doubt, left much to be deserved. The implication is that the procedure is at the discretion of the Magistrate. It is difficult to guess the reason why the equivalent of section 8 of CYPA dealing with the procedure was excluded from the CYPL. On the other hand, the provisions of the CYPA are quite explicit as to the constitution and procedure of the juvenile courts. The procedure for the trial of juvenile offenders is provided in section 8 of the CYPA. The section regulates the trial procedure of juvenile courts in Nigeria, including the right of the juvenile offenders to due process. Similarly, the CYPA confers exclusive jurisdiction on juvenile courts to try juvenile offenders.[22]

Under section 6 of the CYPA, a juvenile court for the purpose of hearing and determination of cases relating to children or young persons, is constituted by a magistrate either sitting alone or with any other person appointed by the Chief Judge of a State. This provision seems to suggest that, there are no separate or specialized juvenile judges. Rather a magistrate is allowed to wear two caps by sitting as a magistrate in regular court and as a juvenile judge at other times with or without other persons called assessors.

Finally in States, where the Child Rights Law has been enacted, the law proposes the replacement of Juvenile Court with Family Court. However, this is yet to happen in most States as Juvenile Courts continue to exercise jurisdiction in matters relating to children.

Child Rights Act

The Child Rights Act is the most comprehensive piece of legislation in Nigeria dealing with all issues relating to children. Its application is however limited to the Federal Capital Territory being a law concerning children, a residual matter within the legislative competence of states. States in Nigeria have adopted the Law as a State Law. Importantly, the CRA has introduced a juvenile justice administration system known as child justice administration. A very salient provision of the Act which is a fundamental departure from the provision of CYPA and CYPL is that, it specifically removes a child from the purview of the criminal justice process or criminal sanctions. It provides that "no child shall be subjected to the criminal justice process or criminal sanctions, but a child alleged to have committed an act which would constitute a criminal offence if the child were an adult shall be subjected only to the child justice system and the process set out in the Act". The CRA provides for the establishment of family court at the High Court level and family court at the Magistrate Court level.

These courts are conferred with unlimited jurisdiction to hear and determine, among others, any criminal proceeding involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a child, against a child or against the interest of the child. [23] The child justice procedures in Family Courts are specifically contained in section 217 of the CRA. Under the CRA, the procedures for handling the child initial contact with the Law are clearly set out.

Primarily, the court or the police are required to notify the parent or guardian of the child immediately or within the shortest time possible depending on the circumstances of each case and consider the issue of the

[22]AbdullahiWahabZakari, *op cit at footnote 2*
[23]AbdullahiWahabZakari, *op cit at footnote 2*

release of the child without delay. The police in the course of investigation or the courts during adjudication are obliged to handle a child offender in such a way or a manner that respect the legal status of the child, promote the best interest and wellbeing of the child and avoid harm to the child, having regard to the situation of the child and the circumstance of the case. In order to guarantee and protect the interest of the child offender, the CRA lays profound emphasis on the competence, training and professionalism of all persons dealing with a child offender. Section 206 (1) of the CRA listed this category of persons to include Judges, Magistrates, officers of the Specialized Police Unit, Supervisors and Child Development Officers.[24] Realizing the importance of the police in child justice administration the CRA established a specialized police unit which shall consist of police officers to exclusively deal with children and primarily engaged in the prevention of child offences.

It is the specialized police units in the Nigeria Police Force, that has as its function (a) the prevention and control of child offences, (b) the apprehension of child offenders, (c) the investigation of child offenders and (d) such any other function that may be referred to the unit by the Act. Under the child justice administration provisions of the CRA, the Police, Prosecutor or any other person dealing with a case involving a child offender has the power to dispose the case without formal investigation or trial. The means of settlement suggested by the Act includes supervision, guidance, restitution and compensation of victims. The only qualification for the exercise of this discretion, is that the offence in question must be of a non-serious nature and that there is the need for reconciliation, taking into account the disposition of the family, school institution or where the police deems it necessary or appropriate in the interest of the child offender and the parties involved.

In line with the above discretionary powers of the police, is the requirement that detention pending trial shall be used or resorted only as a last resort and for the shortest period of time. Where however, in view of the circumstance of the case, the court did not release a child offender to bail, he shall be remanded in a state government accommodation. Ironically, state government accommodation is not defined in the Act. By inference, state government accommodation may be interpreted to include Homes or Centers established by the state government for such purposes. The Act guarantees to the child, fundamental rights to presumption of innocence, the right to be notified of charges, the right to remain silent, the right of legal representation and free legal aid among others, as well as rights to fair hearing and due process. The court in the determination of cases involving a child offender is prohibited from ordering the imprisonment of the child offender, subject the child offender to corporal punishment or death penalty or have death penalty recorded against a child offender.

The child offender can only be deprived of his liberty if he is found guilty of "(i) a serious offence involving violence against another, (ii) persistence in committing other serious offences and there is no appropriate response that will protect the public safety' where however, the court decides against institutionalization, it shall utilize such disposition measures such as; dismissing the charge, discharging the child offender on his entering into recognizance, placing the child under care, guidance and supervision, including supervision by a supervision officer. Again, a child offender can be committed to the care of a guardian and supervision by a relative or any other fit person. A child offender may equally be ordered to participate in group counseling. He may also be order to pay a fine, damages, compensation or costs or to undertake community service. The child offender may equally live in educational settings or ordering the parents or guardian of the child to pay a fine, damages compensation or costs, or to give security for good behaviour of the child etc.

In broad perspective, the CRA in content and principles satisfies the standard set by UNCRC, AUCRWC, Beijing Rules as well as other international treaties or instruments. However, it is surprising to find that, in most states where the CRA has been enacted as state laws and FCT, complete machineries and structures for the implementation of the CRA are not yet in place. This development puts to question the sincerity of government. It would appear that the commitment of the government towards the protection and promotion of the rights of the child merely stops at enacting the law either to satisfy international obligations for the sake of it or political expediency.[25]

Appraisal of Institutions Involve in Juvenile Justice Administration

The Police, Courts and the Prisons are the principal institutions involve in Juvenile Justice Administration. In this paper, attempts shall be made to appraise the performance of these institutions in the exercise of their statutory functions in Juvenile Justice Administration.

The Police

[24]AbdullahiWahabZakari, *op cit at footnote 2*
[25]AbdullahiWahabZakari, *op cit at footnote 2*

Of all the Law enforcement agencies, the Police play a pivotal role in Juvenile justice administration. For one, it has statutory mandate to prosecute suspects, arrest suspects with or without warrant depending on the nature and circumstances of the crime, grant bail to suspects pending appearance in court etc. secondly, they are the first point of contact with a child who is in conflict with the Law, and thirdly the Police is the main Law enforcement agency recognized by the constitution with a very high visibility than other agencies, as police establishment has a structural and operational spread in every nook and crannies of Nigeria to bear the onerous burden of crime prevention and Law enforcement at every level of criminal justice system.[26]

In addition to such powers and duties that may be conferred upon them by the Law, the Police Act provides that the Police "shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of Law and order, the protection of life and property etc." A child offender, no doubt falls within the armbit of persons caught with the statutory function of the Police. The duties of the Police in the child justice system do not end after apprehending the Child and taking the child to the welfare office. The Police carries out the investigation of the case and prosecutes the child offender. With all these functions in mind, it is a truism that the Police is the nerve center of Juvenile Justice System. Of great importance, is the initial contact between the Law enforcement agency, that is, the Police and the Juvenile offenders. The management of this initial contact will determine the success or failure of further interventions by the other arms within the Juvenile Justice system.

Notwithstanding the overwhelming role of the Police in the Juvenile Justice system it has been observed, that the Police in this country often does not have the requisite skill to handle children in other to minimize the effect of the arrest on the psyche of the child. It was also found that there are even cases when the photograph of children suspected of committing some crimes are splashed on the pages of newspapers. And sometimes too, children are paraded on television along with adult suspects contrary to the provisions of the law and regard to their status as a child. It is our opinion that these practices are short of the standard set by the statutes and international instruments. To this extent, the practice not only constitutes a violation of the rights of the child, it also amounts to a contravention of the standard minimum rules for the treatment of child offenders.[27]

The Courts

Specifically, the courts vested with jurisdiction to entertain and determine all criminal cases relating to or involving children are, Juvenile Courts, Courts of Summary Jurisdiction i.e. Magistrate Courts and Family Courts. While Juvenile Courts or Magistrates are established pursuant to the provisions of Children and Young Persons Act or the Children and Young Persons Laws, Family Courts are established pursuant to the provisions of the Child Rights Act. In terms of procedure, these courts are all required by Law to observe due process, principles of fair hearing, and regard to the legal status of the child. With respect to Juvenile Courts, the court is constituted by a Magistrate sitting alone or with assessors who are appointed by the Chief Judge of the State. May it be reiterated that the real intendment of the Law in establishing Juvenile Courts is for the Welfare of Children in need of care and attention and the treatment children in conflict with the Law. A mention is necessary at this juncture of the fact that, after arraignment the courts are expected to consider the issue of bail to the child offender immediately and to ensure that the trial is expeditiously concluded. It is also a paramount consideration in Juvenile proceedings to guarantee the child's right to privacy i.e. court proceedings involving children are to be in camera to avoid social stigma. Finally, Juvenile courts cannot impose imprisonment on Juvenile offenders save in circumstances contemplated by Law. Note that the Family Courts system under the CRA has features that are similar to Juvenile Courts.

In the FCT where CRA is in place or State where the CRL are in operation, family Courts are to replace Juvenile Courts.[28] An appraisal of the performance of Juvenile Court system suggests clearly that the system is bedeviled with lack of skilled manpower and facilities. Magistrates that preside over Juvenile matters only have the general knowledge of Law and no special training or qualification in Juvenile issues. Similarly, contrary to the provisions of the Law, child offenders are quite often ordered to be detained, particularly when the offence alleged is committed with adults. Owing to several reasons child offenders are kept in custody for a fairly long time in violation of the constitutional provisions and their status as children. In States, where very few cases go to full trial in Courts affected Juveniles have no legal representation or access to free legal services.

The full realization of the objectives of CYPA, CYPL and CRA/CRL will greatly depend on the availability of free legal representation to child offenders. In states under the application of CRL, Family Courts are not yet established in line with the provisions of the Law several years after its enactment. The implication is

[26] *ibid*

[27] AbdullahiWahabZakari, *op cit at footnote 2*

[28] AbdullahiWahabZakari, *op cit at footnote 2*

that Juvenile Courts hitherto vested with jurisdiction are now superseded and are to be replaced with family Courts.[29]

The Prisons

In Juvenile Justice, custodial institutions recognized for children by law are Remand Homes, Approved Institutions, Borstal institution and the Prison depending on the nature and circumstances of their case. The research found that in most states, particularly these centers are non-existent or where they exist, the facilities are a mockery of the best practice. As a result of these constraints child offenders are usually detained or kept in Police cells or Prisons with adult offenders.[30]

Other Agencies or Institutions

The role of the social welfare department in Juvenile Justice machinery is worthy of mention. Generally, the social welfare department or officials are involve in investigation, preparation of social inquiry report and sometimes used to contact Juvenile parents. The CRA made provision for the appointment of fit and proper persons as probation officer. Note that, when a Juvenile offender is placed under the supervision of a probation officer, it is the duty of that officer to visit or receive reports from the Juvenile under probation, to see that the Juvenile observes conditions of his recognizance, to report his behaviour to the Court and to advice, assist and befriend him where necessary to endeavour to find him suitable for appointment. Traditionally, social welfare officers from the Social Welfare Department of the Ministry of Women Affairs are appointed to the Courts as probation officers.[31]

Under the CRA, a Child Rights Implementation Committee is established. The functions of this committee are provided in section 265 (a) – (c) of the CRA. Importantly, it is the responsibility of the committee to initiate actions that will ensure the observance and popularization of the rights and welfare of a child. In the emerging processes of the implementation of the CRA, the committee is an indispensable institution in Juvenile Justice Administration.[32]

The International Framework

The Convention on the Rights of the Child (CRC), to which 191 states have become parties, remains the principal building treaty that sets out all the rights to which governments have agreed that children are entitled. In addition, the papers presented emphasized three additional sets of rules adopted by the global community, which provide greater detail on the operation of juvenile justice:
- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)
- The United Nations Rules for the Protection of Juveniles Deprived of their Liberty.
- The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Rights Guidelines).

The Convention on the Rights of the Child

Most provisions on the rights of the child are very relevant to juvenile justice, in the sense that respect for rights such as the right to education, to protection against abuse and exploitation, the right to freedom, adequate information, adequate standard of living and appropriate moral guidance helps keep children from becoming involve in crime. It leads to the conclusion that any meaningful attempt to prevent juvenile crime must involve promoting and protecting all rights for children. The main thrust of the Convention is to support the role of the parents or the family as the primary caregivers and to prevent institutionalization whenever possible.

The most relevant provisions of the CRC on the administration of juvenile justice are included in Articles 37, 39 and 40. Article 37 specifically protects children deprived of their liberty. No child shall be deprived of liberty unlawfully or arbitrarily. Accordingly, this article adds that arrest, detention or imprisonment "shall be used only as a measure of last resort and for the shortest appropriate period of time". This right applies regardless of the reason for the deprivation, that is, whether the child is detained for investigation, awaiting trial, convicted or placed for purpose of care and protection.

In addition Article 37 prohibits the torture or other cruel treatment or punishment of any child, capital punishment or life imprisonment without possibility of release of persons below eighteen years of age. Article 40 lists rights, which belong to children "alleged as accused of, or recognized as having infringed the penal law".

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[29] *ibid*
[30] *ibid*
[31] *ibid*
[32] AbdullahiWahabZakari, *op cit at footnote 2*

It applies to all phases of the juvenile justice process from the suspect who is being questioned to the child who has been sentenced, including children waiting for trial and those who are on trial. It relates to matters such as the minimum procedural safeguards to be guaranteed at all stages of penal proceedings (due process rights); the establishment of laws, procedures, authorities and institutions specifically application to children alleged as, accused of, or recognized as having infringed the penal law, including a minimum age for criminal responsibility, diversion and the availability of alternatives to institutional care (superior order, counseling, probation, foster care, education for example). The third Article closely related to juvenile justice is article 39, which recognizes the right to rehabilitation and social reintegration of children victims of neglect, exploitation and abuse.[33]

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

The Beijing Rules was the first international comprehensive statement to focus specifically on juvenile justice administration. It is aimed at developing a juvenile justice system that should be fair and humane, emphasizing the well-being and rehabilitation of the juveniles. It ensures that the reaction of the authorities is proportionate to the circumstances of the offender as well as the offence. Although it is not a treaty per se, many of its provisions have become binding on states by virtue of their incorporation in the Convention on the Rights of the Child. The rules encourage:

- The use of diversion from formal hearing to appropriate community programmes;
- Proceedings to be conducted in the best interests of the juvenile by respecting the right to due process and the requested procedural safeguards;
- Careful consideration before depriving a juvenile of liberty;
- Specialized training for all personnel dealing with juvenile cases;
- The consideration of release both on apprehension and at the earliest possible occasion thereafter.[34]

United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)

The Guidelines stress the importance to pursue a child centered orientation in any preventive program. A successful prevention of juvenile delinquency requires efforts on the part of the society to ensure the well-being and harmonious development of adolescents, with respect for and promotion of their personality from early childhood. Young persons should have active partnership within society and should not be considered as mere objects of control. Designed policies should consider that youthful behavior or conduct that does not conform to overall norms and values is often part of the maturation and growth process and tends to disappear spontaneously with transition to childhood. However, labeling a young person as 'deviant', delinquent' or 'prodelinquent' often contributes to the development of a consistent pattern of undesirable behaviour by young persons. Thus, community-based services and program should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort. In between are the United Nations Standard Minimum Rules for the Administration of juvenile justice, whose provisions cover everything from the moment of arrest to sentencing by the court (including alternatives to the court procedure), and the Tokyo Rules dealing with alternatives to custodial sentences. All these aspects, from prevention to disposal and social reintegration, are integral components of a juvenile justice policy.[35]

All the regional level, the African Charter on the Rights and Welfare of the Child that entered into force in 1999 contains in its Article 17 detailed provisions applicable to juvenile justice. This regional instrument, which places the child at the center of the family and community, includes similar provisions to the CRC. Together with the CRC, these rules provide a comprehensive framework of juvenile justice. At one end of the spectrum are the United Nations Guidelines for the Prevention of Juvenile Delinquency (known at the "Riyadh Guidelines") covering all levels and forms of prevention of juvenile delinquency, including social reintegration? At the other end are the Rules on protection of Juvenile Deprived of their Liberty, which sets out standards applicable when a juvenile is confined to any facility. The rules apply whether penal, correctional, educational or protective, and whether on the grounds of conviction or suspicion of having committed an offence, or simply being deemed "at risk".[36]

Challenges Associated with Juvenile Justice Administration in Nigeria

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[33]AbdullahiWahabZakari, *op cit at footnote 2*
[34]*ibid*
[35]AbdullahiWahabZakari, op cit at footnote 2
[36]*ibid*

The paper appraises the problems facing juvenile justice administration in Nigeria. These problems are generally manifest in all the stages of the juvenile justice system, starting from pretrial, trial and post-trial stages. These problems would be highlighted and assessed against the backdrop of the provisions of the CYPA, CRA, UNCRC, AUCRWC and Beijing Rules among others.

The following are some of the problems confronting juvenile justice administration in Nigeria,

1. Physical abuse of juveniles during arrest and detention by police: it is observed that quite a number of juveniles experience severe and some physical abuse during arrest and detention. In some cases juveniles were beaten, tortured or threatened with torture or imprisonment to confess to crimes they may not have committed. [37]

2. Inadequate number of police personnel and lack of requisite training for police, judicial officials, social welfare workers and prison officials: The police are understaffed and under resourced and many of Rank-and-File police have low level education and few have received any training in human rights and even fewer in the rights of the child. In a similar vein, though a substantial majority of judicial officers possess requisite certificate, they lack the experience and training in child related issues. Importantly, Magistrates, who handles the bulk of juvenile offences lack specialized skills in juvenile justice matters. Child justice administrators, social welfare officers, probation workers did not possess the specialized skills and facilities for treatment of child offenders. In line with the laws and international instruments or protocols, personnel involved in juvenile administration are expected to have a specialized and regular training in juvenile matters.[38]

3. Lack of facilities for detention of child offenders: In most states where detention centers exist, the homes were usually in a deplorable condition as there are no facilities for carrying out rehabilitation or reformation of the child offenders for re-admission and reintegration into the society. In some States, there are no child friendly detention centers as required by law. Traditionally, police cells and prisons that are usually resorted to lack basic facilities. In some cases, the facilities in such homes are grossly inadequate and very short of any known standard. As a result of this problem, children in conflict with the law were often arbitrarily ascribed adult age by the police and presented as adults in order to justify the detention of such children in prison. As it were, juvenile offenders, owing to dearth of facilities are locked up with adults in crowded cells and prisons, thereby exposing them to physical and sexual abuse by adult inmates.

4. Non-establishment of juvenile or family courts: Most states of the federation do not have permanently constituted juvenile courts. Instead, in most states, designated magistrate courts exercise jurisdiction to hear juvenile cases ad-hoc. In states where the Child Rights Laws are in place, family courts are not yet constituted or established to determine cases affecting or relating to children. The implication of this is that, young offenders are often tried and sentenced in adult courts with all the paraphernalia of formal judicial process.

5.Lack of legal representation: The near absence of contact between children in conflict with laws and legal practitioners from the time of arrest to remand, through trial and finally, sentence is a very serious militating factor against juvenile justice administration. There is no special legislation to make provision for the extension of legal aid to juveniles. This simply presupposes that a "juvenile offender must therefore, fall back on the general provisions in the law which make legal aid available to persons earning less than N1,500.00 per annum, in respect of narrow range of criminal offences. The Children's rights in Nigeria would be better protected if all children charged with criminal offence receive free legal aid, irrespective of the nature of the offence, as a basic entitlement.

6. Non-recourse to alternative measures and diversion options in the law. The CYPA/CYPL gives sufficient latitude to a juvenile judge to deal with a child found guilty of an offence. the CYPA provides the following options, dismiss the charge, discharge the offender if he enters into a recognizance, discharge the offender and place him or her under a probation officer, Commit the offender to the care of a relative or other fit person, send the offender by means of a corrective order to an approved institution, order the offender to be whipped, order the offender or the parents to pay a fine or damages or give security for good behaviour. The non-recourse to these listed options explains why there are so many children under custodial sentence.

7. Inadequate funding: Generally, the juvenile justice machineries are not properly funded owing to several reasons. Majorly, there is the tendency at the state level to confuse juvenile criminal justice system with the activities of the department of social welfare in the Ministry of Women Affairs and Social Development.

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[37] *ibid*

[38] AbdullahiWahabZakari, *op cit at footnote 2*

In another vein, there is the general perception that administration of criminal system is all embracing and that the institutions and agencies are the same. In some States, no specific funding is made for juvenile institutions. The budgetary provisions by the Ministry of Women Affairs and Social Development for the social welfare department are hardly released. This may be as a result of the confusion or the misunderstanding of not seeing the operation of juvenile justice agencies as distinct. As a result of poor funding, juvenile courts are not structured in the manner required by law to operate optimally, facilities and infrastructural needs of the institutions in the juvenile justice sector are hardly met and specialized and regular training for human elements involved in the juvenile criminal justice system is de-emphasized.[39]

Conclusion

With the enactment of the CRA and its subsequent adoption in some states of Nigeria, very many problems associated with juvenile justice administration attributable to the provisions of CYPA, have been cured. It is submitted that the provisions of the CRA are consistent with the standard set by UNCRC, AUCRWC and Beijing Rules and other international instruments and protocols on the promotion and protection of the rights of the child. Nevertheless, as it would appear from the foregoing enumerated constraints and challenges, there is the dire need for reforms of the institutions and adequate funding of institution responsible for juvenile justice administration in Nigeria. Institutions, such as, the police, courts and detention centers as well as social welfare departments are to be child-friendly and performance driven. Of great importance to the workings of these institutions, is the capacity building of the persons and their specialization in child-centered skills.

The proper understanding of the laws and international instrument on juvenile matters could only be attained, where the persons who drive the process are adequately trained to appreciate the law international standards on juvenile justice administration.

[39]Abdullahi Wahab Zakari, *op cit at footnote 2*