

AN APPRAISAL OF THE REGIME OF JUVENILE JUSTICE UNDER THE CHILD'S RIGHT ACT IN NIGERIA

ADAM, Eteete Michael

Lecturer, Department of International Law & Diplomacy, School of Law and Security Studies, Babcock University, Ilishan-Remo, Ogun State.

ABSTRACT

The regime of the right of the Nigerian child forms a part of the larger frame work of protection of the Nigerian citizens under the larger Nigerian legal system. The child is not only protected under the constitutionally entrenched fundamental human right in chapter 4 of the 1999 constitution of Nigeria, the Nigerian child enjoys special legal protection and coverage under the Child's Right Act. The work gives an analysis of the evolution of the right of the child. Analyses the juvenile delinquency in Nigeria, appraises the juvenile justice system in Nigeria and captures the attitude of the government towards the welfare and right of the child and outlines the factors working against the realization of the right of the child. The work concludes with suggesting inter-alia that, if the rights of the Nigerian child are to be realized, there must be an end to corruption, an end to lack of political will to enforce the Child Rights Act and an end to the lack of national political cohesion. The work concludes by taking the position that, the interest of the Nigerian child is well protected under the current legal frame work of the Nigerian constitution, the Child's Right Act and other Nigerian laws but the bane of the child's development and protection is not a failure of statutory provisions but rather a failure of implementation.

INTRODUCTION

It is the intention of this paper to undertake a cursory study of the subject matter of juvenile justice, identify its measures, scope and application under the Nigeria Judicial System. This will be juxtaposed with the background of the evolution or development of child welfare especially in the confines of Child Right Act; a legislation in Nigeria with a purpose of advancing the frontiers of the development and protection of the Nigeria child.

To have a clear understanding of the concept of the issues raised in this topic, it will be necessary to undertake some form of conceptual explanations of the issues raised by this topic. Among the issues that crop up include; Juvenile, Justice, Juvenile Justice System, Child, Welfare and others. The study is descriptive and relied on secondary sources of data.

CONCEPTUAL EXPLANATIONS

Juvenile

A juvenile is a term that can be used interchangeably with a minor, infant or young person. In other words, it means someone that is no yet an adult. The word juvenile has been

defined as a person who has not reached the age at which the Criminal Justice System should treat one as an adult (Garner 2004). Under the Nigerian law, the issue of juvenile is used interchangeably with a minor. It is also seen as of, for or relating to young people. In the Nigerian case of *Labinjo v. Abake*, the court held that a person under the age of 21 is a minor and therefore lacks capacity for contractual obligations.

The sum total of the concept of juvenile in concept of terms is a person who in the eye of the law does not possess requisite capacity for criminal or even civil liability. The purpose of such distinction revolves around the idea of protection and welfare of the child. Professor Okonkwo has made detailed distinction of the various age cadres with different legal consequences and a paraphrase of his paper finds instructive for our purposes. *Section 30* of the criminal code, provides for 2 categories of juvenile which include:

- Children under age 7: the law believes that children under this category are not criminally responsible for any act or omission. It must not be thought, however, that because a child under 7 cannot be guilty of an offence, he is not amenable to action by the authorities.
- Children between ages 7-11: under the law, children between the ages 7-11 are not criminally responsible for any act or omission unless it is proved that the child had a capacity to know he ought not to do the act or make the omission.

Delinquent

According to ‘Garner dictionary’ a delinquent means failing to perform an obligation or guilty of serious antisocial or criminal conduct.

Juvenile Delinquent

A juvenile who has committed an offense that would be a crime if committed by an adult such children are usually in need of supervision by adults or an institution meant for such purpose.

Justice

The concept of justice in the layman’s balance connotes what is right, what is fair and what is just. Justice can be viewed as the correct or just or equitable application of the law. Examples of justice include:

- Commutative Justice: this is a justice concerned with the relations between person and especially with fairness on the exchange of goods and fulfillment of contractual obligation.
- Distributive Justice: this is the justice owed by a community to its members, including, their allocation of resources, common advantages and sharing of common burdens.
- Jed burgh Justice: this is a brand of Justice involving punishment (especially execution) first and trial afterwards. The term alludes for Jed Burgh, a Scottish border town where in 17th century, raiders were said to have been hanged, without

the formality of a trial. Jed Burgh justice deters from lynched law, in that the former was administered by an established court (albeit after the fact)

- Preventive Justice: this is the justice intended to protect against probable future misbehavior. Specific types of preventive justice include; appointing of a receiver or administrator, issuing a restraining order or injunction and binding over order to keep the peace
- Social Justice: this is justice that conforms to moral principle such as, that all people are equal.
- Substantive Justice: justice fairly administered according to rules of substantive law, regardless of any procedural errors, not affecting litigants substantive right, a fair trial or merits (Garner).

Child

A child is a term that refers to a person that is underage and therefore lacks capacity whether at civil or criminal matters. The Child Right's Act 2003, passed into law in the Federal Capital Territory (Abuja), defines a child as a person who has not attained the age of eighteen years.

A child is a person under the age of majority. It has been observed that the term child can easily be used interchangeably with the term infant. In Nigeria, and in contractual transactions, the age of majority is 21 years. Common Law and Infant Relief Act 1874 governs contracting capacity of an infant. The combined effects of these laws are as follows;

- An infant is allowed to enter into contracts for the supply of necessaries for himself or member of his family. This necessaries are items which the infant cannot exist without
- An infant is allowed to enter into a contract of apprentice services, education and instruction
- An infant has not contractual capacity where it involves contracts of repayment of money lent or contracts for goods supplied other than necessary goods.

To attain the age of majority in Nigeria, the position in *Labinjo v. Abake(1924) 5 NLR 33* of 21 years as distilled in the Infant Relief Act (1874) has been altered to 18 years by the 1999 Constitution of the Federal Republic of Nigeria. The age of 18 for majority or adulthood has also been affirmed by the Nigerian Electoral Act of 2004 which provides for full age, that means the age of eighteen years and above”.

Welfare

Welfare generally refers to well being in any respect, prosperity, good health, peace, morals and public safety.

Juvenile Justice System

The Juvenile Justice System is the collective institutions and laws through which a youthful offender passes until any charges have been disposed of or the assessed punishment has been concluded. The system comprises; juvenile courts, judges, lawyers and psychologist,

law enforcement officers, for example the police and correction for example, probation officers and social workers.

Child Right Act

Since 1959 there have been abroad spectrum of laws which were available for the protection of child rights some of which include laws such as League of Nations Declaration of the Right of the Child, 1924; United Nations Declaration of the Rights of the Child, 1959; Declaration of the Rights and Welfare of the African Child, 1979 and The 1948 Universal Declaration of Human Rights. But with all these laws, children were still deprived from enjoying the full benefits of their basic rights.

Towards the end of the 20th century, civic organizations interested in the welfare of children started agitating for a broad based legislation that would protect the rights of children and their efforts coupled with the domestic implementation of United Nations Convention on the Rights of the Child and the OAU Charter culminated in the enactment of the Act.

The Child Rights Act, which was enacted in 2003, seeks to regulate and protect the rights of children as enshrined in the 1999 Constitution and other subsidiary legislations. The Act which has 278 sections and 11 schedules was aimed at providing a uniform standard throughout the country; this was because its provisions covered the constitutional jurisdiction of both the Federal and State governments. The Act has repealed the Children and Young Persons Act and has broadened the law in relation to children's rights and responsibilities of children and protection of the rights of children.

The Act ensures that the minimum age for criminal responsibility is applicable to all the 36 states of the federation including the FCT, and guarantees the right to appropriate legal assistance and defense. The law also requires speedier fair trials and provides for alternative measure of last resort for the shortest possible time, thereby eliminating the culture of imprisoning children on slightest opportunity. The Child Right Act provides for the best interest of the child and enjoins stakeholders to make this paramount in all matters concerning the child; it further imposes responsibilities on parents, guardians, institutions among others to make provision for the welfare of the child.

Section 1 and *Section 2* the Act, in considering an action pertaining to a child, the child's best interest, welfare and well being should be the primary consideration. In considering the best interest, welfare and well being of the child, one has to understand the rights of the child. *Section 6-20*, provides for all the rights available to a child in Nigeria some of which include;

- Freedom of association and peaceful assembly
- Freedom of thought, conscience and religion
- Right to freedom of movement
- Right to freedom from discrimination
- Right to dignity of the child etc. just to mention but a few.

The first view of protection in the Act is sighted in *Section 14* which provides for *right to parental care, protection and maintenance*. But the protection of a child is fully provided for in part III part IV and part V of the Act. The act provides various protection for the rights of children section 21 and 22 speak on how a child under 18 is not allowed to enter into a marriage and no child shall be betrothed by any one, section 24 says that no child is allowed to be marked or tattooed and a fine and prison sentence is exacted on those who break that law and no child is allowed to traffic drugs that offence carries a life sentence (section 25). Section 26 and 27 of the act forbids anyone from using a child to commit criminal offences and this offense carries a penalty of imprisonment, section 28-30 speaks on child labor it mentions the jobs it considers unfit for a child and how no child should be forced to work and it also relates to young persons in section 59-63.

The unlawful act of sexual intercourse and other sexual abuses is punished by a prison term of life or fourteen years depending on the crime and it is immaterial whether the individual is 18 or above or the act was done with the consent of the child (section 31-32). Section 33 speaks on other forms of exploitation; no child is allowed to be recruited into the armed forces (section 34). A section 35-38 speaks on harmful publications under this act. Section 39-40 speaks on miscellaneous offenses trying its best to cover a wide range of offenses to protect the rights of a child, from 41 (which is part iv of the act) still speaks on the protection of children 41 speaks on child assessment orders, 42 speaks on emergency protection orders and 43 speaks on the duration of these orders.

Section 44 talks about children taken into police custody in cases of extreme emergency situations that warrant it and section 45 state the duty of a state government to investigate these cases. Section 46 talks about the disclosure of the whereabouts of children in emergency cases sections 47-49 talks about the abduction of children, refuge for children at risk and the rules and regulations that guide it . Part five speaks of children in need of protection and care, section 50 speaks on bringing a child before the court for some reasons some of which are if the child is orphaned or if there is proof that the child has been ill treated etc. 51 speaks about the courts power to make decisions for a child in the absence of the Childs parents and guardians ability to do so, 52 speaks about the courts power as well to order a parent to contribute to the maintenance of a child if the child has been committed.

Juvenile justice system

Juvenile court usually specifies that the court has jurisdiction in relation to three categories of juvenile behavior -delinquency, dependency and neglect. First, the court may intervene when a youth has been accused of committing an act that would be a misdemeanor or felony if it were committed by an adult.□Secondly, the court may intervene when a juvenile commits certain other acts that are not defined as criminal if committed by adults - status offenses. Third, the court may intervene in cases involving dependency and neglect. If the court determines that a child is being deprived of needed support and supervision, it may decide to remove the child from the home for his or her own protection (NOUN lecture note 2012).

The Nigerian Juvenile Justice looks at the Juvenile Justice Administration (JJA) with a view to implementation issues and the development of a juvenile justice policy for the

country. The Nigeria Juvenile Justice Project, which recently began, seeks to implement policies which include; the age of criminal responsibility; pre-trial juvenile justice; functions and procedure of the juvenile court, disposition measures available to the juvenile court; and non-judicial child justice prevention policies and programs.

Nigeria's system of juvenile justice, which is modeled after the British system, was established in 1914, although it has been modified in various locations to accommodate local customs. Juvenile justice administration has been embodied under the country's federal ministry of justice. Juvenile justice administration system in Nigeria can be describe as a system of justice set up by the federal government of Nigeria to take care and charge of person (s) and people below 18 years. A separate court and system of administration can and is always established for them. The justice administrations, especially the juvenile departments are concerned about protecting the rights of the underage children.

The children and young persons Act is the major piece of legislation dealing with matters affecting children and young persons in Nigeria. Its stated purpose is "to make provision for the welfare of the young and the treatment of young offenders and for establishment of juvenile courts". This Act was first enacted in 1943 by the British colonial government for application in any part of the protectorate of Nigeria on the order of the Governor-in-Council. It was then specifically enacted for Lagos in 1946 and was later on extended to the Eastern and Western Regions of Nigeria in that same year.

Thereafter, Nigeria became a signatory to the convention on Rights of the Child, the Criminal Procedure Act and the children and young persons laws (CYPL) of the various states define juveniles as a special category of offenders; all persons under the age of 17 or 18, as the case may be, are juveniles in terms of these Act and Laws.

Under this law (CYPL) Three categories of children may be brought before the juvenile court and they are;

- (i) Children alleged to have committed offences;
- (ii) Children in need of care and protection; and
- (iii) Children beyond parental control.

Most juvenile offenders are children, who have committed offences under laws which are also applicable to adults, children who play truant may be brought before the juvenile court in the exercise of its criminal jurisdiction under the CYPL, Juvenile court proceedings take place in two courts, a high court consisting of a single judge and a magistrate court composed of a magistrate and two laypersons, including one woman. Proceedings are formal and are intended to protect and correct the child. The child's Rights Act and Childs Rights laws of the various states also have provisions for establishment of the family court for the purposes of hearing and determining matters relating to children.

Section 149 of the child's Rights Act, 2003 establishes the family court for each state of the Federation and the Federal Capital Territory, Abuja.

Section 150 provides that the family court (in the Act referred to as "the court") shall be at two levels-

- “(a) the court as a division of the high court at the high court level; and
- (b) The court as a magistrate court at the magistrate level”.

Generally the function of the juvenile court is to provide safety for a child. The Children and Young Persons Act 1946 contains rules for dealing with juveniles. Some of which include:

- Trials are conducted in a special juvenile court to which the public is not generally admitted.
- There must be no publication of the identity of the child or young person
- The words “conviction” or “sentence” must not be used.
- No child shall be ordered to be imprisoned, even when a young offender is guilty of an offence his age must be considered as a strong mitigating factor in fixing sentencing.

So many premiums is placed on the protection of the rights of the child that the Act specifically stipulates that the personnel of the court shall be afforded professional education, in service training, refresher courses, among other things, to promote and embrace the necessary professional competence they require. The idea of juvenile court is to protect the child from prison but rather try to reform them in correctional or remand homes to build them to be better people.

In the 1980’s in Nigeria, the juvenile system was very effective and highly practiced, but it is no longer so in this day and age. The reasons for this include;

- **Improper justice system:** Lack of proper justice system in Nigeria’s administrative system can be viewed as one of the key factors affecting juvenile system of administration in the country.
- **Constitutional defects:** the non inclusion of certain Child’s Right Act into the Constitution of the Federal Republic has impedes on the growth of an effective juvenile administration in the country.
- **Lack of juvenile court judges:** the absences or lack of juvenile court judges and lawyers has greatly affected the administration of juvenile. The cases of where children are abused or molested but don’t have judges or lawyers to defend them is increasingly becoming an embarrassment for the nation.
- **Funding:** lack of funds especially from the government and partners have hindered juvenile system of administration in the country. Funds are needed in prosecuting and making the cases of abuse children heard in the outside world. If these trends continue, I fear we will still continue to live in limbo!
- **Attitudinal and cultural changes:** the kind of parental and societal attitudes attach to children behaviors in our present world today can be seen as our ‘normal way of life’. We tend to put cultural ties to the defense of child’s character if infringe upon (An article on: *Juvenile Justice Administration System and Factors Militating against Effective Juvenile Justice Administration System in Nigeria*).

CHILD’S RIGHT

The evolution of Child’s Right grew as a part of the larger frame work of Human Rights as promoted by the United Nations which included The International Bill of Right along with the Universal Declaration of Human Right (UDHR) and its two protocols. According to Sopekan (2007) the UDHR of 1948 increased the international awareness on Human

Rights. The World War II to which was fought between 1939 and 1945 caused terrible problems to the human society Genocide (that is planned destruction of a particular race) were carried out against people for belonging to particular race. Millions of Jews, people from Israel, for example were killed; many others unaccounted for were rendered homeless and terrible violations of human rights existed, as a result of this, fourteen member nations of the then United Nations (UN) came together to discuss these human rights problems. The agreements they reached were put down on paper and are known today as the UN Charter. The UN Charter captures the mood of the International community then, and strengthens their resolve to promote freedom and equality worldwide, as well as foster International Co-operation and Solidarity against injustice. The UN charter later formed the UN General Assembly on December 10, 1948. The UDHR also serves as a “common stand” for measuring the respect and protection of human rights of all peoples in all nations of the world. It contains 30 articles, which include Civil, Political, Social, Economic and Cultural Rights every human being is entitled to. The UDHR later serves as the source of inspiration for the drawing up of many International Covenant on Civil and Political Rights (ICPR) and the International Covenant of Economic Social and Cultural Rights (ICESCR) adopted by the General Assembly of the UN in 1966.

The African Charter on Human and People’s Rights grew from the developments at the global level and came to stay to re-enforce the large regime of respect for Human Right including the rights of the child. The Nigerian government follow suit in entrenching fundamental human right in her constitution as can be seen in chapter four of the 1999 constitution of Nigeria. At the international level the committee on children’s rights emphasizes the need for state parties to address the issue of child sexual exploitation. In its twenty fifth session, (Fall 2000) report, it expressed concern regarding worldwide increase in commercial sexual exploitation, child pornography, sex trafficking and prostitution and urged states parties to strengthen families, ensuring that women are not denied their basic rights.

CHILD’S RIGHT AND NATIONAL DEVELOPMENT

The rights of the child and infact that of the larger population of a country, where it is well preserved encourages individual and group development. It is in this light that the respect of the child’s rights directly translates to an incentive for community and therefore national development. A child that is given optimal training by the state or his parent can only become a better advocate of social-economic engineering. A well trained child of today is the national leader of tomorrow therefore the future of the state and the advancement in its social political and infrastructural levels is hinged on the level of care, welfare, protection and education given to the child of today. In countries like the US where the right of the child is optimally guaranteed by institutions of the state it creates a sense of patriotism on the part of the children and adults. Whereas in countries where such child welfare is absent the children and adult will utilize every opportunity to abandon their nation and travel abroad for greener pastures.

CONCLUSION AND RECOMMENDATION

It is therefore incontrovertibly stated here that the Nigerian child requires not just the hortatory of statutory provisions of the constitutions, the Child’s Rights Act, the UDHR

and other instrument creating rights of the child, what is required is a sincere and purposeful leadership, committed to the enforcement of the right of the child in Nigeria. The Child Right Act and the Juvenile System in Nigeria both seek to achieve one thing, protect a child's welfare. With the combined efforts of the two, the Nigerian child should have a better lifestyle and grow to be a law-abiding citizen, at least in theory anyway. Just like any other law or project in this country, there is the problem of enforceability due to factors such as corruption, lack of documentation, proper funding etc. thus the Nigerian child has a perfect protection Law in paper but does not enjoy the reality of it.

REFERENCES

- Akpotohwo C. (2004). *'Materials on Nigerian Business Law'*, Covenant Shol Communications Lagos
- An article on: Juvenile Justice Administration System and Factors Militating Against Effective Juvenile Justice Administration System in Nigeria.
<http://tribune.com.ng/index.php/tribune-law/2242-child-rights-act-and-problem-of-implementation> visited on 22/1/2013 at 2:05am
- Child Justice reform in Nigeria. Article 40 (2003):. *The Dynamics of Youth Justice and the Convention on the rights of the child in South Africa*. Vol.5 No.3
- Garner, B. A. (2004) *Black's Law Dictionary*, 8th edition, Thompson West, Texas
- Okonkwo C. O. (1990). "The Child and Criminal Responsibility, The Nigerian Perspective". *The Federal Ministry of Health and Human Services and UNICEF*. Lagos. pp. 16 -23
- Unpublished Lecture Note from National Open University of Nigeria titled: Juvenile Institutions and Juvenile Correction in Nigeria, 2012
- www.thefreedictionary.com/juvenile visited on 21/01/2013 at 5:00pm