AN APPRAISAL OF JUVENILE JUSTICE ADMINISTRATION IN NIGERIA: ADVOCATING FOR THE RIGHTS OF CHILD OFFENDERS[1].

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Abstract

Juvenile justice is a track within the criminal justice system which aims to protect children from the harshness of the criminal procedures. Juvenile justice addresses three categories of children: those in need of care, those beyond parental control and children in conflict with the law. The aim of the system is to rehabilitate, reform and release children for proper integration into society. However, many systemic lapses violate the rights of these children instead of protecting them. It is these anomalies that have prompted this study, with the aim of advocating for the protection of these vulnerable children. This work analyses the legal frame work that provides for the protection of children in the criminal justice system and X-rays those factors that compromise these protections and exacerbate violations on the rights of the child. The work discovered that our juvenile justice falls abysmally lower in standard than what is obtainable in other jurisdictions and advocates for a positive change. Accordingly, the work recommends for review of our legal framework, particularly the review of 1999 Constitution (as amended), the adoption and implementation of the Child's Right Act by every state in Nigeria, adoption of diversion programmes and collaboration with various non-governmental organisations and communities.

1. Introduction

This study is very imperative, because our juvenile justice system is fraught with numerous inadequacies which violate the rights of children. The police, the court and the correctional institutions have failed to uphold the rights and welfare of the child. Hence this work advocates a serious change in the system in order to protect the

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rights of children. The police is usually the first correctional institution that the child comes in contact with, but police men often expose the child to a great deal of violence by not adhering to the stipulations of the law. The Child Rights Act provides for the establishment of Specialized Children Unit within the Nigerian Police; however, studies reveal that many police stations do not have them. Further, the Family Court that is provided for protection of the rights of these children have not been established, hence many children are subjected to criminal trials. Furthermore, the dearth of correctional institutions is a major threat to the realization of effective juvenile justice administration in Nigeria, for instance studies reveal that out of thirty –six states in Nigeria, only eleven states have functional Remand and Borstal Institution. Hence, this work makes a serious case for effective change in the system by proffering answers to the following nagging questions that must be resolved in order to have an effective juvenile justice administration in Nigeria. Firstly, whether the Family Court is established in all the States in Nigeria and what is the position of children that do not have access to Family Courts. Furthermore, whether our correctional institutions cater for the needs and welfare of children. Finally, whether the provisions of the various legal framework are adequate for the protection of the rights of the child.

1.1 Legal Status of the Child

The legal status of the child can be traced to the period of the industrial revolution and the religious and moral revival of the early 19th century.[2] Up until that time, both adults and children alike were subject to the same laws and penalties including such harsh treatment as flogging, imprisonment and hanging. The only concession granted to child offenders under the Common Law was that children below a certain age were presumed *doli incapax* or incapable of committing crimes. This exception was not, however, a reflection of any general benevolence towards children, but was rooted in the Common Law notion of *mens rea* or a guilty mind which was a prerequisite to criminal culpability[3]. The first part of the 19th century however, witnessed movements for the reform of adult offenders and the crusade against slavery and by the middle of the 19th century, public conscience was also directed to the treatment of

[2] S M Davis, *Children in the Legal System* (2nd edn, United State of America: The Foundation Press Inc, 1997) p. 760
[3] *Ibid*.

juvenile offenders[4] as explained by the United States Supreme Court in the case of *Re Gault:* [5]

> The early reformers were appalled by adult procedures and penalties and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals. They were profoundly convinced that society's duty to the child could not be confined to the concept of justice alone. They believed that society's role was not to ascertain whether the child was 'innocent,' but ... (What could be done)… in his interest and in the interest of the state to save him from a downward career… The child… was to be made 'to feel that he is the object of (the state's) care and solicitude' not that he was under arrest or on trial.
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> Thus the philosophy of juvenile justice administration thrives on the protection and welfare of the child. The whole essence is that the child should be accorded the right to be protected at all times even where he commits an offence punishable by death. Thus, juvenile justice is a human right of the child that must be observed by all. Hence, the child should not only be given the right to education, health, good environment but must be protected at all times even when he runs afoul of the law, he should not be punished like criminals. The mere fact that he is a child gives him protection because of his malleable nature which can be corrected and molded to make positive impact in the society.[6]

Similarly, in 1922, Eglantyn Jebb pleaded through a memorandum which he addressed to 'Save the Children International Union', an organization based in Geneva, asking for the creation of a code for children.[7] The union was finally formed in 1946, but it was merged with the International Association for Child Welfare (IUCW). This merger led to serious lobbying with the United Nations Economic and

[4] M R Gardner, *Understanding Juvenile Law* (United State of America: Matthew Bender & Con Inc 1999) p. 53.
[5] (1967)387 U.S.1,87 S.Ct,1428,16L.Ed 2d 527
[6] Ibid.
[7] N F Uba, *Rights of the Child in Nigeria* (Owerri: Bon Publishers, 2002) p.8.

Social Council (ECOSOC) by pressing for its adoption as the Declaration of Geneva while approving its adoption. ECOSOC posited that the child must be protected beyond and above all consideration of race, nationality or creed and also that the child must have a family as an entity.[8]

In 1959, the United Nations adopted the Declaration on the Right of the Child (UNDRC), which affirmed the rights of children everywhere to receive adequate care from their parents and the community. This provided an enabling environment for the United Nations to make convincing attempts to consolidate the International Law on the basic rights of children to survival, education, improved health condition and protection from all forms of abuse and exploitation. Thus, the United Nations Convention on the Right of the Child (CRC) was finally adopted in 1989.[9] The rights enunciated in the African Charter on the Rights and Welfare of the child, which was adopted by the organization of African Unity (OAU), now African Union (AU) in 1990 complemented or reinforced the CRC.

1.2 The Concept of Juvenile Justice

The concept of juvenile justice is anchored on the recognition of the rights of the child to growth, protection, and effective participation in the society. It is intended to be corrective, preventive and advocacy oriented. The enactment of Children and Young Persons Laws (CYPL) and the application of special codes and procedures in matters concerning the child and the young person were intended to protect his welfare in the dispensation of justice and also to protect him from the highly technical, cumbersome and harsh nature of the procedure applied by ordinary courts, for instance taking evidence of a child victim and taking collaborative evidence especially in sexual offences. This is mainly because of the belief that juvenile administration would not be so much the determination of guilt or innocence and the application of penal sanction, but rather the determination of the most appropriate form of treatment in the best interest of the child.

[8] TU Onyemachi, 'Children Status and the Law in Nigeria' *African Research Review, An International Multi- Disciplinary Journal Ethiopia* (2010) Vol.4, p.93 htt://www, ajol. infi. accessed on 3/10/2016.
[9] *Ibid.*

Accordingly, Glanville Williams[10] posited that '...if the guiding principle in the treatment of children and young person's is to have regard to their welfare, then punishment may be irreconcilable.' Based on this, our law prohibits the imprisonment of children. A young person can only be sentenced to a prison term where he is so unruly in character or depraved. Whilst in prison he shall not be allowed, as far as it is practicable, to associate with adult prisoners and death sentence cannot be imposed on a young person who has committed an offence punishable with death.[11] Thus, in the case of *Odidika &Anor v The State,*[12] a 15 year old boy who in association with an adult robbed with firearms, was saved and released at the pleasure of the military Governor of Imo State on the ground that he was under 18 years of age when he committed the crime while the adult was not saved. This also tallies with the provision of Section 12 of the CYPL Lagos State.

Even international instrument stress on the humane treatment of young offenders. The Africa Charter on the Rights and Welfare of the Child[13] provides that in any matter that concerns the child, the basic interest of the child shall be paramount. The Charter provides further that death sentence shall not be pronounced for crimes committed by children.[14] Furthermore, the Charter provides some illustrations of giving humane treatment to the young offenders:

> Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and which reinforces the child's respect for human rights and fundamental freedom of others.[15]

The principle of juvenile justice provides that the child must be protected at all times including when he commits offence against the state. Hence, a child offender should not be punished but rehabilitated and integrated back into the system. Thus any treatment that is inimical to the right of the child must be jettisoned.

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[10]W Glanville, quoted in F Shmalleger, *Criminal Justice Today: An introductory Text for the Twenty First Century* (7thedn, United States of America: Pearson Education Inc, 2003) p 583.
[11]Africa Charter on the Rights of Welfare of the Child, 1990.
[12](1977) NMLR 295.
[13]Africa Charter on the Rights and Welfare of the Child 1990 Article 4 (1).
[14]*Ibid* Article 5 (3).
[15]*Ibid* Article 17.

The adoption of the concept of juvenile justice system is based on the notion that the mental and intellectual capacity of children cannot be equated with those of adults. This concept is meant to discourage the state from exposing children to any formal criminal processes or subjecting them to any unwarranted ill-treatment, because children do not have the ability or maturity as adults to influence their own social situation and make choices. Other important reasons for the adoption of this concept are perhaps, to discharge inadvertent over-reaction to minor's delinquency, and to avoid doing or causing any harm to worsen a young person's prospects and not inappropriately using criminal justice interventions where welfare needs are appropriate, adequate and present.[16] This vividly brings to mind the principle expressed in the Convention on the Rights of the Child (CRC) which provides that:[17] "in all actions concerning children, whether undertaken by public, or private social welfare institution, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration."[18]

Nowadyas, juvenile justice has metamorphosed from welfare issue to a human rights issue.*[19]* The essence is that children must be protected at all times even when they are in conflict with the law. Hence, in every matter that concerns the child, the child's best interest must be upheld. Thus juveniles have the right to be protected by the state even when they commit offences that are punishable by death. This is in accordance with the basic principles of Child's Right Convention that is based on protection of the interest of the child.

Juvenile justice administration has been influenced by the activities of humanitarian and penal reformers who reacted against cruelty to children under the guise of administering justice. Prior to the 19th century, children were harshly punished for even petty offences, but in the 19th century they were concerned, first, about increasing rates of delinquency and secondly, about the handling of juvenile offenders.[20] It was the realization of the negative consequences of the punitive treatment of young offenders that spurred humanitarian and penal reformers to

[16] T U Onyemachi, *op. cit,* p.92.
[17]Child Rights Act 2003.
[18]United Nations Convention on the Right of the Child 1989 Article 3.
[19] Per Kayode J.S.C in *Ransome Kuti v Attorney General of the Federation* (1985) 2 NWLR (pt. 6) 230.
[20] T J Barnard, *Cycle of Juvenile Justice* (1992), http://www.ncirs.go/ app/publications/abstract. .

advocate for the protection and treatment of young offenders. They argued that young offenders should be given opportunity for correction, reformation, rehabilitation and be restored into society as useful and law-abiding citizens, instead of being punished. These concerns heightened as delinquency rates increased, and the reformers realised that the young offenders were not born criminals but victims of circumstances beyond their control[21].

These agitations led to the emergence of general international legal instrument Conventions, Charters and principles, rules and guidelines that regulate the promotion and protection of the rights of the child and treatment of juvenile offenders to which Nigeria is a signatory such as, the Beijing Rules of the United Nation, Standard Minimum Rules for the Administration of Juvenile Justice, the Children and Young Person Act etc. The United Nations Convention on the Rights of the Child,[22] specifically provides that States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all from of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s) or any other person who has the care of the child. Hence, everyone in the society both the government and non-government body are mandated to protect the rights of the child.[23]

2. Legal Framework for Protection of Juveniles

Various framework have been provided for the regulation of treatment of children under the juvenile justice administration. However, for the purpose of this study only few shall be discussed under the international, regional and nation sphere.

2.1 The United Nations Convention on the Rights of the Child.

This Convention is the most widely endorsed human rights treaty in history, currently ratified by all the states parties in the world except United States of America and Somalia. It focuses on the best interest of the child, non-discrimination, participation, implementation of child's right which includes economic, social and cultural rights to the maximum extent of available resource, the rights to like, survival and

[21]*Ibid.*
[22]United Nations Convention on the Rights of the Child (1989) Article 19 (1).
[23] Ibid.

development. Hence, provisions in Article 37 and 40 of the United Nations Convention deal directly with the treatment of juvenile offenders by the government.

Specifically, Article 37 provides that state parties shall ensure that, no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility or release shall be imposed for offences committed by persons below 18 years of age; hence no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriates period of time. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the takes into account the needs of persons of their age. In particular every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits save in exceptional circumstance.[24] Furthermore, the Convention provides that every child deprived of his or her liberty shall have right to prompt access to legal services and other appropriate assistance as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent independent and impartial authority and to a prompt decision any such action.[25]

These provisions have profound implication on the treatment of juvenile offenders, they form the foundational philosophy of juvenile justice administration. However, in reality most of them are not implemented thus making these rights of the child a mirage. Also Article 40 provides that state parties should recognize the rights of every juvenile offender to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedom of others and which takes into account the child's age and the desirability of promotion the child's reintegration and the child's assuming a construction role in society.[26] In essence, the handling of juvenile offenders should promote the best interest of the child rather than inflict punishment by executing retribution and vengeance. Hence, every child alleged or accused of having infringed

[24]Un Convention on the Rights of the Child Article 37.
[25]*Ibid.*
[26]*Ibid* Article 4.

the penal law has the right to be presumed innocent and to be informed promptly and directly of the charges against him or her, and if appropriate through his or her parents or legal guardian and to have legal or other appropriate assistance in the preparation and presentation of his or her defence.[27]

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

These Rules provide guidelines for the protection of children's right in respect of their needs. Specifically, it encourages appropriate community programmes but this can only be possible when the communities are allowed to be involved in juvenile justice by creating adequate awareness. The Rules reiterate that careful consideration should be taken before depriving a juvenile his/her liberty and that specialized training should be given to all persons dealing with juveniles cases. The Rules encourage the organization and promotion of research as a basis for effective and policy formation. Basically, juvenile justice is to promote the wellbeing of the juvenile and to ensure that in any reaction to juvenile offenders, shall always be in proportion to the circumstances of both the offender and the offence. Specifically, Rule 18 recommends variety of non-custodial measures or dispositions. Such measures or dispositions include care, guidance and supervision orders, probation, community service orders etcetera.

2.3 Regional Legal Framework: Organization of African Unity (OAU) Charter on the Rights and Welfare of the Child

This instrument recognizes the vulnerable situation of most African children due to unique factors of their socio-economic, cultural, traditional and development circumstances, natural disasters, armed conflicts, exploitation and hunger. On account of the child's physical and mental immaturity, he/she needs special safeguards and care. Hence, in its preamble it avers that the child, due to the need of his physical and mental development, requires particular care with regard to health, physical, mental, moral and social development and requires legal protection in conditions of freedom, dignity and security. Particularly, Article 4 provides that, in all actions that concern the child, undertaken by any person or authority, the best interest of the child shall be the primary consideration. Also in all judicial or administrative

[27] *Ibid.*

proceedings affecting a child who is capable of communicating his/her own views, an opportunity shall be given for such child to air his/her views, either directly or through an impartial representative as a party to the proceedings and those views shall be taken into consideration by the relevant authority in accordance with provision of the appropriate law.

Article 27(2)(d) prohibits the press and the public from the trial of juvenile offender.[28] This is cardinal because, the essential aim of treatment of every child during the trial and also if found guilty of infringing any penal law shall be his or her reformation and reintegration into his or her family and social rehabilitation[29] above punishment retribution, deterrence incapacitation that are common goal of adult criminal justice. The Act reaffirms, adherence to the principles of the rights and welfare of the child contained in the declaration conventions and other instruments of the organization of African unity and in the United Nations and in particular the United Nation Convention on the Rights of the Child, and the OAU Head of State and Government Declaration on the Right and Welfare of the African child.

2.4 National Legal Framework: The 1999 Constitution (as amended)

The 1999 Constitution provides for the right of the child and for the establishment of Family Court as a division of High Courts specifically entrusted with the responsibilities for the enforcement of the rights of the child in Nigeria. Apart from establishment of Family Court, the Constitution also provides for safeguard for fair trial. These rights include, right to life and development which is very cardinal because life is the foundation upon which all other rights are predicated and is the most precious gift to every citizen, thus no one shall be deprived of his life. This right to life as guaranteed by the Constitution requires that state need not only to abstain from taking life but to take further positive steps to protect life, like making sure that juveniles who run afoul of the law are protected adequately. Hence, even those that commit serious offense should not be sentenced to death but rehabilitated and reintegrated back to the society.

[28]Guidelines 27 (2).
[29]Guidelines 27 (3).

Further, the Constitution provides for the right of the child to the dignity of his or her person and accordingly provides that the child shall not be subjected to any form of torture or inhuman or degrading treatment and the child shall not be required to perform forced or compulsory labor. Accordingly, the Constitution has specifically enumerated the acts, which will be regarded as violating the dignity of the person of the child and torture as used example physical brutalization of the human person or mental torture, like agony or worry.[30] Inhuman treatment on the other hand, could be a situation of deliberately causing severe pains, suffering, physical or mental which are not justifiable in law.[31]

Furthermore, the Constitution provides for the right to personal liberty which reiterates that the child should be free from physical restraint on his body, that he/she shall not be restricted bodily except in justifiable circumstance which are specifically recognized by the law, like restriction for education and welfare. Thus, children under juvenile justice should be adequately protected. Hence, casual arrest made especially with regards to states offences should be reduced to the barest minimum. Even when they are arrested, adequate effort should be made to notify their parents. Also safeguards inadequate non-discrimination which provides that no child shall be discriminated against due to circumstances of his birth, sex, religion. It also grants child the freedom of expression, hence, the child to express his opinion, receive and impart ideas and information without interference should be upheld.

Finally, the Constitution provides for right to privacy and fair hearing. The child is entitled to be heard in privacy and all records made in the course of the hearing should not be used against him in future. The child is entitled to be informed in the language he understands and in detail, of the nature of the offence with which he is accused or charged with. This must be done prior to trial either at the point of arrest or at the beginning of trial that is during arraignment.[32] Also, the Constitution provides that the child should have sufficient time to prepare for trial and adequate facilities, hence, section 36 (6) (b) of the 1999 Constitution provides that accused person must

[30]Mugaji v Board of Customs & Exercise (1982) 2 NCLR 552.
[31]Uzoukwu v Ezeonu (1991) 6 NWLR (Pt. 200) pg 708 and Onwo v Oko (1960) 6 NWLR 587.
[32]Mukailu v State (2001) 2 NWLR (pt.25) 765 MAJA v State (1980) INCR 212; Kalu Uwadinaka, D.C A case for the, Demise of the 'Holding charge' in Nigeria's criminal justice 'System, Benin Journal of public law, vol, 5-7.

be given adequate time and facilities for the preparation of his defense. As it complements the right to fair hearing, the court in exercise of this power, should grant adjournment to every accused person either to obtain the services of counsel or to call a witness that is material to his matter.[33] The child has the right to defend himself in person by choice. But the court must inform the accused of his right to be represented by counsel where he has none.[34]

2.5 The Child's Right Act

With respect to children in conflict with the law, the Child's Right Act provides that no child shall be subjected to the criminal justice process or to criminal sanctions but a child alleged to have committed an act which would constitute a criminal offence if he were an adult shall be subjected only to the child justice system and processes set out in this Act.[35] Furthermore, the Act provides that privacy of the child should be protected at all stages of child justice administration in order to avoid harm being caused to the child by undue publicity or by the process of labeling.[36] Hence, no information that may lead to the identification of a child offender shall be published for instance, the records of a child offender shall be kept strictly confidential and closed to third parties. It can only be made accessible only to persons directly concerned with the disposition of the case at hand or other duly authorized persons and not be used in adult proceedings in subsequent cases involving the same child offender.[37]

The Act further provided that professional education, in-service training, refresher courses and other appropriate mode of instructions shall be utilized to establish and maintain the necessary professional competence of all persons, including judges, magistrates, and officers of the specialized children police unit etcetera.[38] Furthermore, every persons employed in the child justice system shall reflect the diversity of children who come into contact with the child justice system and efforts

[33] 2007-2009 pp.179-207 on some of these Constitutional safeguards to fair trial as therein discussed- see CPA section 179, CPC section 218 *Umoru v the State* (2002) 9 NWLR (Pt. 771) 90 at 108-109, 1 *Babalola v the State* (1989) 7 S.C (Pt.1) 94 at 102.

[34] *Arior v Elemo* (1983) SCNLR 1, *Okon v State* (1995) 2 SCNJ 174.

[35] Child's Right Act, 2003 Section 204.

[36] *Ibid* section 205 (2).

[37] *Ibid* section 205 (3).

[38] *Ibid* section 206 (1).

shall be made by those concerned with the appointment of those persons to ensure the fair representation of women and minorities in the appointment[39].

What's more, it provides for specialization within the Nigerian police force which shall consist of police officers who frequently or exclusively deal with children or are primarily engaged in the prevention of child offences.[40] The unit shall be charged with prevention and control of child offences, the apprehension of child offenders, the investigation of child offences and such other functions as may be referred to the unit by this Act or by regulations made under this Act or by any other enactment.[41] Also members of the unit shall be continually trained and instructed especially for the functions conferred on the unit under subsection (2) of this section[42] also the Act provides that discretion should be exercised while dealing with the child offender. Hence, in view of the varying special needs of children and the variety of measures available, a person who makes determination on child offenders shall exercise such discretions as he deems most appropriate in each case, at all stages of the proceedings and at the different levels of child justice administration, adjudication and the follow-up of disposition.[43] Every person who exercises discretion shall be specially qualified or trained to exercise the discretion judiciously and in accordance with his functions and power.[44]

With respect to disposal of cases, the police dealing with a case involving a child offender shall have the power to dispose of the case without resorting to formal trial by using other means of settlement, including supervision, guidance, restitution and compensation of victims and encourage the parties involved in the case to settle the case out of court, as provided in the Act. Thus, investigation and adjudication before the court shall be used only as measures of last resort. *Section 210* provides that the legal status and fundamental rights of the child shall be respected at all times. Hence, in dealing with the child offender, his right to be presumed innocent, the rights to be notified of the charges, the rights to remain silent shall be upheld.[45]

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[39]*Ibid section* 206 (3).
[40]*Ibid section* 207 (1).
[41] *Ibid.*
[42]*Ibid section* 207 (3).
[43]*Ibid.*
[44]*Ibid.*
[45]*Ibid*.

With respect to initial contact with the child, Child's Right Act provides that on the apprehension of a child, the parents or guardian of the child shall be immediately notified or where immediate notice cannot be given within the shortest time possible after the apprehension, the court or the police, as the case may be, shall, without delay, consider the issue of release. Contact between the police and the child shall be managed in such a way as to respect the legal status of the child, promote the best interest and well-being of the child, avoid harm to the child, having due regard to the situation of the child and the circumstances of the case. The word "harm" according to Child Right's Act shall include the use of harsh language, physical violence, exposure to the environment and any consequential physical, psychological or emotional injury or hurt. Hence, *Section 212* provides that detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time. Where, it is possible, it should be replaced by alternative measures, including close supervision, care, by and placement with a family or in an educational setting or home[46].

Accordingly, while in detention, a child shall be given care, protection and all necessary individual assistance including social, educational, vocational psychological, medical and physical assistance, that he may require having regard to his age, sex and personality. Where the court authorizes an apprehended child to be kept in police detention the court shall unless it certified, that by reason of such circumstances as specified in the certificate, it is impracticable for him to do so; or in the case of an apprehended child has attained the age of the fifteen years, that no secure accommodation is available and that keeping in some other authority's accommodation would not be adequate harm from the child, secure that the apprehended child is moved to a State Government accommodation. Also, classification in the place of detention pending trial shall take account of the social, educational medical and physical characteristics and condition of the child, including his age, sex and personality.

In all, the Child's Right focuses on using diverse measures in dealing with the child laying emphasis on professional training of the police, so that they will be able to carry out their functions effectively.

[46] Child's Right Act,2003, *section* 212.

2.6 Children and Young People's Law (CYPL)

Section 3 **of CYPL** provides for the bail of arrested children and young persons. Thus, where a person apparently under the age of seventeen years is apprehended with or without warrant, and cannot be brought forthwith before a court of summary jurisdiction, the police officer in immediate charge for the time being of the police station to which such person is brought, shall inquire into the case and may in any case, and shall unless the charge is one of homicide or other grave crime or unless it is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute or unless the officer has reason to believe that the release of such person would defeat the ends of justice release such person on a recognizance being 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[47].Thus, the CYPL frowns on detention of children under the law and provides that where bail is not possible the child shall be detained in a suitable accommodation provided by the governor. However, this is practically impossible because of dearth of correctional institution in Nigeria.

3. Challenges Inherent in Juvenile Justice Administration in Nigeria

3.1 Lack of Research as a Basis for Planning Policy Formation

To improve juvenile justice administration, Nigerian Government should encourage research for generating policies to enhance the rights of juveniles for an effective juvenile administration. To achieve this, the Child Rights Act must be implemented, for instance the Act provides for research as a basis for planning policy formation. Hence, it reiterates that, the Federal and every State Government shall organize and promote necessary research as a basis for effective planning and policy formulation on child justice administration. Justice system policies shall be reviewed and appraised periodically, the trends, problems and causes of child delinquency and crime and the varying particular needs of children in custody. The Government shall also establish a regular evaluation of research mechanism built into the child justice administration system. Also the government shall collect and analyse relevant data

[47]CYPL *section* 3.

and information for appropriate assessment and future improvement and reform of the child justice administration system. Accordingly, the government shall systematically plan and implement, as an integral part of national development efforts, the delivery of services in child justice administration[48].

3.2 Conflict of Laws

One of the greatest impediment to juvenile justice administration is conflict of laws. With respect to the age of criminal responsibility, rather than adopt a single age of criminal responsibility, Nigeria has adopted various age demarcations under which responsibility may or may not be assigned depending on the circumstances of the offence. Thus, various legislations like Child's Right Act, Children and Young Persons Act, Companies and Allied Matters Act (CAMA),[49] Marriage Act,[50] Labor Act[51] and various laws have given diverse age definition for juveniles and this poses as threat to effective juvenile justice administration. Also with respect to corporal punishment, the Child's Right Act[52] provides that a juvenile should not be subjected to imprisonment or corporal punishment while the Criminal Code provides otherwise. In fact the Criminal Codes provides for death, imprisonment and corporal punishment[53] respectively and these conflicts act as a clog on the wheels of effective juvenile justice administration in Nigeria. Moreover, the Penal Code applicable in the northern States of Nigeria has copious provisions authorizing the sentence of corporal punishment under the guise of caning. In this wise, *section* 68 of the Penal Code provides the punishment which offenders are liable under the provisions of the Penal Code to include: death, forfeiture of property, imprisonment, detention in a reformatory, fine and caning. In fact, offenders who are of Muslim faith may in addition to the punishments specified in subsection (1) be liable to the punishment of *haddi* lashing as prescribed by Muslim law for offences contrary to sections 387, 388, 392, 401, 402, 403, and 404 of the Penal Code.

[48]*Op. cit*,*section* 238.
[49]CAMA *section* 257.
[50] Marriage Act *section* 18.
[51] Labor Act *section* 3.
[52] CYPA *section* 12(2).
[53]*Section* 17 Criminal Code Cap10 LFN 2004.

From the above provisions, it is crystal clear that the Penal Code expressly allows the punishment of caning which courts are to implement on offenders. The same Code had in *section* 55 expressly permitted the infliction of corporal punishment on children, apprentices and wives in the name of discipline by parents, school masters and husbands.[54] Just like the Penal Code, the Criminal Code[55] applicable to the Southern States of the federation provides for the sentence or whipping of the offenders. However, the Criminal Code restricted this sentence to males less than 17 years.[56] In a related perspective, the Criminal Procedural Code[57] has made more elaborate provisions to the effect that when any person is convicted of any offence for which he is liable to imprisonment for a period of six months or more, the court may, if it thinks fit, having regards to the prevalence of crime within its jurisdiction or to the antecedents of the offender, sentence such an offender to caning either in addition to or in lieu of any other punishment to which the offender is liable.[58] It must be noted that in Eastern States no sentence of whipping can be passed on any female or male, other than juvenile offenders.[59]

The Sharia legal code also provides for corporal punishment. The first state in Nigeria to legalize the implementation of the sharia legal system law was Zamfara State on the 27th October, 1999. This was followed by the promulgation into law of the Sharia Courts (Administration of Justice and other Courts in Criminal Proceedings in Islamic law and involving or relating to any offence, punishment, forfeiture by any person against the state).[60] The law provides the sentences of *haddi* lashing and mutilation of limbs amongst others as the sentence that Sharia courts could pass. It is clear from the above that the Sharia Legal Code provides for double streams of corporal punishment to wit: caning and mutilation of limbs.

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[54] For the moral efficacy and jurisprudential issues associated with *section* 55 of the Penal Code Particularly as it affects the discipline of wives by husband s, see Tarhule, V. *op. cit, p.140-141.*
[55] Cap 77 Laws of the Federation of Nigeria 1990.
[56] *Ibid section* 18.
[57] Cap C41 Laws of the Federation of Nigeria 2004.
[58] *Ibidsection* 387.
[59] Criminal Procedure (Eastern Region) Amendment Law 1955. See also Nwadialo F: The Criminal Procedure of the Southern States of Nigeria: Second Edition (Lagos: MIJ Professional Publishers Limited, 1987) p.230-231.
[60] See generally, part III of the Law dealing with jurisdiction of the Sharia Courts.

Although the Prisons Act[61] did not specifically make provisions for whipping or caning of inmates, the Prisons Regulations[62] made thereunder provides in regulation 49 a variety of punishments to be meted out to an inmate who has infracted prison discipline including but not limited to whipping with a cane. For effective juvenile justice our laws should be streamlined and any law that conflicts with protection of the right of the child should be jettisoned.

3.3 Non-Compliance/Non-Implementation of the Law

The problem with the administration of juvenile justice does not lie on dearth of laws but on implementation of the law. Hence, various laws have provided for procedures in the administration of juvenile justice but the courts, police and prison administrators do not adhere to them, for instance the provisions of International Covenant on Civil and Political Rights provide that in the determination of any criminal charge, the juvenile shall be informed promptly and in detail in a language which he understands, however, in Nigeria many young persons are arrested without giving them notice or their parents or guardians. The law also provides for private hearing with respect to juvenile matters but in practice most of their proceedings are conducted publicly in the normal courts.

The Constitution provides plethora of rights such as rights to fair hearing, rights to dignity of human person *et cetera*; however, in practice the courts do not comply with them, thus many juveniles proceedings are conducted in the normal court without upholding the juveniles rights to privacy. In the case of *COP v Uzodinma,*[63] Section 28 the Area Courts Edict 1967 made pursuant to section 390 CPC was held inconsistent with the Constitution for forbidding the appearance of counsel in a court of law in Nigeria. Also the Constitution provides for the right to interpretation of proceedings, particularly section 36(6)(e) of the 1999 Constitution provides that an accused 'shall have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence'. Such accused person must

[61] Cap. p 29 Laws of the Federation of Nigeria, 2004.
[62] Cap p. 29 Laws of the Federation of Nigeria, 2004.
[63](1982) 1 NLR 27. See also *Tulu v Bauchi N.A.*(1965) NMLR 343 and Inrisu v State (1968) NMLR 88, where the Supreme Court elevated this provision to the level of sacrosantctity.

notify the court accordingly.[64] However, the chosen interpreter must be satisfactorily competent.[65] These rights are often overlooked in the trial of juveniles.

Another cardinal right is the right to fair hearing which is provided in *section* 36 (4) of the 1999 Constitution and embodies the twin maxims of *audi alteram partem* (hear the other party)[66] and *nemo judex in causa sua* (nobody shall judge his own cause or matter) for there must be freedom from biases or likelihood of such.[67] Here, the test of bias or fair hearing/natural justice is an objective one and not by subjective assessment; it must be that of a reasonable right thinking member of the society[68]. Presumption of Innocence in section 36 (5) of 1999 Constitution stated that an accused is presumed innocent until his guilt is proved beyond reasonable doubt by the prosecution. Offence must also be known to law, thus the accused must be convicted of an offence defined in a written law wherein the penalty or punishment for the same must also be specified, or prescribed[69]. However in reality, these rights as provided by the Constitution are not complied with, for instance, many juveniles have been sentenced because they did not have the financial capacity to engage the services of an attorney to represent them in their matter. Right to silence is also very imperative thus an accused person must not be compelled to give evidence at his trial.[70] The Constitution also provides that no one shall be tried twice for an offence committed, it should be one trial only for one offence.[71]

With respect to custodial institutions, the law provides that institutionalization of young persons should be a measure of last resort, and for minimum necessary period and for the best interest of the child neither should corporal punishment be imposed on them. Hence, for effective juvenile justice, various institution under the juvenile justice administration must comply with the law.

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[64] *Gwonto v State* (1983) 3 S.C. 67.
[65]*Ajayi v Zaria N.A*. (1963) 1 ANLR 169; *R v Eguabor* (1962) 1 ANLR 287.
[66] *P H M B v Mrs Doris Edosa* (2001) NSCQR 533.
[67](1986) 2 SC. 128- *Garba v University of Maiduguri*, *Alsthorn SA v Saraki* (2005 3 NWLR (pt. 911) 208- *Kenon v. Tekam* (2001) 34 WRN 98.
[68]*Okoro v The State* (1988) 1 NWLR (pt. 74) 255; *Eyu v State* (1988)2 NWLR (pt. 78) 602; *Uso v Police* (1972) 11 SC 37.
[69]1999 Constitution (as amended) section 36 (12).
[70]Pursuant to *Section* 36 (11) of the 1999 Constitution; *Section* 159 (a) and (b) Evidence Act, Cap E14, LFN 2004.
[71]*Guru v State* (1996) 4 NWLR (pt. 443) 375.

3.4 Poverty

Apart from above factors, poverty is one of the major causes of juvenile delinquency poverty is noted for throwing children out to the streets in order to make ends meet. Recently, many children in Nigeria have been displaced in their homes because of insurgence attacks. Many have dropped out of school and will soon be lured into social vices in other to fend for themselves. Also the high rate of unemployment is another contributory factor that exposes children to delinquency. Therefore the government should rise and improve this condition by providing educational and job opportunities to people. The issue of poverty cannot be over emphasized because it has made many children to lose their cases because they cannot afford the services of legal practitioner to assist them do their cases. Apart from that, Government should fund the Courts, the police and custodial institutions in order to improve our juvenile justice system.

3.5 Lack of Training of Juvenile Justice Administrators

The need for professionalism and training is also emphasized by various legislation[72] that provides for professional education, in service training refresher courses and other appropriate modes of instruction .All shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases[73]. However, in practice this provision is rarely implemented. In the course of this study the researcher, observed that custodial institution personnel are not given adequate that are needed for adequate protection of children within the juvenile justice system.

3.6 Lack of Adequate Facilities

One of the greatest impediments to the right of the child under the juvenile justice administration is inadequate facilities. With respect to the police, the Act provides for establishment of specialized police unit whose function is to prevent of child offences and investigate child matters. The law provides police personnel within this unit should be trained in child matters for effective administration of juvenile justice. However, various studies observed that many police station do not have them. Hence exposing children to violence. In fact a study carried out on statement of juvenile

[72]Children and young Persons Act 1958, Child's Right Act, 2003, OAU Charter on the Rights of the Child 1979 Child's Right Act,1989.
[73]*Ibid* Article 22.1.

during arrest and detention by the police found that about two third (66.5%) of juvenile reported being verbally abused, physically assaulted (64.70%) and threatened with beating (68.5%). Only 13.7% reported being well fed in police cells and 12.9% were provided with adequate materials for personal hygiene.[74]

Also with respect to Family Court, many states do not have established Family Courts. In fact out of 36 state in Nigeria only about 23 have implemented the Act[75]. Hence, exposing children to abuse as they are subjected to criminal trial. This is contrary to 149 of the Act[76] which grants exclusive jurisdiction to Family Courts to hear and determine matters that relate to children. It further provides that no child shall be subjected to the criminal trial or to criminal sanctions. That comes to bear is whether children, in states that have not established Family Courts are protected. The answer is in the negative because they are subjected to criminal justice and sanctions.

4. Conclusion

The researcher observes that there are many factors that impede our juvenile justice system, hence, for juveniles in Nigeria to enjoy quality justice, everything that constitutes a clog in the wheels of juvenile justice administration must be jettisoned. On the issue of procedural abuse, the researcher observes that abuse runs through the gamut of Nigerian Juvenile Justice System, for instance, the police, the courts and custodial institutions all violate the constitutional rights of juvenile offenders. Specifically, the police violate juvenile offender rights at the point of arrest and their rights to bail are also violated. Also, when their cases eventually get to the court, the court denies them their fundamental rights as enshrined in the Constitution; for instance, at times the courts to not give them fair hearing and eventually sentences them to imprisonment without ascertaining their age in order to treat them according to the dictates of the law.

The study further reveals that one of the major causes of procedural abuse is the existing gaps in our laws. Thus, for juvenile offenders to enjoy their fundamental rights our laws must be reviewed and the existing lacunae filled. This will save our

[74] Children within the juvenile justice system in Nigeria: Psychopathology and psychosocial needs 7.7 Belle. O. Atilola and O.O. Omigbodum Ann Ib Postgrad Med. 2010 June 8(1) 34-39.
[75]Child's Right Act, 2003.
[76]ibid sec 149.

children from delinquency and the nation from insecurity unleashed by delinquent juveniles, the issue of poverty must also be properly addressed.

Furthermore, the work reveals that the current legislation that provides for juvenile administration of justice and the institutionalization of children does not appear to conform with the principles and provisions of the international standard like the provisions of the United Nations Convention on the Rights of the Child (CRC), the African Charter on the Rights and Welfare of the Children (CRWC), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Rules for the Protection of Juvenile Delinquency (The Riyadh Guidelines) and other relevant international standards .To achieve effective juvenile justice system ,urgent action is required to be taken by Nigerian government to ensure that the principles relating to juvenile justice as enshrined in the relevant international standards and norms are respected. The basic principles that need to be considered in the light of the general principles of the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (CRWC) etcetera; namely; non-discrimination, best interest of the child and participation are complied with. Hence, the child should be treated humanely in a manner that takes into account the special needs of persons of that age. Thus, deprivation of liberty should be used as a measure of last resort and for the shortest possible period of time and deprivation of liberty should never be unlawful or arbitrary. The juvenile should be treated with dignity at all stages of the proceedings and be accorded the right to due process for instance presumption of innocence, right to a prompt and fair trial, right to appeal et cetera.

Also, the dearth of remand and borstal institutions is also a major factor that must be addressed in order to have effective juvenile justice administration in Nigeria. The research observes that many States in Nigeria do not have remand or borstal institutions and this particular challenge has led to cohabitation of young offenders with adult criminals which expose them to abuse.

It is therefore recommended that the government should encourage implementation of the principles of child justice administration, in all their ramifications and this should be urgently undertaken by all States and the Federal Capital Territory. In this regard,

the Judiciary, the Bar, the Legislature and the Executive, as well as the civil society, and the international development partners should act collectively to ensure the enactment of the CRLs in the States that are yet to enact the law. All these steps must necessarily be taken in order to ensure that the following global decisions concerning the rights of the child are realized:

> The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.[77]

5. Recommendations

(1) **Review of Laws:** The 1999 Constitution should be reviewed particularly the chapter (ii) should be made enforceable for effective juvenile justice administration

(2) **Harmonization of different legal framework:** For there to be effective juvenile justice administration various conflicting provisions on the rights of the child should be streamlined for protection of the child.

(3) **Training and Research:** Adequate training and research should be given to the various personnel that work in juvenile justice administration for instance the police, the Court and Correctional institutions, .This include collection and analysing of data for intervention of Government.

(4) **Implementation of laws:** The Government should set up machineries serious monitoring and implementation of our juvenile justice system.

(5) **Establishment of Specialized police Unit:** For maximum efficiency, the Government should establish police unit in every police unit for protection of children that come in contact with the system.

(6) Establishment of Family Court is necessary for effective juvenile justice administration in Nigeria.

(7) **Diversion Programme:** The Court should not sanction children but divert them to probation, community services, financial penalties and compensation.

[77] The *Geneva Declaration on the Rights of the Child, 1924*, adopted by the *League of Nations Resolution*, adopted in Geneva, Switzerland, on 26 September 1924