

## A CENTURIAL LEGAL HISTORY OF CHILD JUSTICE REFORMS IN NIGERIA 1914-2014

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### Abstract

This paper analyses the development of child justice during three main periods in Nigeria. From 1914-1943, juvenile delinquency emerged as a distinct social problem; specific laws were enacted relating to children and Reformatory and Industrial Schools were established across the country. From 1943-2003, the colonial masters enacted the Children and Young Persons Ordinance for the treatment of young offenders. After independence in 1960, this remained the law regulating juvenile justice. However, most juvenile offenders were not granted bail by the police and the juvenile court structure and procedure were not protective. Offenders were sent to institutions but extensive research carried out across the country shows that the facilities for rehabilitation were non-existent at such institutions. This paper argues that the period, 2003-2014, has recorded positive improvement. The Child Rights Act 2003 introduces key reforms such as codified legal rights for children, diversion, Centralised Children Police Unit, Family Courts and two novel non-custodial disposition methods. The author recommends the implementation of the Committee on the Rights of the Child Observations to fully protect child offenders in Nigeria.

**Keywords:** police, juvenile courts, custodial institutions, children's rights, diversion, family courts, non-custodial disposition methods, reforms, Nigeria.

### Introduction

Nigeria is a Federal Constitutional Republic comprising 36 states and its Federal Capital Territory (FCT), Abuja.<sup>2</sup> According to the 2006 Census, the population of Nigeria was 140,431,790 with age groups 0-19 years being 73,635,716, slightly higher than half of the population.<sup>3</sup> As at 2011, the estimated population of Nigeria is 162,471 million with children being in the simple majority.<sup>4</sup>

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<sup>2</sup> There are six geopolitical zones in Nigeria. (1) South East: Anambra, Enugu, Ebonyi, Imo and Abia states. (2) South South: Akwa Ibom, Bayelsa, Cross River, Edo, Delta and Rivers states. (3) South West: Ekiti, Lagos, Ogun, Ondo, Osun and Oyo states. (4) North Central: Kwara, Kogi, Plateau, Nasarawa, Benue, Niger and FCT. (5) North East: Taraba, Yobe, Adamawa, Borno, Bauchi and Gombe states. (6) North West: Sokoto, Zamfara, Kebbi, Kaduna, Katsina, Kano and Jigawa states.

<sup>3</sup> Annual Abstract of Statistics 2010, National Bureau of Statistics < <http://www.nigerianstat.gov.ng/> > (July 2014).

<sup>4</sup> UN Data: Nigeria, <http://data.un.org/CountryProfile.aspx?crName=NIGE> (July 2014).

Historically, in traditional African societies, kinship and seniority were the two overarching principles that guided human relations.<sup>5</sup> The principle of kinship entailed the training of children by communal and co-operative efforts whilst that of seniority demanded that children unquestioningly deferred to others. Any child that exhibited acts of infraction was punished by agents of social control in the community.<sup>6</sup> In Nigeria, the famous Yoruba sociologist, Nathaniel Fadipe said of the role of Yoruba *Baale* (head of compound or *agbo-ile*), 'the *Baale* also punishes such anti-social behaviours as...disrespect to elders, sexual misbehaviours among juveniles, sexual waywardness in girls and young people who broke the peace of the compound'.<sup>7</sup>

However, from 1898, the British government sought to establish and maintain a colonial state in Nigeria. To secure central direction of policy, they started the gradual amalgamation of the administrative units. In 1906, the Lagos Colony was merged with Southern Nigeria to form the Southern Protectorate. In 1914, the Southern and Northern Protectorates were joined as Nigeria.<sup>8</sup> The British introduced Western education, Christian religion and urban development. This process of change, Mabogunje, observed in Ibadan (Western Nigeria) as 'growth by fission', resulted in the breakdown of controlling mechanisms within the extended family as well as communal efforts in the country.<sup>9</sup>

In 1914, Nigeria became a single administration which led to several changes. In relation to juvenile justice, three notable features occurred. First, juvenile delinquency emerged as a social phenomenon. The second was the enactment of legislation including: the Prison Ordinance 1917 which provided for the separation of juveniles who were under 14 years from adult prisoners.<sup>10</sup> The Native Children Ordinance 1928 applied mainly to children who were orphans, deserted by their relatives or who had been sold as slaves and not to young children who had

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<sup>5</sup> Sigmund OA Bulumo, 'History of Juvenile Justice in Nigeria', in Donald J Shoemaker (ed.) *International Handbook on Juvenile Justice* (Westport Connecticut Greenwood, 1996) pp.220-239, p.220.

<sup>6</sup> *Ibid.*

<sup>7</sup> Nathaniel A Fadipe, *The Sociology of the Yorubas* (Ibadan University Press, 1970) p.108. In Yoruba land, to show good character and proper upbringing (*Omoluwabi*) girls kneel in greetings and boys prostrate as a sign of respect for elders, (*ai bowo fun agba ni oje aye gun*).

<sup>8</sup> T. N. Tamuno, 'British Colonial Administration in Nigeria in the Twentieth Century' Obaro Ikime (ed.) *Groundwork of Nigerian History* (Heinemann Educational Books, 1980) pp.393-409.

<sup>9</sup> S.O. Osoba and A. Fajana 'Educational and Social Development during the Twentieth Century' *ibid.*, pp.570-600.

<sup>10</sup> Laurent Fourchard, 'Lagos and the Intervention of Juvenile Delinquency (1920-1960)', *Journal of African History*, 47 (2006) 127.

committed offences.<sup>11</sup> Hence, these laws were insufficient as typically young offenders were sent to prison. Thirdly, three reformatory schools were opened: the Salvation Army School (1925); the Kano Native Authority Juvenile Reformatory (founded in 1931) and the Industrial School in Enugu (1932). But they were not able to cater for these offenders due to capacity problems. Finally, the Children and Young Person Ordinance (CYPO) was promulgated in 1943 for the colony of Lagos.<sup>12</sup> This was subsequently extended to other parts of the country for the treatment of young offenders.

Between 1943 and 1960, the CYPO created juvenile courts. Modelled on the English juvenile courts, the system was more like a welfare agency. Social Welfare Officers were appointed throughout the regions to serve as probation officers in the Juvenile Courts and address the problems of juvenile delinquency. The officers identified the need for further legislation which culminated in the Children and Young Persons Law (CYPL) 1958 to cover both juvenile delinquency and child welfare. This was the position of the juvenile justice system until independence in 1960. From 1960-2003, the country became enmeshed in military rule. This had a key impact on every strata of the country as the regimes were characterised by arbitrariness. The criminal justice system faced the problem of abuse of process and delay. Three major research projects were carried out across the country to specifically inquire into the state of the juvenile justice system and their results were quite revealing. The first one, a 1996 study concluded that from arrest until final disposition, the well-being and welfare of juvenile offenders was not being preserved and protected.<sup>13</sup> According to the second study in 2001, the legal philosophy and framework for the treatment of juvenile offenders emphasised institutionalisation.<sup>14</sup> In a similar vein, the third 2003 study discovered that the only laws guiding the juvenile justice system are the CYPLs.<sup>15</sup> A National Conference concluded that there was a need for change.

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<sup>11</sup> Ibid.

<sup>12</sup> No 41 of 1943. It came into force in 1946 and was an adaptation of the British Children and Young Persons Act 1933.

<sup>13</sup> The research was conducted by the Nigerian Institute of Advanced Legal Studies (NIALS). Isabella Okagbue, 'The Treatment of Juvenile Offenders and the Rights of the Child,' in IA Ayua and Isabella Okagbue (eds.) *The Rights of the Child in Nigeria* (Nigerian Institute of Advanced Legal Studies, 1996) pp.242-285, p.276.

<sup>14</sup> Etannibi EO Alemika and Innocent C Chukwuma, *Juvenile Justice Administration in Nigeria: Philosophy and Practice* (Centre for Law Enforcement Education (CLEEN), 2001) pp.4, 66, 82.

<sup>15</sup> Chinwe R Nwanna and Naomi EN Akpan, *Research Findings of Juvenile Justice Administration in Nigeria* (Constitutional Rights Project (CRP) in partnership with Penal Reform International (PRI) and the European Union (EU) 2003) pp.86, 135.

The period 2003-2014 has witnessed great strides in child justice reforms. This started ten years ago with the enactment of the Child Rights Act (CRA) 2003. For the first time, legal rights for children are codified in a child specific instrument. The law encapsulates novel diversionary measures aimed at preventing the child offender from facing the rigour of judicial proceedings. It creates a Specialised Children Police Unit and establishes a Family Court structure with procedural safeguards which accord with international juvenile justice standards. The Act also introduced two innovative non-custodial disposition methods; counselling and community service under supervision thereby widening the use of non-custodial measures. In addition, it contains several new restrictive provisions on punishing child offenders. These are all first time innovative developments.

This paper analyses child justice reforms in Nigeria spanning a century with a view to tracing these positive changes. It identifies three significant periods as outlined above. The discussion then reflects on the customary and sharia laws' arguments against the CRA. The latter position is still very strong because only one out of the 12 Sharia States in Nigeria has implemented the CRA. The paper evaluates key reforms in the CRA and recommends the implementation of the 2010 Committee on the Rights of the Child Observations on Child Justice in Nigeria.

## **1 Child Justice 1914-1943**

The Southern and Northern protectorates were amalgamated in 1914 to become Nigeria and Lord Frederick Lugard became the first Governor-General. There were far reaching changes in the country including the creation of its own administrative system by 'indirect rule' through the Emirs in Northern Nigeria. In Southern Nigeria, the position was more of a direct rule through the Governor-General. Hence, western education, Christianity and new forms of social relations were developed before Nigeria became independent in 1960.<sup>16</sup>

From the 1920s, specific offences relating to young offenders were being discussed in official correspondence, police reports and Nigerian newspapers. The Senior Resident in Lagos lamented on the increase in the number of youth offenders. According to him, the average number of juveniles convicted in the Colony was only 30 a year between 1927 and 1930 but rose to 112 cases in 1934 and 158 cases in 1935.<sup>17</sup> Criminal groups emerged in some parts of

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<sup>16</sup> Nigeria, Encyclopedia Britannica, <http://www.britannica.com/EBchecked/topic/414840> (June 2014).

<sup>17</sup> The Police Magistrates, *Nigerian Daily Times*, 31 July 1936. Note that during this period, young offenders were classified as juveniles below the age of 16 years who had committed an offence.

Nigeria. Jaguda (pickpocket) boys were reported in Lagos and Ibadan (Western Region).<sup>18</sup> Boma boys acted as guides to European and African soldiers who stopped over in Lagos but were later involved in serious crimes. There was the development of a network of juvenile prostitution that became a subject of concern. Young prostitutes around the age of 12 were coming from Owerri and Calabar Provinces (Eastern region) to Lagos.<sup>19</sup> Many prostitutes migrated to other parts of the country, mostly port areas such as Calabar and Port Harcourt and to West African Ports like Accra and Sekondi-Takoradi on the Gold Coast.<sup>20</sup> This led to the emergence of juvenile delinquency which the government saw as a social and moral crisis that had to be tackled.

In the 1930s, the Colonial Office set up a Committee to consider the special arrangements that were in force in the British Empire for the trial and punishment of offenders.<sup>21</sup> An Advisory Committee proposed a draft bill which recommended the introduction in the various colonies of provisions such as Special Detention Facilities, Probation Officers and Juvenile Courts to separate juveniles from adults and prevent them from being hardened criminals.<sup>22</sup> This proposition was rejected as being unsuitable to meet Nigerian conditions as it was more 'Westernised'.<sup>23</sup>

During this period, legislation relating to young offenders in Nigeria was found to be insufficient. The Prison Ordinance 1917 provided for the separation of juveniles who were under 14 years from adult prisoners.<sup>24</sup> The Native Children Ordinance 1928 applied mainly to children who were orphans, deserted by their relatives or who had been sold as slaves and not to young children who had committed offences.<sup>25</sup> In practice, there was only one alternative for juvenile offenders: either they were sent to the prison without being segregated from adult prisoners (because

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<sup>18</sup> In 1926, the *Nigerian Pioneer* reported frequent assaults on girls by young men and boys. See 'Assault on a Girl' *Nigerian Pioneer*, 29 January 1926. The *Lagos Daily News* reported on bands of young men who paraded in certain sections of the town armed with sticks or whips, most especially during Christmas week. *Lagos Daily Times* 'Local Hooliganism' *Lagos Daily News*, 21 June 1929.

<sup>19</sup> NAI, Comcol 1, 2844, Child Welfare, Prostitution and Child Marriage, n.d.

<sup>20</sup> Benedict B. Naanen, 'Itinerant Gold Mines: Prostitution in the Cross River Basin of Nigeria 1930-1950' *African Studies Review* 34 (1991) 60.

<sup>21</sup> Fouchard, 'Lagos and the Intervention of Juvenile Delinquency' 127.

<sup>22</sup> *Ibid.* In England, through the Probation of Young Offenders Act 1907 and the Children's Act 1908, children were sent to a reformatory for between two and five years or to an Industrial school for an indefinite period. Top officials rejected these measures in the colony, they reasoned that there were limited number of offenders and the appointment of probation officers would require considerable expenditure.

<sup>23</sup> NAI, ABE PROF 1/1, File ABP 392/1.

<sup>24</sup> Fouchard, 'Lagos and the Intervention of Juvenile Delinquency' 127.

<sup>25</sup> *Ibid.*

there was no other provision) or they were given corporal punishment.<sup>26</sup> Legislation for the treatment of juvenile offenders was revised in 1932 to cover 'care and protection' cases, although it did not alter the position of young offenders.<sup>27</sup>

There was a dearth of special institutions for young offenders. By 1930, the only known institution dealing with young offenders was the Boy's Industrial Army Home in Yaba.<sup>28</sup> The Lagos Branch of the Salvation Army approached the government with a proposal to set up a 'refuge' for juvenile delinquents. In 1925, the Salvation Army School (financed by the government) was opened for the 'reclamation of boys who have for long been a problem to many'.<sup>29</sup> According to Henry Carr, the Resident of Lagos at the opening of the institution:

The subject of the increasing number of our youths who have committed offences for which they should be imprisoned has given cause for anxiety for many years. Under the prison system, these youths are brought under the influences of hardened adult criminals and become steeped in criminal tendencies. And yet, they are of that age when they might be reclaimed if placed under proper influences and firm and exacting discipline. There was no opportunity for subjecting these youth to institutional treatment of this sort until the arrival of the Salvation Army in the colony.<sup>30</sup>

However, the Institution could not tackle the problem of juvenile delinquents as capacity was a limiting factor.<sup>31</sup>

In response to the Colonial Office recommendation in the 1930s, the Industrial School in Enugu was also established. It was the third one, after the Salvation Army School 1925 and the Kano Native Authority Juvenile Reformatory founded in 1931. This school could provide accommodation for only 80 boys under the age of 16 years convicted of offences punishable with imprisonment.<sup>32</sup> They were given vocational training for about three years. Although the school was modelled after industrial schools in Europe, it could not grapple with the problem of the treatment of young offenders as again space was a limiting factor.<sup>33</sup>

Due to inadequate legislation and few reformatory schools, young offenders continued to commit offences largely unabated. It was reported in Lagos that 'the activities of Boma Boys

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<sup>26</sup> Ibid.

<sup>27</sup> Ibid, Native Children (Custody and Reformation) (Amendment) Ordinance No 21, 1932.

<sup>28</sup> Ademola Ogunleye, *The Nigerian Prison System*, (Specific Computers Publishers, 2007) pp.210-211

<sup>29</sup> Ibid, Opening Address by P.M. Baddeley, the Officer Administering the Government of Nigeria.

<sup>30</sup> Reported in Nigerian Pioneer, 28 August 1925.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ogunleye, *The Nigerian Prison System*, p.216.

were becoming something very much worse than a mere nuisance'.<sup>34</sup> In 1937, a Colonial Penal Administration Committee was appointed to advise the government on penal matters in general and juvenile delinquents in particular. Alexander Patterson, Commissioner of Prisons for England and Chairman of the Committee, appointed Donald Faulkner as the first Social Welfare Officer in the British Empire. Between 1941 and 1943, Faulkner produced a series of reports based on Lagos fieldwork. He reported that poverty; lack of permanent homes, dysfunctional families and the consequence of urbanisation were all factors responsible for juvenile delinquency. To proffer a solution with laws prosecuting young offenders and providing welfare services he convinced the government to promulgate the CYPO for Lagos, a colonial adaptation of the CYPA1933 in Britain. By virtue of section 1(2), the Governor-Council was empowered to apply it to the regions by order. Hence, Regional governments adopted the CYPO as part of their laws and it became the Children and Young Persons Act (CYPA).<sup>35</sup>

## 2 Child Justice 1943-2003

From 1943, the CYPA was the principal statute regulating the administration of juvenile justice. Two remarkable features were noted from 1943 to 1960 when Nigeria became independent. First, the 1943 Children and Young Person Ordinance created juvenile courts to hear and determine cases relating to children and young persons.<sup>36</sup> Initially, juvenile courts were established in Lagos and Calabar.<sup>37</sup> They were also established in the states in the Western and Eastern Regions.<sup>38</sup> Relatively in Britain, the CYPA 1933 changed the status of juvenile courts with specially selected panels of magistrates to deal with juveniles and to have due

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<sup>34</sup> Fourchard, 'Lagos and the Intervention of Juvenile Delinquency' 129.

<sup>35</sup> Ibid, 129-131.No.41 of 1943. Regional governments (Western, Eastern, and Northern) adopted the CYPO as part of their laws and it became the CYPA. When the regional structure was changed and states were created, the various states retained the original CYPA with slight modifications. Children and Young Persons Law, Cap.C10 Laws of Lagos State 2005; Children and Young Persons Cap.29 Laws of Oyo State of Nigeria 2000; Children and Young Persons Cap.38 Laws of Edo State of Nigeria; Children and Young Persons Law, Cap.26, Laws of Rivers State of Nigeria 1999, Children and Young Persons Cap.26, Laws of Kaduna State.

<sup>36</sup> During this period, the CYPL made a distinction between a child and a young person. A child is a person under the age of 14 years whilst a young person is a person who has attained the age of 14 years and is under 17 or 18 years (depending on the state). The CYPL refers to both the child and young person as juvenile offenders.

<sup>37</sup> RAI Ogbobine, *The Juvenile Court and Young Offenders Court Practice Handbook No. 1*, (High Court of Justice, Sapele, 1978), p.6.

<sup>38</sup> For instance, Anambra, Bendel, Cross River, Imo, Lagos, Ogun, Ondo, Oyo and Rivers States. Despite the similarity in the wordings of the Ordinances, juvenile courts were not established in the ten states in the North. These were Bauchi, Benue, Borno, Gongola, Kaduna, Kano, Kwara, Niger, Plateau and Sokoto. For instance, Kano state created Juvenile Courts with the enactment of Kano State Juvenile Courts Edict 1987. Akintunde O Obilade, *The Nigerian Legal System* (Spectrum Books Limited, 2005) p.216-217.

regard to the 'welfare of the child'.<sup>39</sup> Courtroom procedures were to be modified to eliminate any semblance of a criminal proceeding.<sup>40</sup> The overall inquiry gave little weight to the offence committed since the misconduct itself was a fault indicator of what the child needed.<sup>41</sup> In contradistinction, a judge captured the dilemma of the court in Nigeria thus,

a juvenile court is always faced with the problem of how to equate the divergent interests of society, the vindication of public justice, the rehabilitation or reformation of the juvenile at the outset of his life and the deterrent element required in all punishments, especially when the crime committed by the child is of a serious nature.<sup>42</sup>

A former Magistrate in a Juvenile court sadly observed:

there is no waiting room for children and their parents or guardians to stay while waiting for their cases to be heard. Therefore, they sit in the open and people around hear their names when called. The identities of the children are disclosed in print or electronic media even when the case is *sub judice*. The penalty for contravening the law is N100 (less than USD \$1). This penalty is therefore inadequate and unlikely to deter anyone from flagrantly violating the law.<sup>43</sup>

The second is the appointment of Social Welfare Officers across the regions. The office was opened in the Northern region to address the problems of juvenile delinquency in the cities of Kaduna, Kano and Zaria. The Probation of Offenders Law 1957 mandated the court to use probation orders when expedient. Hence, Social Welfare Officers served as probation officers. These officers observed that children were becoming delinquent due to parental neglect. There were complaints of youths participating in political activities, shouting party slogans, attending rallies and distributing party propaganda materials. Mr Hillier, the Social Welfare Officer of the Northern Region in charge of Zaria wrote a memo to the Resident of Zaria explaining the need for new legislation to tackle these problems. This culminated in the Children and Young Persons

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<sup>39</sup> Loraine Gelsthorpe and Vicky Kemp 'Comparative Juvenile Justice: England and Wales' in Winterdyk, J.A. (ed.) *Juvenile Justice Systems: International Perspectives* (Canadian Scholar Press, 2002) pp.127-169, p.131.

<sup>40</sup> Barry C. Feld, 'The Transformation of the Juvenile Court-Part II: Race and the Crack-Down on Youth Crime' *Minn. L. Rev.*, 84 (1999) 338.

<sup>41</sup> Antoinette C Clarke, 'The Baby and the Bathwater: Adolescent Offending and Punitive Juvenile Justice Reform' *U. Kan. L. Rev.* 53 (2004-2005) 668.

<sup>42</sup> Ogbobine, *The Juvenile Court and Young Offenders*, p.26.

<sup>43</sup> Sheri Solebo, 'The Juvenile Court System in Lagos State the Trial and Processing of Children in the Justice System,' in Bolaji Owasanoye and Marie Wernham (eds.) *Street Children and the Juvenile Justice System in Lagos State* (Human Development Initiative, 2004), pp.35-44, p.36.



Law of (CYPL) 1958. It encompassed other ordinances that were related to juvenile delinquency and child welfare.<sup>44</sup>

In 1960, Nigeria achieved her independence from Britain. Several events unfolded from that period that had significant impact on the development of the country. In 1966, due to the political unrest in Western Region, there was a military coup. From that period until 1999, eight successive military coups took place in the country.<sup>45</sup> This was apart from a stint of civilian administration from 1979 to 1983.<sup>46</sup> The military administration was in force for almost three decades. The military rule was epitomised by retrospective and oppressive Decrees, detention without trial and ouster of court's jurisdiction.<sup>47</sup> A former Justice of the Nigerian Supreme Court, Kayode Eso, condemned the deplorable situation of arbitrariness in government during this period. He strongly described it as executive lawlessness and absolute disregard for the rule of law.<sup>48</sup>

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<sup>44</sup> The Law merged the provisions of the Children and Young Persons Ordinance (CYPO) and Native Children (Custody and Reformation) Ordinance. Alamveabee Efihrain Idyorough *History and Philosophy of Social Welfare Services in Nigeria 1900-1960* (Aboki Publishers, Abuja, 2008) pp.109-115

<sup>45</sup> General J.T. Aguiyi Ironsi (Jan-Jul 1966); General Yakubu Gowon (July 1966-1975); General Muritala Mohammed 1975 –February 1976) and General Olusegun Obasanjo (February 1976- October 1979), General Tunde Idiagbon/Major-General Buhari (1983-1985), General Ibrahim Babangida (1985-1993), Sonekan interim government (26 August 1993-17 November 1993), General Sanni Abacha 1993-1998, General Abdusalami Abubakar (1998-1999).

<sup>46</sup> Abiola Ojo, *Constitutional Law and Military Rule in Nigeria* (Evans Brothers (Nigeria Publishers) Limited, 1987) pp.16-22, Kehinde M Mowoe, *Constitutional Law in Nigeria* (Malthouse Press Limited, 2008) pp.I-ii.

<sup>47</sup> The death penalty was prescribed for many economic and anti-sabotage crimes-disruption of the production of petroleum products, tampering with oil pipelines; Decrees such as the State Security (Detention of Persons) Decree No 2 of 1984 (as amended) empowered the executive to detain people without trial. By Constitution (Suspension and Modifications) Decrees, fundamental human rights provisions were not totally abrogated but suspended. Detention laws under military regimes such as State Security (Detention of Persons) Decree No 3 of 1966, Decree No 2 of 1984 (as amended) and the Federal Military Government (Supremacy and Enforcement Powers) Decree No 13 of 1984 oust the jurisdiction of the courts on the application of fundamental human rights provisions in the Nigerian Constitutions. M Ayua, 'The Rule of Law in Nigeria' in I. A. Ayua (ed.) *Law, Justice and the Nigerian Society Essays in Honour of Hon. Justice Mohammed Bello* (Nigerian Institute of Advanced Legal Studies Lagos, 1995) pp.84-87.

<sup>48</sup> *Ojukwu v Governor of Lagos State* (1986) 1 NWLR (pt.18) 621, Ojukwu was forcefully ejected from his house with armed men whilst his appeal was pending before the Court of Appeal. The Court of Appeal ordered his reinstatement but the government refused. Upon the government appeal to the Supreme Court, the Court affirmed the reinstatement and reiterated that 'the essence of the rule of law is that it should never operate under the rule of fear'. Akin Ibidapo-Obe, 'The Rule of Law Versus the Rule of Force in Nigeria: The Contribution of Hon. Kayode Eso' *The Nigerian Journal of Public Law* vol.1 (1997) 5.

Apparently, the criminal justice system had its share in the nation's chequered development. Nigerian children were not left out of the scourge as they faced a myriad of problems.<sup>49</sup> Specifically, the criminal process of arrest, and detention were fraught with abuses. Constitutional protection of the presumption of innocence, right to bail and right to legal representations were undermined.<sup>50</sup> There were delays in the administration of justice due to the lack of adequate infrastructure and manpower resources as well as defective rules of procedure and evidence.<sup>51</sup> Notwithstanding, several laws contain provisions pertaining to young offenders. The Criminal Procedure Act and the Criminal Procedure Code contained relevant provisions dealing with juvenile offenders.<sup>52</sup> Both the Criminal and the Penal Codes prescribe the age of criminal responsibility.<sup>53</sup> The Nigerian Constitution provides for a plethora of rights for Nigerians, including children.<sup>54</sup>

During this period, the CYPL (1958) majorly governed the administration of juvenile justice but juvenile offenders also experienced considerable abuses. Arguably, these provisions were adult-interpreted and invariably the problems of violation of procedures and other constitutional protections experienced by adult offenders were equally transferred to juvenile offenders.<sup>55</sup> The CYPL did not contain any specific sentencing guidelines. Invariably, the Magistrate or judge adjudicating in a case involving a juvenile offender was guided by the law creating the offence

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<sup>49</sup> Poverty; breakdown of family; overcrowding; abusive conditions in the home; the growing HIV/AIDS scourge (orphans and without means of subsistence); housing and lack of other basic necessities. Adedokun A Adeyemi, 'Children in Especially Difficult Circumstances in the Contexts of United Nations and the OAU Charter on the Rights of the Child,' *The Nigerian Journal of Public Law*, 1 (1997) 16-25.

<sup>50</sup> *Onu Obekpa v Commissioner of Police* (1981) 2 N.C.L.R. 420 at 422, *Human Rights and the Administration of Criminal Justice in Nigeria* Ayo M. Ajomo and Isabella Okague (eds.) (Nigerian Institute of Advanced Legal Studies, 1991) pp.284-292.

<sup>51</sup> Taiwo Osipitan, 'The problems and causes of delays in Criminal Justice Administration' in Cyprian O. Okonkwo (ed) *Contemporary Issues in Nigerian Law Essays in Honour of Bola Ajibola* (Toma Micro Publishers Limited, 1992) p.494.

<sup>52</sup> Sections 413-434, Criminal Procedure Act (CPA) Cap. C41 Laws of the Federation of Nigeria (LFN) 2004. The CPA and the CPC apply to the Southern and Northern Nigeria respectively.

<sup>53</sup> These are for Southern and Northern Nigeria respectively. Section 30(a) of the Criminal Code provides that 'a person under the age of seven years is not criminally responsible for his acts or omissions'. 30 (b) of the Criminal Code states, 'a person under the age of 12 years is not criminally responsible for an act or omission unless it is proved that at the time of doing the act or making the omission he had the capacity to know that he ought not to do the act or make the omission'. Criminal Code, Cap. 77 of the 1990 Laws of Nigeria, Criminal Code Act, Cap. C38 (LFN) 2004. Similarly, section 50(a) of the Penal Code states that 'no act is an omission which is done by a child under seven years of age', section 50 (b) states, 'no act is an offence which is done by a child above seven years but under twelve years of age who has not attained sufficient maturity of an understanding to judge the nature and consequence of such an act'. Penal Code, Cap. 345, volume XIX, Laws of the Federation 1990, Penal Code Act Cap. P3 (LFN) 2004.

<sup>54</sup> Sections 17, 33-42 1999 Constitution, Cap.C23 (LFN) 2004. African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap. A9 (LFN), 2004.

<sup>55</sup> *Human Rights and the Administration of Criminal Justice in Nigeria*, pp.284-292.

and general sentencing guidelines.<sup>56</sup> In doing this, the judicial officer was imbued with wide discretionary powers tending towards excessiveness.<sup>57</sup> Corroborating this declaration, a former Justice of the Court of Appeal summarised the sentencing pattern as the most confusing area of criminal legislation.<sup>58</sup> Persistently, the courts developed the penchant for sending offenders to custodial institutions without any consideration for the effectiveness of such sentencing.

In 1991, a National Workshop was held to review the application of the CYPL. It agreed amongst other things, that the age of criminal responsibility should be raised, the juvenile court should follow its own procedures and juvenile justice should de-emphasise custodial treatment and shift towards informal, non-custodial and community-based methods.<sup>59</sup> However in 1996, the Nigeria Institute of Advanced Legal Studies (NIALS) study conducted on children in custody showed that 84.1% had not been released on bail by the police after their arrest.<sup>60</sup> In addition, the disposition methods frequently used at the juvenile courts were corporal punishment 20 (37%); probation/fine 6 (11.1%); prison 10 (18.5%), approved school/remand home 14 (25.9%) and Borstal 3 (5.6%).<sup>61</sup> From this study, 50% of the disposition methods were the custodial institutions.<sup>62</sup> In 2001, the Centre for Law Enforcement Education (CLEEN) conducted a study, institutionalised juvenile respondents were interviewed on their treatment at the various

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<sup>56</sup> The Nigerian Supreme Court over the years has laid down sentencing guidelines through its pronouncement in several cases. These were: age of the accused; the character of the offender as shown by previous convictions; the nature or seriousness of the offence, rampancy of the offence in the community and the role played by the accused. A. A. Adeyemi, 'Administration of Justice in Nigeria: Sentencing' in Y. Osinbajo and A. Kalu (eds.) *Law, Development and Administration in Nigeria* (Federal Ministry of Justice, 1990) pp.109-157.

<sup>57</sup> Iyabode Ogunniran, 'The Lock and Key Phenomenon: Reforming the Penal Policy for Child Offenders in Nigeria,' *Justice Policy Journal* 10 (1) (2013) 1-19.

<sup>58</sup> A. Fatayi Williams, 'Sentencing Processes, Practices and Attitudes: As seen by an Appeal Court Judge' *The Nigerian Magistrate and the Offender Lagos: (Faculty of Law, University of Lagos, 1972) pp.31-38.*

<sup>59</sup> Report of the National Workshop on the Review and Application of the Children and Young Persons Law 21-26 July 1991, Central Hotel, Kano p.6.

<sup>60</sup> Okagbue, 'The Treatment of Juvenile Offenders', pp.255-256.

<sup>61</sup> The sample of 66 was made up of Magistrates and judges about half of whom, as at the survey period, had over 10 years' experience at the Bar but had been on the bench for five or fewer years. Babatunde A Ahonsi, 'Data and Methodology,' in IA Ayua and Isabella Okagbue (eds.) *The Rights of the Child in Nigeria* (Nigerian Institute of Advanced Legal Studies, 1996) pp.12-27, p.26.

<sup>62</sup> Isabella Okagbue, 'The Treatment of Juvenile Offenders,' p.269. Approved Institutions are established for juvenile offenders for education, training and developing a good conduct. Sections 8, 9 and 14. Children and Young Persons (Approved Institutions) Regulation, Cap. C 10, Laws of Lagos State 2005; Remand Centres are a place of detention of persons who are not less than 16 years but under 21 years of age either for trial or sentence. Section 3(1) Borstal Institutions and Remand Centres Act, Cap B11 (LFN) 2004; Borstal Institution is a place where offenders who were not less than 16 but under 21 years of age on the day of conviction may be detained; and given training and instruction conducive to their reformation and the prevention of crime for three years. Section 3(1)(b), Borstal Institutions and Remand Centres Act, Cap. B11 (LFN) 2004; The Prison Act states that juveniles under 16 years of age are to be separated from adults. Section 16(b) Prisons Regulations, Cap. P29 (LFN) 2004.

custodial institutions. 329 (85.9%) of the juveniles reported that they had received advice and counselling from the custodial officers.<sup>63</sup> However, less than half 180 (48.3%) of the juveniles had access to education. Also, 197 (52.8%) had access to vocational training.<sup>64</sup> Apart from counselling which was reported on a positive note, educational and vocational facilities were inadequate or non-existent. Conversely, an effective rehabilitation programme must include measures such as: education; vocational training; individual and group counselling, psychiatrist and psychological treatment.<sup>65</sup> Apparently, the rehabilitation objective was not fulfilled.

In 2003, the Constitutional Right Project (CRP) equally revealed the issue of pre-trial detention. Out of the 171 juveniles in the Study, more than half (58.5%) were detained in police cells.<sup>66</sup> Focus Group Discussions (FGDs) were conducted with the juvenile offenders in the institutions. They expressed dissatisfaction with the feeding, gross inadequacies in the supplies of bedding and overcrowding.<sup>67</sup> In the North East zone, the Remand Home was an open place so juvenile offenders were chained and handcuffed for security reasons. The use of corporal punishment was common. The juvenile offenders at the Kaduna Borstal mentioned that offences such as attempts to escape, fight or stubbornness could attract horse whipping, frog jumping, labour or lock up in the guardroom for three days.<sup>68</sup> Furthermore, researchers in Enugu and Cross River States (Eastern Nigeria) observed that juveniles were not separated from adult hardened criminals. Worse still, there were no custodial institutions in Enugu, Cross River, Imo and Federal Capital Territory (FCT).<sup>69</sup> A rehabilitation programme should be conducted in a condition that accords with the concept of decency: non-use of corporal punishment; no disciplinary isolation, lack of mechanical restraints and overcrowding. In addition, there should be provision of adequate medical and dental care.<sup>70</sup> This study revealed otherwise and this rehabilitative goal was non-existent. The assertion of Martinson that rehabilitation does not work captures the situation of juvenile offenders in these institutions.<sup>71</sup>

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<sup>63</sup> Etannabi EO Alemika and Innocent C Chukwuma, *Juvenile Justice Administration in Nigeria*, pp.70,74.

<sup>64</sup> *Ibid*, pp.71, 75-76.

<sup>65</sup> Paul Holland and Wallace J Mlyniec, 'Whatever Happened to the Right to Treatment? The Modern Quest for a Historical Promise' *Temple L. Rev* 68 (1995) 1791-1836.

<sup>66</sup> Chinwe R. Nwanna and EN Akpan, *Research Findings of Juvenile Justice Administration in Nigeria*, pp.88-89.

<sup>67</sup> *Ibid*, p.113.

<sup>68</sup> *Ibid*, p.115.

<sup>69</sup> *Ibid*, p.110.

<sup>70</sup> Paul Holland and Wallace J Mlyniec, 'Whatever Happened to the Right to Treatment? 1791-1836

<sup>71</sup> Robert Martinson, What Works? Question and Answers About Prison Reform Public Interest, *The Public Interest* 35 (1974) 22.

It is apparent that the juvenile justice system was in need of urgent reform. A National Conference was convened<sup>72</sup> which concluded that the existing legal framework was being implemented in a non-beneficial manner to juvenile offenders. Based on this, the Conference urged the immediate 'implementation of the Convention on the Rights of the Child (Children's Convention) in the domestic order'.<sup>73</sup> In 2003, the Children's Convention was domesticated in Nigeria as the Child Rights Act.

### **3 Child Justice 2003-2014**

Nigeria ratified the Children's Convention in April 1991 and the African Charter on the Rights and Welfare of the Child in July 2001.<sup>74</sup> However, under the Nigerian legal regimes, treaties are mainly implemented by express legislative assent. For instance, section 12 of the 1999 Constitution states that 'no treaty between the Federation and any other country shall have the force of law except to the extent to which such treaty has enacted into law by the National Assembly'.<sup>75</sup> This implies that the Children's Convention can only be enforced in Nigeria after its re-enactment as part of the laws of the Federal Republic of Nigeria.

A combination of factors has constituted impediment to its re-enactment by the country and adoption in some states up until now. The first is the federal structure of Nigeria. The National Assembly can only make laws regarding matters on the Exclusive Legislative List.<sup>76</sup>

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<sup>72</sup> Report on National Conference on Juvenile Justice Administration, 2-3 July 2002, Sheraton Hotel, Abuja p.21.

<sup>73</sup> Ibid.

<sup>74</sup> Status of Ratification of the Convention on the Rights of the Child <http://www2.ohchr.org/english/law/crc-ratify.htm> (July 2010). Ratification Table: African Charter on the Rights and Welfare of the Child <http://www.achpr.org/instruments/child/ratification/> (August 2014). There are two Optional Protocols to the Convention on the Rights of the Child. Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) GA resolution A/RES/54/263 of 25 May 2000, Nigeria signed on 8 September 2000 and ratified 25 September 2012. Optional Protocol on Sale of Children, Child Prostitution and Child Pornography (OPSC). General Assembly resolution A/RES/54/263 of 25 May 2000, Nigeria signed on 8 September 2000 and ratified 20 September 2010.

<sup>75</sup> Cap. C23 ( LFN), 2004.

<sup>76</sup> Section 4(2), by the Second Schedule to the Constitution, there are three types of Lists: Exclusive, Concurrent and Residual Lists. The National Assembly can solely legislate on the 68 items on the Exclusive Legislative Lists; both the National Assembly and the state Houses of Assemblies can legislate on the 30 items on the Concurrent Legislative Lists. Any item that is not on the two Lists, automatically falls into the Residual List. The State Houses of Assembly legislate on items in the Residual List. 1999 Constitution Cap.C23 (LFN), 2004.

The Constitution further provides that:

The National Assembly can make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.<sup>77</sup> But “a bill for an Act of the National Assembly passed pursuant to this subsection shall not be presented to the President for assent and shall not be enacted unless it is ratified by a majority of all the Houses of Assembly in the Federation.<sup>78</sup>

In this instance, matters relating to children are not on the Exclusive List, the National Assembly can make laws to implement the Children’s Convention but subject to ratification by a majority of the Houses of Assembly. Ordinarily, this should not be difficult since the Convention provisions are basically for the child’s overall development and protection. However, some State Houses of Assembly were not favourably disposed to a number of the provisions in it, thus refused to ratify. The National Assembly bypassed this hurdle by applying section 299 of the Constitution.<sup>79</sup> It provides that ‘the National Assembly has the legislative powers to make law for The Federal Capital Territory (FCT), Abuja’.<sup>80</sup> Consequently, the Children’s Convention was enacted as the Child Rights Act 2003 for Abuja. Since the provisions are on children issues, which are on the Residual List and under the jurisdiction of the State Houses of Assembly, states have the prerogative to adopt the CRA as part of their laws.

Secondly, Nigeria operates three different legal regimes simultaneously: English Common Law, the Islamic Sharia Law and Customary Law.<sup>81</sup> The first Bill on Children’s Rights was introduced in 1993 but could not be passed into law by the military government due to opposition from religious groups and traditionalists. Consequently, a Special Committee was set up to ‘harmonise the Children’s Bill with Nigerian religious and customary beliefs’. In 2002, the revised Children Bill encapsulating rights and responsibilities of children in Nigeria as well as a renewed system of juvenile justice was rejected for the same reasons.<sup>82</sup> As mentioned earlier, the CRA was eventually enacted in 2003. Presently, 24 states have adopted the CRA as their state laws.<sup>83</sup> In addition, out of the 12 Sharia implementing States, only Jigawa has adopted the CRA.<sup>84</sup>

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<sup>77</sup> Section 12(2), *ibid.*

<sup>78</sup> Section 12(3), *ibid.*

<sup>79</sup> 1999 Constitution Cap. C23, (LFN), 2004.

<sup>80</sup> *Ibid.*

<sup>81</sup> Obilade, *The Nigerian Legal System* pp.64-110.

<sup>82</sup> Report on the Implementation of the Convention on the Rights of the Child in Nigeria.

<sup>83</sup> These are Abia, Anambra, Bayelsa, Ebonyi, Ekiti, F.C.T. Abuja, Imo, Edo, Delta, Jigawa, Kwara, Kogi, Lagos, Nasarawa, Ogun, Ondo, Oyo, Osun, Plateau, Rivers, Benue, Akwa Ibom, Cross Rivers, Taraba.

### **Customary Law Arguments and CRA**

In the Nigerian context, some provisions of the CRA provide an insight into cultural relativism and shed some light on the reluctance of some states to adopt or enforce it for contradicting the customs of the people. For instance, sections 21-23 CRA prohibit child marriage; no person shall tattoo or make a skin mark or cause a tattoo or skin mark to be made on a child,<sup>85</sup> a child shall not be used for begging for alms or guiding beggars.<sup>86</sup> It provides for an array of rights that a child is entitled to and most significantly, the right of the 'child to free, compulsory and universal basic education'.<sup>87</sup>

These provisions touch the core of some cultural practices in Nigeria. In some states, for example, girls are withdrawn from schools for early marriages, even betrothed from childhood.<sup>88</sup> Tattoo on the skin is seen as a form of identification or beatification in some parts of the country. In the Northern part of Nigeria, child beggars or *almajiris* are an endemic feature of that society.<sup>89</sup> Rights conferred on children are regarded as alien to our culture wherein children are to be seen and not heard.

Therefore, even for some states that have adopted the CRA, there may still not be wholesale application due to the cultural factors highlighted above. It has been suggested that change and integration must be achieved with local initiatives and involvement that does not compromise the 'cultural integrity of the people'. Local people and cultural communities must feel a sense of ownership of the process of change.<sup>90</sup> It is equally imperative to sustain the cultural context of the African Children's Charter even with the tools, agencies and strategies to be relied upon.

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Only five Northern states such as Jigawa, Kwara, Kogi, Nasarawa and Taraba have adopted the CRA. Report from Sharon Oladiji, Project officer, Child Protection and participation Section UNICEF, U.N. House Central District, Abuja.

<sup>84</sup> The other States are Niger; Bauchi; Borno; Gombe; Jigawa; Kaduna; Kano; Katsina; Kebbi; Sokoto and Yobe

<sup>85</sup> Section 24(1) CRA.

<sup>86</sup> Section 30(2)(a),(c) *ibid.*

<sup>87</sup> Section 15(1) *ibid.*

<sup>88</sup> *Children's and Women's Right in Nigeria: A Wake- Up Call, Situation Assessment and Analysis 2001.* A publication of National Planning Commission, Abuja and UNICEF Nigeria 2001, p.200. The 1991 census gave a detailed breakdown of the ages at which females are married in Nigeria. It indicated that 2% of Nigerian married women had entered into marriage by the age of ten. The Nigeria Demographic and Health Survey (NDHS) in 1999 revealed large zonal variation in the mean age of marriage. Females in the North marry on average about five years earlier than those in the South. In the North West, the median age of female marriage was 14.6 years but in the North East (slightly higher) at an average of 15.0 years.

<sup>89</sup> Sarah Oloko, UNILAG/UNICEF Pilot Survey on Child Protection Issues in Nigeria 2005.

<sup>90</sup> Bonny Ibhawor, 'Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African State,' *Hum.Rts.Q* 22(3) (2000) 838-860.

This can only be achieved by using international law as well as socio-legal methods to present an understanding of an African Charter reflective of 'cultural context.'<sup>91</sup> A culturally sensitive African Children's Charter can provide the necessary legal framework for some of the provisions in the CRA. The implementation of the CRA is achievable because some states have Laws prohibiting some of these cultural practices.<sup>92</sup>

### **Sharia Law Arguments and CRA**

The CRA emphasizes child oriented justice which stresses reintegration of the child offender to play a constructive role in society. On the other hand, the underlying objective of the Sharia legal system is deterrence, retribution and compensation. In fact, for *hadd* offences, the *hudud* (punishments) are copied from the Quran, these are very severe and non-amendable.<sup>93</sup> Since the Sharia States have incorporated the strict application of the *hadd* offences, one can assume that a child offender will not be spared.

Closely related to this is the age of criminal responsibility under the Sharia Penal Code. Criminal liability for *hudud* begins from the age of puberty.<sup>94</sup> However, the period of puberty is somewhat flexible as children attain maturity at different times. This signifies that children below the age of 18 years can be sentenced to death and amputation. For instance, in Zamfara State, 17 year old Bariga Ibrahim<sup>95</sup> was flogged for becoming pregnant outside marriage in 2001. The Committee on the Rights of the Child Concluding Observations noted with concern the existence of the death penalty to persons below 18 under Sharia law.<sup>96</sup>

Hence, in respect of the Sharia legal system, change is imperative. The internal change, it is submitted need to come from Islamic leaders in these Sharia states working with Islamic jurists.

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<sup>91</sup> Thoko Kaime, 'The Foundation of Rights in the African Charter on the Rights of the Child and Welfare of the Child: A Historical and Philosophical Account,' *African journal of Legal Studies* 3 (2009) 129.

<sup>92</sup> Ebonyi State Law 010 (2000) on the Abolition of Harmful Traditional Practices against Women and Girl; Cross River State Girl Child Marriage and Female Circumcision (Prohibition) Law 2000; Niger and Bauchi State have laws prohibiting the withdrawal of girls from school for purposes of early marriage; Sokoto State has a scheme whereby young married girls who dropped out of school can return to their education.

<sup>93</sup> Yahaya Yunusa Bambale, *Crimes and Punishment under Islamic Law* (Malthouse Press Limited, 2003) pp.107-109.

<sup>94</sup> Rudolf Peters, *Crimes and Punishment in Islamic Law, Theory and Practice from the Sixteenth to the Twenty-first Century* (Cambridge University Press, 2005) p. 170.

<sup>95</sup> *Children's and Women's Right in Nigeria: A Wake- Up Call*, p.230.

<sup>96</sup> Nigeria 3<sup>rd</sup> and 4<sup>th</sup> Periodic Report, Information Notes on Juvenile Justice Related Issues Argentina, Belgium Nigeria at the 54<sup>th</sup> Session of UN Committee on the Rights of the Child held in Geneva from 25 May to 11 June 2010. A publication of Defence for Children International 2010.

[http://www.juvenilejusticepanel.org/resources/?act=res&id=DCICRC54DCINotesJuly10\\_EN](http://www.juvenilejusticepanel.org/resources/?act=res&id=DCICRC54DCINotesJuly10_EN) (july 2014).



According to a foremost Islamic scholar, 'human agencies today should decide how to realise the underlying rationale of the text of the Quran and Sunna as sound social policy in the seventh-century Arabia and seek to articulate an equivalent purpose in the modern context.'<sup>97</sup> It should therefore be possible for the Sharia legal system to accommodate the ideal and objectives of the CRA.<sup>98</sup>

#### **4 Key Reforms in the CRA**

The Child Justice Administration in sections 211 to 259 covers procedure for handling cases of children in conflict with the law. These include: diversionary measures; investigation; adjudication; non-custodial disposition methods; research; planning; policy formulation and evaluation supervision as well as release and post-release supervision.<sup>99</sup> There are notable legal and institutional frameworks in the law.

#### ***Legal Rights for Children***

In pre-2003, these rights were scattered in different legislation with no specific guidelines, hence they were adult-interpreted. As earlier reiterated, the problems of violation of procedures experienced by adult offenders in the broader criminal justice system were transferred to this class of offenders.<sup>100</sup> Specifically, the CRA spelt out the rights of a child that has been apprehended, stipulating that there should be a presumption of innocence; notification of charges; a right to remain silent; a right to legal representation and free legal aid; and a right to have the parents present. The use of the terms 'conviction' and 'sentence' is prohibited and only a finding of guilt may be made. The proceedings must follow due process and the child's family must be allowed to participate in the trial.<sup>101</sup> These are important protective measures in child legislation. Towards this end, there is free legal service delivery through the establishment of pro-bono services by the Nigerian Bar Associations; various Non-Governmental Organisations (International Federation of Women Lawyers); respective offices of the Public Defender and the

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<sup>97</sup> Abdullahi Ahmed An-Na'im, *Islamic Family Law in a Changing World: A Global resource Book* (Zed Books Ltd, 2002) p.3.

<sup>98</sup> Iyabode Ogunniran, 'The Child Rights Act versus Sharia Law in Nigeria: Issues, Challenges and a Way Forward,' *Children Legal Rights Journal* 30 (2010) pp.62-80, p.71.

<sup>99</sup> CRA. In contradistinction to the CYPL, section 277 of the CRA defines a child as any person under the age of 18 years. It is a blanket provision without any distinction between a child and a young person. In accordance to Nigerian laws, this paper refers to juvenile offenders from 1943-2003 and child offenders as from 2003.

<sup>100</sup> *Human Rights and the Administration of Criminal Justice in Nigeria*, pp.284-292.

<sup>101</sup> Sections 210-216 CRA.

several zonal offices of the Legal Aid Council.<sup>102</sup> The Legal Aid Council with the National Youth Service Corps (NYSC) Directorate in Abuja evolved a new programme called Women/Children Detainees Initiative which it kick started in Suleja, Kuje and Keffi Prisons (Northern Nigeria). It focuses on the legal needs of children standing trial or in custody who cannot otherwise afford the services of a private legal practitioner. Through this Initiative, fines of some convicts have been paid; bail has been secured for some awaiting trials whilst legal representation has been entered in court for others.<sup>103</sup>

### ***Diversiory Measures***

These are measures for dealing with children, alleged or accused of infringing the penal law without resorting to judicial proceedings.<sup>104</sup> The police, prosecutor or any other person dealing with a case involving a child offender has the power to dispose of the case without resorting to formal trial by using other means of settlement. These are supervision, guidance, restitution and compensation of victims.<sup>105</sup> They are to encourage parties to settle the dispute. This method can be used if the case is for an offence of a non-serious nature and if there is a need for reconciliation; or the family, school or other institution involved has reacted or is likely to react in an appropriate manner; or if they think it appropriate in the interest of the child offender and the parties involved.<sup>106</sup> This is an international safeguard, the Committee on the Rights of the Child regards diversion from the court process as the most desirable option for child offenders. They considered such benefits as the practice of diversion fostering respect for the rights of the child whilst also saving government time, money and resources.<sup>107</sup> It is premised on a voluntary

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<sup>102</sup>Nigeria's 3<sup>rd</sup> and 4<sup>th</sup> Country Periodic Report, Convention on the Rights of the Child, Federal Ministry of Women's Affairs and Social Development Abuja, Nigeria 2008. A Juvenile Justice Administration Project was initiated by Penal Reform International (PRI) in collaboration with the Constitutional Rights Project (CRP) and the National Human Rights Commission (NHRC) with funding from European Union. Hence, a Juvenile Justice Working Group has been formed. Due to the support from UNICEF, a *Pro-Bono* Protocol on Juvenile Justice Administration is currently being developed. This will further facilitate legal aid to child offenders. Adedodokun, A. Adeyemi, 'A Demand-Side Perspectives on Legal Aid: What Service Do people Need? The Nigeria Situation'. <http://www.afrimap.org/english/images/documents/1> (December 2014)

<sup>103</sup> Legal Aid Act, Cap. L9 (LFN) 2004, Legal Aid Council. <http://www.legalaidcouncil.org/peoples-right.htm>. (March 2009).

<sup>104</sup> Article 40 of the Children's Convention. Diversiory measures need to comply with the condition precedents in the Beijing Rules 11.3 and para.27 CRC General Comment on juvenile justice. These are: diversion would be used when there is (a) compelling evidence that the child committed the alleged offence, (b) he/she freely and voluntarily admits responsibility, (c) no intimidation or pressure has been used to get that admission and (e) the admission will not be used against the child in subsequent legal proceedings.

<sup>105</sup> Section 209(1)(a) CRA.

<sup>106</sup> Section 209(2)(a, b, c) CRA.

<sup>107</sup> General Comment No 10, Children's Rights in Juvenile Justice, Fact Sheet #3, Promoting Diversion.

admission of the offence and the willingness to make amends. It can be used at the police station or by the courts or any other person dealing with a case involving a child.

Diversion Programmes in Nigeria include pre-trial community service, vocational or life skills training programmes, victim-offender mediation, family conferences and reparation to the victim.<sup>108</sup> UNICEF has worked hard to ensure these programmes are used. In 2004, it designed a 'Guideline for Establishing Diversion Programmes in Nigeria'.<sup>109</sup> The structure as well as the roles of the police, courts, social workers and NGOs were stated. A 2006 UNICEF study assessed the existing diversionary programmes in Nigeria.<sup>110</sup> Arguably, continuous improvement in skill and knowledge of diversion is ongoing. At the 2007 Nigeria Bar Association Conference, 1,800 copies of 'Profile of Diversionary Programmes in Nigeria' were freely distributed.<sup>111</sup> To further promote diversion, all officers dealing with children are specially trained. In 2009, a two day Workshop was organised by UNICEF and Lagos State.<sup>112</sup> The National Human Rights Commission (NHRC) has a partnership arrangement with UNICEF on diversionary programmes and representation for children in the Court. Towards this end, it has incorporated the Nigerian Bar Association (NBA) into its activities by trying to establish standards of diversion and *pro-bono* programmes in Nigeria. This is to entrench within the child justice system diversionary measures, family court, *pro bono* services and eventually One Stop Child Justice Centre.<sup>113</sup>

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<sup>108</sup> Nigeria's 3<sup>rd</sup> and 4<sup>th</sup> Country Periodic Report, Federal Ministry of Women's Affairs and Social Development Abuja.

<sup>109</sup> Ibid.

<sup>110</sup> The study was conducted in the six geo-political zones by selecting one state from each zone: Kaduna in the North West, Bauchi in the North East, Plateau and FCT in the North Central, Lagos in the South West, Anambra in the South East and Rivers in the South South. *Profile of Existing Diversionary Programmes in Nigeria* (UNICEF, 2006), [http://www.unicef.org/nigeria/ng\\_publications\\_diversion.pdf](http://www.unicef.org/nigeria/ng_publications_diversion.pdf) (July 2014).

<sup>111</sup> Nigeria's 3<sup>rd</sup> and 4<sup>th</sup> Country Periodic Report, Federal Ministry of Women's Affairs and Social Development Abuja.

<sup>112</sup> Workshop on Development of Diversionary Programmes and Strategies for Children in Conflict with the Law, UNICEF and Lagos State Ministry of Youth, Sports and Social Development Gateway Hotel Ota, 13-16 October, 2009. Participants included police, social workers, judicial officers, child development officers across the various Ministries and NGOs.

<sup>113</sup> National Human Rights Act of 1995 Statutory Report of the National Human Rights Commission for the year 2006. This was presented by the Ag. Executive Secretary, Mrs K. F Ajoni at the 2006 Annual Bar Conference of the Nigerian Bar Association held from 26 Aug.-1 Sept. 2006 at Port Harcourt. <http://www.nigeriarights.gov.ng/status.htm>. (April 2010).

### ***The Police Force***

A specialist child police unit is to be established in the Nigeria Police Force. It will consist of police officers who (a) frequently or exclusively deal with children or (b) are primarily engaged in the prevention of child offences.<sup>114</sup> The functions of the unit are: the prevention and control of child offences; the apprehension of child offenders; the investigation of child offenders and such other functions as may be conferred to the unit by the CRA or regulations under the CRA or any other enactment.<sup>115</sup> This novel provision is commendable because specialisation will enhance performance within the police in the handling of child offenders. As stated above, Nigeria operates a federal system of government and there are Police Commands in the 36 states and the Federal capital Territory. There are Juvenile Welfare Desk Officers in 24 states of the Federation.<sup>116</sup> There is an ongoing process to crystallise the foregoing into Specialised Children Units and include children's rights and child justice into the curriculum of the Police College.<sup>117</sup>

### ***Family Courts***

Family courts are established for the purposes of hearing and determining matters relating to children.<sup>118</sup> The courts have unlimited and exclusive jurisdiction in any criminal proceedings relating to child offenders.<sup>119</sup> The courts operate at two levels, the Magistrates' Court and the High Court. Appeal lies from the Magistrates' Court to the High Court.<sup>120</sup> At both levels, the court is duly constituted if it consists of a magistrate or judge and two assessors.<sup>121</sup> A well-delineated jurisdiction will enhance coordination. Secondly, this structure emphasises professionalism as assessors are to be persons educated in child psychology.<sup>122</sup> Officers with such backgrounds will better understand the socio-psychology of such offenders and proffer appropriate interventions to protect them.

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<sup>114</sup> Section 207(1)(a) and (b) CRA.

<sup>115</sup> Section 207(2), *ibid.*

<sup>116</sup> Nigeria's 3rd and 4<sup>th</sup> Periodic Report, Federal Ministry of Women's Affairs and Social Development Abuja.

<sup>117</sup> Child Justice Administration in Lagos State: A Qualitative Analysis, a research funded by the Central research Committee, University of Lagos, Nigeria (CRC No M2013/06).

<sup>118</sup> Section 149 CRA.

<sup>119</sup> By virtue of section 6(5)(e) of the 1999 Constitution, the Family Court at the High Court level is a superior court of record, that is, it is similar to any High Court, appeal can move from it to Court of Appeal and Supreme Court. At the Magistrate Court level, the Family Court is similar to just any other magistrate court. Cap C23 Laws of the Federation of Nigeria (LFN) 2004.

<sup>120</sup> Sections 149, 150, 153(5) CRA.

<sup>121</sup> Sections 152(3) and 153(3), *ibid.*

<sup>122</sup> *Ibid.*

The courts are to apply novel procedural safeguards which are based on international juvenile justice standards. Proceedings in the family courts must take cognisance of two factors. First, it must be conducive to the 'best interest of the child' and conducted in an atmosphere of understanding, 'allowing the child to express himself and participate in the proceedings'.<sup>123</sup> The best interest approach is to avoid arbitrary decisionmaking with respect to the child's essential needs using the child's physical and psychological well-being as its cornerstone.<sup>124</sup> On participatory rights, the underlying philosophy is that a child who is capable of forming his or her own views is given the right to express those views freely and due weight shall be given to them according to the child's age and maturity.<sup>125</sup>

Secondly, 'the reaction taken is always in proportion not only to the circumstances and gravity of the offence, but also to the circumstances of the child and needs of society.'<sup>126</sup> The overarching principle is the need for a comprehensive understanding of a child's personal development, including the interaction with his or her environment before considering social reaction for certain behaviour.<sup>127</sup> Overall, in the exercise of its jurisdiction, the family courts are to be guided by the principle of reconciliation of the parties involved or likely to be affected by the result of the proceedings, including the child, the parents or guardian or any person having parental responsibility or other responsibility for the child. The court is also required to encourage and facilitate the settlement of any matter before it in an amicable manner.<sup>128</sup>

The philosophy of a Family Court is principled on the theory of therapeutic jurisprudence. The Family Court model not only aspires to avoid law-produced harm, but also attempts to heal and preserve the family by addressing legal problems and underlying personal and social problems. The role of the Family Court is not only to adjudicate on issues but also to assist in restoring family stability.<sup>129</sup> It is submitted that a properly trained Family Court personnel will enhance the position of child offenders by ensuring their rights are preserved and will encourage early reintegration of such offenders with their families.

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<sup>123</sup> Section 215(1)(a) CRA.

<sup>124</sup> Cynthia Conward, 'The Juvenile Justice System: Not Necessarily in the Best Interests of Children' *New. Eng. L. Rev.* 33(1) (1998-1999) 43.

<sup>125</sup> Dominic McGoldrick, 'The United Nations Convention on the Rights of the Child,' *International Journal of Law Policy and the Family* 5(2) (1991) 141.

<sup>126</sup> Section 215(1)(b) CRA.

<sup>127</sup> William Schabas and Helmut Sax, *A Commentary on the United Nations Convention on the Rights of the Child, Article 37 Prohibition of Torture, Death Penalty, Life Imprisonment and Deprivation of Liberty* (Leiden: MartinusNijhoff Publishers, 2006) p.81.

<sup>128</sup> Section 151(3)(a) and (b) CRA.

<sup>129</sup> T. Reuters, Unified Family Court and the Child Protection Dilemma *Harv. L. Rev.*, Vol.16, (2003) 2101.

Presently, more than ten states have created family courts. Ondo State is constructing a Family Court Complex. Lagos State has restyled the juvenile courts at the magisterial level to Family Courts. Appeals go to the Family Courts at the High Court level. The state is also building new courts with modern facilities to ensure effectiveness. Some states have also introduced the legal framework to use in the courts. The Ondo State Family Court Practice Directions.<sup>130</sup> Anambra State Family Court (Procedure) Rules.<sup>131</sup> Several states continue to organise training courses for the judges and magistrate in the Family Court so that the officers can be properly grounded and appreciate the philosophical basis of this new court. It is submitted that the family court is a specialized court for child offenders

### ***Non-custodial Disposition Methods***

The reform created two new methods to widen the ambit of non-custodial disposition methods. The child offender can be ordered to participate in group counselling and undertake community service under supervision.<sup>132</sup> These provisions will widen the ambit of non-custodial disposition methods for the Family Courts. First, counselling entails when a person occupying regularly or temporarily the role of counsellor, offers or agrees explicitly to offer time, attention and respect to another person or persons temporarily in the role of client<sup>133</sup> Ogunniran argues that this method is workable and is a welcome development especially as from the nature of juvenile offending in Nigeria, status offences are prominent.<sup>134</sup> Counselling sessions can be used for both the offenders and their parents. Secondly, the social welfare officers can undertake this service. Consequently, there is a ready institutional framework with minor adjustments.<sup>135</sup>

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<sup>130</sup> Supplement to Ondo State of Nigeria Official Gazette, No 10 vol.35, 13 May 2010.

Anambra State ASL No14 Family Court (Constitution of Membership of High Court Level) order 2008; ASL 15 Family Court (Constitution of Membership at Magistrate Court Level) order 2008 and ASL 1: Family Court (Procedure) Rules 2009.

<sup>131</sup> Anambra State ASL No14 Family Court (Constitution of Membership of High Court Level) order 2008; ASL 15 Family Court (Constitution of Membership at Magistrate Court Level) order 2008 and ASL 1: Family Court (Procedure) Rules 2009.

<sup>132</sup> Section 223(1)(d)(i, iii) CRA.

<sup>133</sup> Windy Dryden, David Charles –Edwards & Ray Woolfe (eds.) *Handbook of Counselling in Great Britain* (London: Roulledge, 1989) p.4.

<sup>134</sup> This was based on three studies-CLEEN, CRP and UNICEF (2003) on type of offences committed by juveniles in detention. It showed the following: Property 45%; status offences 38%, personal offences 12% and public order offences 5%. The property offences were theft, fraud, robbery; the status offences were beyond parental control and truancy; the personal offences were fighting and rape; and the public order offences were demonstration and riot. UNICEF Fact Sheet, Situation of Juvenile Justice in Nigeria. <http://www.juvenilejusticepanel.org/resource/items/U/N/UNICEFFactsheetPublicAttitudesJJNigeria> (January 2011).

<sup>135</sup> Iyabode Ogunniran, 'The Lock and Key Phenomenon', 15.

As regards the second non-custodial option, a community service is a sanction of the court requiring the offender to undertake the performance of a certain number of hours of unpaid work for the good of the community. It views the community as a victim, hence requires reparation and restitution in kind. Due to personalised individual placement, it affords the offender the opportunity to enhance his feelings of self-worth and self-respect<sup>136</sup> The effective use of community service in the Family Courts will reduce the use of custodial sentences, avoid the various abuses of child offenders in the institutions and ultimately accord with the international standards of earliest reintegration of such offenders into the society<sup>137</sup>

### **Positive Strides for Child Offenders**

A child offender will not be imprisoned or subjected to corporal punishment.<sup>138</sup> In addition, a child offender shall not be subjected to the death penalty or have the penalty of death recorded against him.<sup>139</sup> About 370 children in Borstal training institutions have access to life skills, anger management and training. 200 indigent children were given free legal services and counselling. For detailed information on care and protection for children in institutions, an 'Assessment Tool to assist National and State government in the implementation of Child Justice Administration' has been developed for all the levels in the child justice system.<sup>140</sup> To further strengthen the administration of child justice, the National Child Rights Implementation Committee has been established to ensure the observance and continually review the law amongst others.<sup>141</sup> Relatedly, there are state child justice administration committee comprising of International Federation of Women Lawyers (FIDA), State Ministry of Women Affairs and Social Development (SMWAD), NHRC, NBA, NGOs, Police, Prison, (Faith Based Organisations) FBOs and the

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<sup>136</sup> Jon F Klaus, *Handbook on Probation Services Guidelines for Probation Practitioners and Managers* (United Nations Interregional Crime and Justice Research Institute, 1998) p.15.

<sup>137</sup> Ogunniran, 'The Lock and Key Phenomenon,' 15-16. By section 347 Administration of Criminal Justice Law 2011, the courts in Lagos State can make community order service. Presently, this applies to only adult offenders.

<sup>138</sup> Section 221(1)(a and b) CRA.

<sup>139</sup> Section 221(1)(c), *ibid. Modupe v The State* (1988) 4 NWLR (pt.87) 130 at 142, the Supreme Court held that the age of the accused at the time of commission of the offence was the age to be attributed to the offender. Therefore if the offender had not attained the age of 17 years at the time the offence was committed, it is wrong for the court not only to sentence him to death but to pronounce or record such a sentence. In *Guobadia v The State* (2004) 6 NWLR (pt.869) 360 at 368-369, the appellant was charged for murder. In overturning the sentence of death, the Supreme Court held that where a juvenile is below the age 17 years at the time of committing murder, sentence of death will not be passed. Rather, he would be detained subject to Governor's pleasure.

<sup>140</sup> Nigeria's 3<sup>rd</sup> and 4<sup>th</sup> Periodic Report, Federal Ministry of Women's Affairs and Social Development Abuja.

<sup>141</sup> Sections 260-262 CRA.

media in several states. The Committee is reinforcing the provisions of *pro bono* services, counselling and legal aid for child offenders.<sup>142</sup>

### **Policies**

The Federal Ministry of Women Affairs introduced a National Plan of Action (NPA) on CRC/CRA 2009-2015.<sup>143</sup> On the child justice system, it seeks to strengthen the machinery for monitoring and preventing juvenile crimes at all levels in the society, with the aim of minimising offending and delinquent behaviour. The strategies for such are: the re-introduction of civic and moral education in the school curriculum; establish mechanisms for the placement of social welfare personnel in schools to (amongst others things), reduce victimisation, criminality and anti-social behaviour within schools and communities; create awareness and involve the entire community in crime and delinquency prevention through schools, churches, mosques and associations within the community.<sup>144</sup> Again, the delinquency strategies enshrined in the NPA if implemented can assist child justice administration in Nigeria.

### **Conclusion**

The 100 years of child justice development in Nigeria have transited several periods. The first major period, 1914-1943 witnessed the emergence of juvenile delinquency as well as inadequate legal and institutional frameworks that were introduced to tackle it. In the second period, 1943-2003, juvenile courts and Social Welfare Officers were created and appointed to ameliorate the problems with young offenders. The British colonial administrators further introduced the CYPL in 1958. Nigeria became independent in 1960 and the political quagmire affected many sectors of the country. The CYPL was the main legislation and juvenile offenders were subjected to horrendous treatments from the point of arrest to institutionalisation.

The CRA has launched several innovative changes. Legal rights for children are specifically stated which can translate to child sensitive applications. Diversionary measures are now stipulated to reduce the number of offenders facing the rigours of the judicial system. There are Specialised Children Police Units, which are ongoing processes across the country. The Family Courts have exclusive and unlimited jurisdiction in cases of child offenders. The judicial process

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<sup>142</sup> Nigeria's 3<sup>rd</sup> and 4<sup>th</sup> Periodic Report, Federal Ministry of Women's Affairs and Social Development Abuja.

<sup>143</sup> National Plan of Action on CRC/CRA 2009-2015, Federal Ministry of Women's Affairs and Social Development, Abuja.

<sup>144</sup> *Ibid*, p.33.



is enmeshed with international safeguards to further protect child offenders. Two novel non-custodial disposition methods have been introduced to counter the ineffectiveness of institutionalisation and promote the earliest reintegration of the offenders. All the foregoing are first time prime reforms. Even the Committee on the Rights of the Child Observations on the state of juvenile justice in Nigeria commended the country in the areas of progress recorded such as the enactment of the CRA; creation of family courts and specialised Children Police Units.<sup>145</sup>

For further progress, this writer aligns with the Committee's recommendation on non-imposition of the death penalty in Sharia implementing states; fixing the minimum age of criminal responsibility to 12 years; establishing uniform procedural rules in the family courts; limiting the length of pre-trial detention and ensuring children are held in detention for the shortest period possible.<sup>146</sup>

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<sup>145</sup> Nigeria 3<sup>rd</sup> and 4<sup>th</sup> Periodic Report, Information Notes on Juvenile Justice Related Issues Argentina, Belgium Nigeria at the 54<sup>th</sup> Session of UN Committee on the Rights of the Child held in Geneva from 25 May to 11 June 2010. A publication of Defence for Children International 2010.

[http://www.juvenilejusticepanel.org/resources/?act=res&id=DCICRC54DCINotesJuly10\\_EN](http://www.juvenilejusticepanel.org/resources/?act=res&id=DCICRC54DCINotesJuly10_EN). (July 2014).

<sup>146</sup> *Ibid.*