

JUVENILE JUSTICE ADMINISTRATION IN NIGERIA:

A CASE STUDY OF KOGI STATE

By

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*LLM/LAW/17459/2007-2008***

**BEING A THESIS SUBMITTED TO THE POST GRADUATE
SCHOOL, AHMADU BELLO UNIVERSITY, ZARIA,
NIGERIA**

**IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR
THE AWARD OF MASTER OF LAWS (LL.M) DEGREE**

**DEPARTMENT OF PUBLIC LAW, FACULTY OF LAW,
AHMADU BELLO UNIVERSITY, ZARIA, NIGERIA**

SEPTEMBER, 2012.

DECLARATION

I hereby declare that the work in this thesis titled: *Juvenile Justice Administration in Nigeria; A Case Study of Kogi State* was performed by me in the Faculty of Law, under the supervision of Professor A. M. Gurin and Professor I. N. Sada.

The information derived from literature had been duly acknowledged in the text and a list of references provided. No part of this work has been presented for another degree or diploma at any institution.

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CERTIFICATION

This thesis titled: *Juvenile Justice Administration in Nigeria; A Case Study of Kogi State* meets the regulations governing the award of Master of Laws Degree of the Ahmadu Bello University, Zaria, Nigeria; and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This research work is dedicated to Late ***Pa. Zakari Oguche***, my dear father and ***Ma. Salimetu Zakari***, my sweet mother. My wonderful parents, the combined effect of your love, care, training and discipline gives me the benefit of life and all that it entails.

Late Pa. Zakari Oguche of blessed memories was a lover of knowledge and an ardent believer of education as a tool for human and society development. My dear father, you are fondly remembered now and always.

ACKNOWLEDGEMENTS

First and most, I am profoundly grateful to Almighty God without whose grace and mercies, the odds and the challenges in this programme would have taken its tolls on me.

I sincerely say a big thank you, to my Supervisors Prof. A. M. Gurin and Prof. I. N. Sada. In the course of this research your cooperation, guidance and constructive suggestions are instrumental to the success of this research. On a special note, I am greatly indebted to Prof. A. M. Gurin who is always there for me, painstakingly, ensuring that my inadequacies and shortcomings are remedied, even at his private time.

A special thanks to Hon. Justice O. S. A. Obayomi for all his advice, encouragement and support. As the then Solicitor-General and Permanent Secretary Ministry of Justice, you ensured that I got the much needed permission and time to pursue Master of Laws (LLM) Degree.

My Directors and colleagues in Kogi State Ministry of Justice, just to mention a few; R. B. Bello Esq., G. O. Salihu Esq, R. A. Alfa Esq, J. Olorunbagun Esq., C. E. Adejoh Esq, T. Ekele Esq, L. Okolo Esq, E. Ibenu Esq and Alh. Saeed Ademu H. have all shown immeasurable interest in

my academic adventure. All of you have done noble and well-done for all your understanding, when it matters most.

I must acknowledge the contributions of Prof. M. T. Ladan, an erudite scholar in the area of research. You graciously obliged me the most needed research materials upon which this research is built and provided me some really useful guide and advise. May Allah reward you accordingly. Prof. Y. Aboki, Dr. H. L. Alih, D. C. John Esq., my Lecturers in Postgraduate Studies. Thank you greatly for further widening my knowledge of law. Dr. J. A. M. Audi. I wish you Allah's blessing in reward for your entire role in the realization of this dream. Dr. I. F. Akande Assistant Dean, Postgraduate School, accept my profound appreciation for all your contributions in ensuring that my efforts, the pursuit of LLM certificate is not in vain. Mrs. Deborah Laah, please accept a token of my appreciation for all your understandings.

I am saddened to acknowledge Late Knight Joseph A. Musa, posthumously for all his encouragements. At the point, my interest was waning in the programme, he repeatedly put several calls across to me telling me "Abdullahi what about your programme in Zaria, please suspend every other thing and get it completed, it is very important". These words continue to ring bells in my years after his death. Late

Knight Musa was a father and a pillar in my quest for a better life through education. May Almighty Allah grant your soul a peaceful rest.

I must not fail to acknowledge Arch. N. S. Adamu, our family umbrella. His ways of life and teachings is a source of inspiration and a guide. Thank you immensely for stabilizing my focus. I am also thankful to Hon. Justice A. N. Awulu, a big brother, for all his mentoring. In all my struggles and adversities, you give me hope and support.

In every one's life, some persons occupy a special place and play a special role to make the realization of one's aspirations possible. In varying degrees and forms T. D. A. Awulu, Achimi Adamu, Halilu Adamu, David Obaje, Abdullazeez Hussein, Hassan Onuche, Titus Ezeoru, Anthonia Ekwebele, Asebe Zekeli, Kizito Musa and Gabriel Sule stands in a specially place to me and have contributed to my struggles. I am humbled by your concern. You are all highly honoured.

I also acknowledge all the support I had from Hon. Zakari Shaibu Ohiemi and Joseph Abah. Your concern for this endeavour is a morale booster.

Agada M. I must be specially acknowledged for her invaluable contributions and sacrifice in the course of this pursuit. Well done, your

contributions are memorable and outstanding. Alhaji Nmah Ahmed, my dear friend, course-mate and roommate, had a tremendous influence and contributions to this endeavour. At a point in time, in addition to several other motivations paid my fees along with his own. Ahmed, I cannot thank you enough, may Allah reward you abundantly.

I owe a life gratitude to my wife Hajia Hawa Zakari who suffers numerous deprivations and denial owing my persistent travels for the Master's programme. This is more than enough sacrifice for the attainment of this goal. Hajia, fully took charge at the home front attending to the needs and distractions of growing Sumaiya E. Zakari, Kamal O. Zakari, Hafiza Zakari, Halima Zakari and little Abdullahi Abdullahi-Zakari the fruit of our union.

Daddy, are you travelling again? Daddy we miss you! Daddy when are you coming back? All these are expressions of how my presence was indispensable to my children. To every one of you my children, I say a big congratulation for being at the centre of this success story.

The last but not the least is a mention of the contributions of Emmanuel Fabire for his ever willing zeal in relentlessly typing the manuscript of this work, mostly at odd hours. Emma thank you, may God bless you abundantly.

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3. Child Rights Act, Act No 26 *Federal Republic of Nigeria* official Gazzette Vol. 90 No. 116.
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5. Children and Young Persons Law, Cap 21 *Laws of Northern Nigeria*, 1963.
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CONVENTIONS AND TREATIES

1. African Union Charter on the Welfare and Rights of the Child, 1990.
2. United Nations Convention on the Rights of the Child, 1989.
3. United Nations Standard Minimum Rules for the Administration of Juvenile Justice.
4. United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines).

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2. Modupe v. State (1988) 9 SCNJ 1.

ABBREVIATIONS

AUCRWC	African United Charter on the Rights and Welfare of the Child.
Beijing Rules	United Nations Standard Minimum Rules for the Administration of Juvenile Justice.
CFRN	Constitution of the Federal Republic of Nigeria.
CC	Criminal Code.
CRIC	Child Rights Implementation Committee.
CPC	Criminal Procedure Code.
CPA	Criminal Procedure Act.
CRA	Child Rights Act.
CRL	Child Rights Law.
CYPA	Children and Young Persons Act
CYPL	Child and Young Persons Law.
FCT	Federal Capital Territory.
LFN	Law of the Federation of Nigeria.
LNN	Laws of Northern Nigeria.
PC	Penal Code.
Riyadh Guidelines	United Nations Guidelines for the Prevention of Juvenile Delinquency.
SJWC	State Juvenile Welfare Centre.
SCNJ	Supreme Court of Nigeria Judgments.
UNCRC	United Nations Convention on Rights of the Child.
VOM	Victim Offender Mediation.

ABSTRACT

Juvenile Justice System is a special track of the criminal justice system. Essentially, the system is expected to be child-friendly in form and application. The need for a child-friendly justice system is borne out of the realization that children are vulnerable and that subjecting a child offender to the full weight of the criminal justice system will have an adverse effect on the child and the society in general. The general criminal justice system including juvenile justice system in Nigeria is retributive and punitive contrary to current trends, which emphasizes rehabilitation, reformation and re-integration as the main goal. In view of the importance for which the promotion and protection of the right of the child avails the world, issues of children has assumed a global interest and attention. To this end, juvenile justice administration is no longer a matter within the exclusive domain of national governments. Therefore, the Nigerian juvenile justice system must be measured against the parameters set by United Nations and other Continental or Regional organizations. Historically, Nigeria was in the forefront of Nations committed to the right and welfare of the child. Nigeria enacted the Children and Young Persons Act in 1943 and it was subsequently adopted in Northern Nigeria in 1958. These laws predate any international instruments on the rights and welfare of the child. Similarly, Nigeria was among the first set of countries in the world to ratify the United Nations Convention on the Rights of the Child (UNCRC) in 1991 and domesticated its provisions by passing the Child Rights Act in 2003. This development encouraged the adoption of the act as State laws in some states in Nigeria. The promulgation of the Child Rights Act exposed the provisions of the Children and Young Persons Act to systemic weakness and problems undermining its main objective, thereby provoking a discourse. In comparison to the standard set by international instruments, it became obvious that the legal and institutional framework involved in juvenile justice administration in Nigeria were ineffective and greatly undermined by army of problems and challenges. Consequently, this research examined the provisions of the laws on juvenile justice administration in Nigeria and the institutions responsible for its enforcement with the view to make the system responsive, effective and result driven.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

The Current system of juvenile justice in Nigeria can not be understood without reference to the country's colonial past. Historically, the Nigerian criminal justice system derives its origin, principle and philosophy from the British system of criminal justice. In the English criminal justice system, the underlying principle and philosophy was a repressive legal system with oppressive penal institutions which aim was to deter and punish offenders. In the system, there was little or no consideration for reformation, even where such offenders are juveniles. The foregoing colonial legacy understandably explains the fact that the Nigerian Criminal Justice system was created as an important instrument of oppression by the British Colonial government, which has sadly remained an integral part of the Nigerian criminal justices system fifty years after independence.

Within the context of juvenile justice administration in Nigeria, may it be noted that there has been a drift towards the enactment of child-friendly laws in recent past. However, not much impact of these child-friendly laws could be appreciated since the existing institutional framework for

juvenile justice administration was inherited from the colonial government.

The major turning point in child specific criminal justice system came in 1948, with the enactment of Children and Young Persons Act (hereinafter referred to as CYPA). The CYPA was re-enacted as State Laws by the various States of the federation.

Importantly, the purpose of the Children and Young Persons Act, was "to make provision for the welfare of the young and the treatment of young offenders and for the establishment of juvenile courts".¹

The question however, is to what extent has this law, having being in operation for over six (6) decades ensured that juvenile offenders are specially treated in such a manner as to ensure their rehabilitation and reintegration into the society. It could be further asked, how has the institutional framework in place fared in administering justice to juvenile offenders. All these questions and many more could be answered in the course of this study.

¹ Children and Young Persons Act, Cap 32 *Laws of the Federation of Nigeria and Lagos 1958*

In 2003, the Child Rights Act, 2003 was enacted in Nigeria and its subsequent adoption by some States of Federation including Kogi State. So far, twenty-five (25) states have adopted the Child Rights Act as their state law. This development marked an epoch in the history of the commitment of Nigeria government to issues affecting children, particularly juvenile justice administration. However, it may be observed that even in the Federal Capital Territory where the Child Right Act has been in operation for close to ten (10) years now, treatment met for children in conflict with law, or children who violate penal provisions, from the point of arrest, interrogation, trial and detention has left much to be deserved. This situation may be worst, particularly in States where the Act was merely adopted to attract patronage from international donor agencies or to merely fulfil all righteousness in their commitment to pretend to the world, that their government is child friendly and States where the law is not yet adopted.

There is international standard in the treatment of juvenile offenders. The international yardstick is a creation of conventions and treaties. These convention and treaties are; United Nations Convention on the Rights of the Child, 1989, Africa Charter on the Rights and Welfare of the Child, 1990, United Nations Standards Minimum Rules for treatment of offenders; the United Nations Standard Minimum Rules for

Administrations of Juvenile Justice 1985, (hereinafter referred to as the Beijing Rules), the United Nations Guidelines, for the prevention of Juvenile Delinquency (hereinafter referred to as "The Riyadh Guidelines").

In the face of the foregoing child-specific laws and international conventions or instruments relating to treatment of children, it could be concluded that, the Nigerian system of Juvenile Justice Administration with all its inadequacies have provided for a system, that in principle, seems to guarantee a peculiar and best treatment for children in conflict with the law or who violate penal provisions. In practice however, the Nigerian system of juvenile justice administration, has left much to the deserved in the treatment of juvenile offenders.

Definition of Juvenile

The word "juvenile" has no universal definition. However, attempts shall be made to consider some contextual definitions in order to set stage for the research. The word juvenile has been defined by Black's Law Dictionary, "as a person who has not reached the age at which one should be treated as an adult by the criminal justice system"². The Children and Young Persons Law Cap 21 laws of Northern Nigeria, 1963 (hereinafter referred to as CYPL) defines "a 'child' as any person who has

² Black's Law Dictionary 8th edition Bryan A Garner (ed) (2004) P. 884.

not yet attained the age of fourteen (14) years". The CYPL defines a young person as "one who has attained the age of fourteen (14) years but has not attained the age of sixteen (16) years". The Child Rights Act, (hereinafter referred to as CRA) defines a child as person under the age of 18 years. The African Union Charter on the Rights and Welfare of the Child 1990 (hereinafter referred to as AUCRWC), defines a Child as every human being below the age of eighteen (18) years. The United Nations Convention on the Rights of the Child 1989 (hereinafter referred to as UNCRC) defines a Child as every human being below the age of eighteen (18) years, unless under the law applicable to the Child, maturity is attained earlier.

The United Nations Standard Minimum Rule for the Administration of Juvenile Justice 1985 (hereinafter referred to as The Beijing Rules) defines a juvenile as a child or young person who under the respective legal systems, may be dealt with for an offence in a manner which is different from adult. For the purpose of this research a juvenile is any person under the age of 18 years. Meanwhile in-depth academic consideration of arguments about age would be attempted at the appropriate chapter.

1.2 Statement of the Problem

May it be stated that the future of the child and the society may not be better protected in a situation where a child who is in conflict with the law is not treated in such a manner as to guarantee his or her reformation, rehabilitation and reintegration into the society.

The ultimate objectives of the administration of juvenile justice are rehabilitation and reintegration of juvenile offenders into the society. The question therefore is whether these goals can be achieved in a situation where juvenile offenders experience severe and physical abuses during arrest or detention by police or where juveniles are locked up in crowded cells with adult criminals irrespective of the nature of the offence.

The research among other things determined (i) whether in practice, a Nigerian Child in conflict with the law is actually treated in such a way that, it promotes the child's sense of dignity and worth (ii) whether the Juvenile Justice Administration machinery are well equipped in terms of infrastructure, personnel and training in their handling of child offenders with the aim of reintegrating the child into the society and to prepare him to assume a constructive role in the emergence of modern society in line with international standards.

The Juvenile Justice System suffers great knocks where most police and judicial officers saddled with the responsibility of Juvenile Justice Administration are hardly aware of the array of laws, protocols and conventions that have been promulgated to safeguard the fundamental rights of juveniles in judicial process. The abuse can be more felt where most juveniles that are taken to police station are just thrown into the cells where hardened criminals are kept. The police quite often do not make efforts to trace and inform the parents of these juveniles of their having ran foul of the law.

1.3 Aims and Objectives of the Research

The aims and objectives of the research are as follows:

1. Examination of existing child specific legislation in Nigeria, particularly, their provision on juvenile justice administration in order to unravel its weakness, shortcomings and challenges.
2. A comparative appraisal of international instruments conventions and treaties connected with juvenile justice administration and Nigerian legislation with the view to test the effectiveness and compliance status of Nigeria laws.
3. An assessment of agencies and institutions responsibility or involved in juvenile justice administration in Nigeria with the aim of

establishing why juvenile justice system has not faired better and propose appropriate solutions.

4. To study the effectiveness of the laws and institutions involved in juvenile justice administration in Kogi state against the background of the Child Rights Law of Kogi State and to make suggestions and recommendations that will reposition the system for optimal performance in Kogi State in particular and Nigeria in general.

1.4 Scope of the Study

Generally, the scope of this thesis includes a consideration of Nigerian Legislation on Children, particularly, those touching on Juvenile Justice Administration in Nigeria, with specific reference to Kogi State. Some of the legislation includes the Children and Young Persons Act, Cap 32 Laws of the Federation of Nigeria and Lagos 1958. Children and Young Persons Law, Cap 21, Laws of the Northern Nigeria, 1963 applicable to Kogi State, Child Rights Act, 2003 as well as Child Rights Law of Kogi State, 2009. Some salient provisions of the Constitution of the Federal Republic of Nigeria, 1999 may be referred to from time to time. However, in view of internationalization of Children matters reference may be made to relevant international instruments or treaties. This is to enable the research to assess the performance of the Nigerian justice system in comparison to international standard.

Specifically, the research work deals extensively with the ways and manners institutions saddled with the administration of Juvenile Justice have fared in Kogi State in the determination of matters affecting children in conflict with the law. In the consideration of this aspect, cases decided by magistrate Courts or high Courts, (if any) the status of Children in custodial institutions in Kogi State as well as the method used by Police in administering children complaints will be studied.

On the final note, the research assesses the level of preparation of the agencies and institution involved in juvenile justice administration in Kogi State to implement the recently enacted State Child Right Law.

1.5 Methodology

The methodology to be adopted in this research is doctrinal. Emphasis shall be placed on two major sources, namely, primary sources and secondary sources. The primary sources of research materials include legislation, case law, international instruments and treaties. The secondary sources include textbooks, journals, internet articles and publications as well as materials or literature from UNICEF on the subject matter of the research.

In the course of the research, visits were made to Magistrate Courts in Lokoja and Ankpa selected police station particularly the State Criminal Investigation Department and state Juvenile Justice Welfare Centre in Lokoja, Federal Prisons in Koton Karfe and Ankpa, as well as Social Welfare Department of the Ministry of Women Affairs, Lokoja for the purpose of conducting oral interview with key role players. All these, as well as the personnel experience of the researcher on the topic of study were resorted to as a method in this thesis.

The research also used some assessment indicators developed by UNICEF to assess and measure the performance of juvenile justice administration in Kogi State.

1.6 Literature Review

This deals with literature relevant to the subject matter of the study which were consulted and found useful in the research of Juvenile Justice Administration in Nigeria. Suffice to state however, that there is a dearth of literature and decided cases in the research topic. In any case, the few available materials in the form of books in Juvenile Justice Administrations, publications, seminar papers and materials from United Nations Children's Fund have been consulted.

Yemi Akinseye-George³ in his book did extensive work on the principles, practices, problems and prospects of child justice administration in Nigeria. However, his work focused on focal States of Lagos, Kano, Rivers, Plateau and the FCT.

A book titled "The Rights of the Child in Nigeria"⁴ in one of the chapters, considered "treatment of child offenders and the Right of the child". Under this heading, the book took a critical look at several issues that are central to juvenile justice administration. Issues such as the legal framework, age of criminal responsibility, juvenile courts, arrest and bail among others were considered on the basis of the provisions of CRA. It is important, however to stress that the shortcomings and challenges raised in the book has been redressed by the enactment of Child Right Act.

Fundamentally, the provisions of the Child Rights Act, 2003, forming the nucleus of the research topic was examined. It was found that, though it was comprehensive on all issues affecting the child, its provisions on adoption, guardianship, inheritance among others does not take into account the religious and cultural practices among a section of the Nigerian society. It was seemingly perceived as offending the teaching

³ Akinseye-George Y. *Juvenile Justice in Nigeria* (Centre for Social Legal Studies, Abuja, 2001

⁴ Ayua I. A. and Okagbue I. E., *The Right of the Child in Nigeria* (Nigerian Institute of Advanced Legal Studies, Lagos, 1996).

and practice of Islam. This development no doubt undermined its adoption in most parts of northern Nigeria. However, its provision on child justice administration with all intent and purpose is not contentious. It is strongly suggested that it can safely be incorporated in the Children and Young Persons' Law of States that are yet to adopt the CRA the full benefit of the child.

Street Children and juvenile justice in Lagos⁵ is a report of study carried out in Lagos State on the phenomenon of street children in Lagos State and the approach of the juvenile justice system of the state. Though, the report articulately addressed the approach of juvenile justice system in Lagos, it reflects the general picture of the attitude of juvenile justice institutions in Nigeria. It is our opinion that notwithstanding, the shortcoming of the juvenile justice system in Lagos State, juvenile justice administration in Lagos State is an advancement over most states in Nigeria.

Juvenile Justice Administration in Nigeria⁶ is a training manual for law enforcement officials working with juvenile offenders. Fundamentally, the book espoused the provisions of laws and international instruments on juvenile justice administration in Nigeria. Its discussions on introduction

⁵ Owosanoye B. and Wernham M. *Street Children and Juvenile Justice System in Lagos State* (Human Development Initiative, Lagos, 2004) The book is a report of a study carried out in Lagos.

⁶ UNICEF, *Juvenile Justice Administration in Nigeria* (A Course Manual for Law Enforcement Officials Working with Juvenile Offenders) (United Nations Children's Fund 2003)

to diversion, community service, victim offender, mediation, life skills programmes as alternative to retributive criminal justice for children is instructive.

Alemika et'al⁷, analysed the laws, processes and institutions for juvenile justice administration in Nigeria under the CYP A and CYPL and found that the standard is short of international model. The book predates the enactment of CRA, hence the challenges in the CRA and the likely suggestions on the way forward was not contemplated. Like most Nigerian Authors on the subject matter, alternative schemes or options to the traditional retributive criminal justice was not discussed. Children's and Women's Right in Nigeria⁸ is a publication which articulated issues concerning children, crime, drugs, juvenile justice, children in custody as well as the legal framework in juvenile justice administration. Though, the report was not exhaustive in all matters involved in the subject matter of the study , it nevertheless, identified problems associated with juvenile justice administration in Nigeria which prompted this research.

⁷ Alemika E.E.O. and Chukwuma I.C. *Juvenile Justice Administration in Nigeria Philosophy and Practice* (Centre for Law Enforcement Education, (CLEEN) Lagos, 2001).

⁸ UNICEF, *Children's and Women's Right in Nigeria, a wake-up call, situation assessment and analysis 2001* (National Planning Commission, Abuja and UNICEF, 2001).

Pothier J.⁹ in a report titled “Best Practices of Diversion Programmes” provided a background of information on the guidelines for establishing diversion programmes in Nigeria. The report considered diversion programmes in other jurisdictions such as Australian, United Kingdom, South Africa and New York among others with the view to providing a context from which to choose the most appropriate programme for diversion in Nigeria.

It is noteworthy to state that this report has greatly provided a broad understanding of the failures, successes and the challenges; diversion has faced in those jurisdiction highlighted. The aim is to fashion out some practicable and workable schemes under the child justice administration in Nigeria.

Juvenile justice administration in Nigeria¹⁰ is an article which seeks to analyze the state of the system of juvenile justice administration in Nigeria against the background of international framework and guidelines. The Author finds the Nigeria set up to be inadequate for ensuring juvenile justice because of the inconsistencies and ambiguities in municipal legislation. The article was not far reaching in the

⁹ Pothier J. *Best Practices in Diversion Programmes in Nigeria* (UNICEF, Nigeria, 2004).

¹⁰ Ijaiya, H. *Juvenile Justice Administration in Nigeria*, NUJs Law Review, 2 NUJs L. Rev. 573 (2009) (<http://www.nujslareview.org/articles2009vol.2no.4hakeemijaiy>).

consideration of all issues involved in juvenile justice administration in Nigeria.

Finally, having carefully reviewed some literature on the project of juvenile justice administration in Nigeria, it is strongly submitted that the materials are rich, profound and adequate to sustain the research topic titled "Administration of Juvenile Justice in Nigeria, A Case Study of Kogi State". However, extra effort would be made to fill in the gaps in some of the literature on juvenile justice administration in Nigeria, explore emerging challenges and suggest ways of intervention for the full realization of the intendment CRA on child justice administration. These are, issues not articulately covered by most of the literature reviewed.

1.7 Justification

Essentially, the adoption of the Child Rights Act 2003 in Kogi State as a state law in 2009 provoked the need to carefully study the position of juvenile justice administration in the state with the view to assess the legal and institutional preparedness towards its implementation. This is particularly instructive as Kogi State was one of the 25 States in Nigeria that adopted the Child Rights Act.

In a similar vein, the necessity to avail operators of juvenile justice institutions such as the officers and men of the Nigeria police, prison officials, judges and magistrates, social welfare workers in Kogi State in particular and Nigeria as a whole of the imperatives to inculcate a child-friendly attitude and disposition dictated by the child justice administration provisions of the Kogi State Child Rights Law and the Child Rights Act provides a veritable rationale for this study. Notably, these institutions constitute the primary machinery for juvenile justice administration in Nigeria.

May it equally be highlighted that in view of the practical approach adopted in this thesis and the wide range of issues covered in this research, Legal Practitioners, Academicians, Scholars, Students of Law, as well as Social welfare workers would find this thesis vitally useful in attending to matters relating to Juvenile Offenders in Nigeria.

Above all, this thesis would greatly benefit the Nigerian society, whose hope seems rapped in the future of children as leaders of tomorrow. This is made possible by the fact that institutions and agencies charged with the responsibility of Juvenile Justice Administration would be better equipped to prepare Child Offenders for rehabilitation and reintegration into the larger society.

The thesis will also benefit governments at all levels whose responsibility it is to provide personnel and facilities in the Administration of Criminal Justice System. Government would need to assess some of the identified problems associated with Administration of Juvenile justice and the suggested recommendations with the view to effect corrections and make the system more practice, effective and efficient.

1.8 Organizational Layout

Generally, this research is aimed at taking a holistic look at Juvenile Justice Administration in Nigeria, and in particular, A Case Study of Kogi State. The purpose of which is to appraise the criminal justice system in relation to children and institutions vested with the administration juvenile justice system in Nigeria. The assessment of Nigeria child specific laws and the performance of juvenile justice institution in comparison to standard set by international instruments is necessary in order to suggest likely reforms to reposition the system for better performance.

The first chapter dealt with general introduction, i.e. an overview of what the research is set to unveil, statement of the problem, aims and

objectives of the research, scope of the research, methodology, literature review.

Chapter two gave a broad overview of administration of juvenile justice in Nigeria and identified problems associated with it. This chapter will extensively appraise the stages in juvenile justice administration and the roles of agencies.

Chapter three dealt with the legal and institution framework involved in juvenile justice administration in Nigeria; this chapter will focus on Nigeria legislation dealing with juvenile justice administration. The institutions or agencies saddled with the responsibility of juvenile justice administration. International instruments, treaties and protocols on juvenile justice administration is discussed in chapter four.

Chapter five dwelt largely on the Juvenile Justice Administration in Kogi State and an assessment of institutions that are responsible for Administration Juvenile Justice in the State.

Chapter six focused on diversions schemes, as alternative to retributive criminal justice system.

Finally, in chapter seven, the thesis made suggestions, recommendations and provided an insight into expected reforms to the juvenile justice administration.

CHAPTER TWO

THE CONCEPT OF JUVENILE JUSTICE IN NIGERIA

2.1 Introduction

It is vitally important to note that whether as perpetrators or victims of crime, children and young persons, by virtue of their immaturity and vulnerability occupy a special place in the administration of justice.¹¹ Most countries in the world in their treatment of children acknowledge the fact that juveniles have peculiar "emotional, mental and intellectual capacities."¹² quite distinct from those of adults. It is equally observed that the exposure of children to formal criminal processes may have the adverse effect on subsequent attempts at their rehabilitation and reintegration into the society¹³. Simply put, it must be stressed that juvenile criminal justice is a special track of its own in the criminal justice system.

As part of Nigeria, notwithstanding, her colonial history and the legacy of English legal system, the country adopted for the very first time, the Nigeria's Children and Young Persons Act (hereinafter referred to as "the CYPA") or where applicable as "CYPL") in 1943¹⁴. The CYPA states as its purpose "to make provision for the welfare of the young and the

¹¹ Akinseye-George Y; *Juvenile Justice in Nigeria*, Centre for Socio-Legal Studies, Abuja (2009) Pp. 1.

¹² Okagbue I. *The treatment of juvenile offenders and the rights of the child* In: Ayua I. A. and Okagbue I. E. (eds) *The Rights of the Child in Nigeria*, Nials, Lagos (1999) Pp. 242.

¹³ Ibid.

¹⁴ Cap. 32 *Laws of Federation of Nigeria and Lagos* 1958. Child Rights Act 2003, Act No. 26, Federal Republic of Nigeria official Gazette Vol. 90 No. 116.

treatment of young offenders and for the establishment of juvenile courts". The CYPA has been subjected to several amendments and re-enacted by various States of the federation as State Laws in compliance with the principle of federalism.

A very careful appraisal of the CYPA, subsequent legislation in Nigeria relating to children as well as International Treaties¹⁵ ratified by Nigeria, it is evident that policies, laws and procedures which apply generally to adults are tampered with when children and Young Persons come into conflict with law.

In most cities in Nigeria, the fact remain, that there is increasing prevalence of street children, urban violence, armed robbery cases and other crimes involving children vis-à-vis the fact that juveniles in conflict with the law were routinely handled and treated as adults and subjected to procedure which thought to be applied only to adults"¹⁶¹⁶. In the face of all these, it is doubtful whether juveniles are reaping the well intended benefits of the child friendly policies, laws and procedures.

¹⁵ *The United Nations Convention on the Rights of the Child 1989* (UNCRC), *The African Union Charter on the Rights and Welfare of the Child*, 1990.

¹⁶ Akinseye-George Y, op. cit. pp. 2

In this chapter, we examined the administration of criminal justice in general, conceptual clarification of key words and terms that are quite germane to the concept of juvenile justice administration, stages of juvenile justices administration, as well as problems associated with juvenile justice administration in Nigeria.

2.2 The Criminal Justice System in Nigeria

The criminal justice administration system in Nigeria is regulated by a regime of laws and institutions or agencies entrenched by a colonial history. Essentially, the penal code and Criminal Procedure Code applies as both the substantive criminal laws and procedural laws in the northern states of Nigeria, while the Criminal Code and the Criminal Procedure Act are applicable in southern states of Nigeria as the substantive criminal laws and procedural laws.

It must be emphasized that “two different regimes of criminal laws for the northern and southern protectorates of Nigeria, introduced by the Colonial Government in Post-1914 amalgamation of the protectorate is still in force”¹⁷ across the country to date. An appraisal of these laws vis-à-vis the dictates of modernity as exemplified in the changes and developments in social, economic, political and constitutional imperatives

¹⁷ Ibid.

in the past seven decades in the world, speak volumes of the shortcomings and the challenges the criminal justice system is exposed to as a result of this obsolete laws.

On the other hand, the Police, the Courts and the Prisons are the major institutions or agencies involved in the administration of the criminal justice system in Nigeria. Just like the regime of laws, in history, development and performance these institutions or agencies are reminders of the Nigeria colonial past. It is noteworthy that, testing the performance of these institutions in the face of current realities and international standards would frustratingly, reveal their abysmal performance. Nevertheless, these Institutions or Agencies are the principal organs of the Criminal Justice Administration in Nigeria.” It is important to note that these institutions or agencies are of colonial origin. They were introduced and established in Nigeria by the then Colonial Administration. The optimal functionality of the general criminal justice system would to a large extent depend on the effectiveness and efficiency of the Police, the Courts and the Prisons.

In addition to the aforementioned criminal justice institutions, the office of the Attorney-General of the Federation or the State as the case may be, plays a pivotal role in the administration of the criminal justice

system. Constitutionally, the chamber's of the Attorney-General is the nerve centre in the administration of the criminal justice system. Notably, "the office of the Attorney-General of the Federation, as well as those of the various States of the Federation either directly or through their respective Directors of Public Prosecutions (DPP) or Officers in his chambers has been empowered to initiate, manage and control all criminal prosecution in Nigeria"¹⁸. It is compelling to state therefore, that the Office of the Attorney-General either of the Federation or that of the state is the engine room that regulates the criminal justice system and determine the way and manner the other components of the justice sector exercise their statutory functions.

The exposition of the workings of the machinery of the administration of criminal justice in Nigeria shows clearly indispensable, high level of inter-relation, inter-connection and inter-dependence of the key organs responsible for criminal justice. What one Criminal Justice Agency does affect the other Agencies, and the workload in one agency is controlled by the decisions or actions of the other agencies.

¹⁸ Section 174 and 211, Constitution of the Federal Republic of Nigeria (Promulgation) Act, (2004)

2.3 Conceptual Clarifications

In this sub title, the research focused on the definition of key words and terms underlined the subject matter of study i.e. Juvenile Justice Administration in Nigeria.

2.3.1 Definition of a Child or Juvenile

Generally, "there is no universal definition of a juvenile. The laws of different nations stipulates different age bracket for a juvenile. The concept of juvenile is sometimes used interchangeably with other concepts, like a child, an adolescent or youth"¹⁹.

Black's Law Dictionary²⁰ defines juvenile as "a person who has not reached the age at which one should be treated as an adult by the criminal justice system". The Children and Young Persons Law²¹ defines "a 'child' as any person who has not yet attained the age of fourteen (14) years". The same law²² defines a young person as "one who has attained the age of fourteen (14) years but has not attained the age of sixteen (16) years". The African charter on the Rights and Welfare of the Child²³ (hereinafter referred to as "AUCRWC) defines a Child as every human being below the age of eighteen (18) years.

¹⁹ Ijaiya H., Op. Cit. pp. 574

²⁰ *Blacks Law Dictionary* Op. cit. pg. 884

²¹ S.2 *Children and Young Persons Law*, Cap 21 Laws of Northern Nigeria 1963

²² *Ibid*

²³ Article II, *African Union Charter on the Rights and Welfare of the Children*, 1990

The United Nations Convention on the Rights of the Child²⁴ (hereinafter referred to as the UNCRC) defines a Child as every human being below the age of eighteen (18) years, unless under the law applicable to the Child, maturity is attained earlier. The United Nation Standard Minimum Rules for the Administration of Juvenile Justice²⁵ (hereinafter referred to as the Beijing Rules) defines a juvenile as a child or young person who under the respective legal systems, may be dealt with for an offence in a manner which is different from adult. This same Rule²⁶ defines a juvenile offender as a Child or Young Person who is alleged to have committed or who has been found to have committed an offence. The Child Rights Act²⁷ defines a child as a person under the age of eighteen (18) years.

It will be observed that, the definitions proffered by Beijing Rules as well as the UNCRC, makes allowances for some flexibility in the definition of who should be a Child. It empowers State Parties to set age, within the parameters of economic, social, cultural, religious and political imperatives in their environment. The CRA adopted the age of eighteen (18) years in line with African Charter on the Rights and Welfare of the Child as well as UN Convention on the Rights of the Child.

²⁴ Article I, *United Nations Convention on the Rights of the Child*, 1989.

²⁵ Article 22(a) Beijing Rules 1985.

²⁶ Article 22(c) Beijing Rules.

²⁷ S.277 CRA

Notwithstanding, the fact that, Children and Young Persons Laws of the various States of Nigeria set different age limit in arriving at who is a child, the provisions of the Child Rights Act, 2003 or the Child Rights Laws of the various states as the case may be, which put the age at eighteen (18) has altered or repealed the provisions of CYPL and CYPA.

On a final note, it our opinion that the eighteen (18) years, age limit be left at the discretion of the various states to determine, taking into account the socio-cultural and religious peculiarities of each state. This is in line with the approach adopted by UNCRC. It is however, important that the every law should fix the age of juvenile.

2.3.2 Definition and Philosophy of Juvenile Justice Administration in Nigeria

Juvenile Justice Administration system is an integral part of the criminal justice system. Juvenile justice system is open to several definitions. Black's Law Dictionary defines juvenile justice system "as the collective institutions through which a youthful offender passes until any charges have been disposed of or the assessed punishment has been concluded"²⁸. Juvenile justice administration is also defined "as a system of justice, which is applicable to juveniles all over the world and which is different

²⁸ *Black's Law Dictionary 8th edn, Bryan A. Gardner (ed) (2004) pp. 884*

from the justice system applicable to adults".²⁹ In the nutshell, juvenile justice system is that part of the criminal justice system which pertains to children and young persons.

The philosophy behind a special criminal justice system for juvenile is founded on the recognition, of the fact,

*that the emotional, mental and intellectual capacities of children are not at the same level of maturity as those of adults, it is also recognized that the exposure of children to formal criminal processes may have an adverse effect on subsequent attempts at their rehabilitation and reintegration into society*³⁰.

Importantly, the goal of juvenile justice system is the establishment of "a pattern of social justice for children brought before courts of law or otherwise coming into contact with law, it seeks to provide separate courts and ³¹flexible alternatives to punishment"

In the main, this goal is predicated on the fact that the rights and needs of children as well as their dispositions and vulnerability are quite peculiar and unique. It is therefore imperative that these special circumstances are to be considered or taken into account when juvenile offenders are to be managed and treated. The emphasis of juvenile

²⁹ Ijaiya H. Juvenile justice administration in n (<http://www.nujslawreview.org/articles2009vol2no.4/hakeemijaya>)

³⁰ Ayua I.E. and Aragbue I.E. Op. cit, pp. 242

³¹ Akinseye-George Y. op. cit. pp 15.

justice administration therefore should be rehabilitation instead of punishment, prevention rather than retribution as the principal goals of the justice system.

Generally, it is the philosophy of concern, care, reformation, rehabilitation and re-integration of juvenile offenders as a cardinal focus in child justice system that necessitated the enactment of Children and Young Persons Laws that are in operation in all the states of the Federation as well as Child Right Act 2003 applicable in the Federal Capital Territory (FCT). The CRA has been adopted in some States of the Federation as Child Rights Laws.

Quite central to juvenile justice administration in Nigeria are, the age of criminality for juveniles, and the roles of criminal justice institutions as it relates to pre-trial, trial and post-trial of children in the criminal justice system. All these would be focused in this sub-title against the background of child specific legislation in Nigeria. Besides, child -specific laws which in general regulates administration of criminal justice in Nigeria, other laws which regulates administration of criminal justice in Nigeria has provisions applicable to administration of juvenile justice. In these categories are: Constitution of the Federal Republic of Nigeria,

1999, Criminal Code (CC) and Penal Code (PC) Laws, the Criminal Procedure Code (CPC) and the Criminal Procedure Act (CPA).

2.3.3 Age of Criminal Responsibility

It is not every juvenile who commits an offence that is liable to punishment under the law. In Nigeria, there are differences in the age and criminal responsibility of juveniles. The provisions of the Criminal Code Act³² and the Penal Code Law³³ establish that a child under the age of seven (7) years does not have criminal responsibility. These substantive Criminal laws also provides that from 7 – 12 years, a child can only be found responsible if it can be proved that he/she had the capacity to know that the act or omission should not have been carried out. In addition, both the Criminal Code Act and the Penal Code Laws provides that above the age of 12, the person is deemed to be fully responsible for the act or omission.

Of great importance is the provision of the Constitution of the Federal Republic of Nigeria³⁴. Though, the Constitution did not specifically set the age of criminal responsibility, it nevertheless, excluded persons who have

³² S: 30 Criminal Code Act, Cap C38 *Law of the Federation of Nigeria*, 2004.

³³ S: 50 *Penal Code Law*, Op. cit.

³⁴ Section 36 (4) (a) *CFRN*, 1999.

not attained the age of eighteen (18) years who are charged with a criminal offence from public trials.

At this point, a mention is necessary of the age of criminal responsibility for juveniles under the Sharia Legal System. This is important against the backdrop of the fact that some states in northern Nigeria has adopted Islamic or Sharia Legal System.

Notably, under the Islamic or Sharia Law, the age of criminal responsibility is taken to be either eighteen (18) years or puberty. In some Sharia jurisdictions, the age of criminal responsibility is tied to the age of puberty³⁵. It may be stressed however, that in terms of application, the nature of the offence, the sex of the juvenile determines the age of criminal liability. For instance, "in cases involving fornication or adultery, which may attract flogging or the death penalty, the age of criminal responsibility is 15 years"³⁶. Similarly, "the age of criminal responsibility under Sharia Law allows for discrimination against girls because they often achieve puberty earlier than boys"³⁷.

³⁵ Akinseye-George Y. Op. Cit Pp. 46

³⁶ Ijaiya H. Op. Cit 575.

³⁷ Ibid.

In conclusion, the enactment of Child Rights Act, and its subsequent adoption in some States of the Federation³⁸ as well as the provisions of the Constitution³⁹ the issue of the age criminal responsibility for juveniles appears settled. May it be recalled that the CRA defines juvenile as any person below the age of eighteen (18) years. Though, the Act does not expressly make any provision on criminal responsibility implying that anyone under eighteen (18) years of age has no criminal responsibility⁴⁰. It must be made crystal clear that, the CRA remove the dichotomy between a Child and Young Person. By virtue of the provisions of the CRA⁴¹, the provisions of the Act supersede the provisions of all enactments relating to children. By implication, the provisions of the criminal code, penal code and all other laws pertaining to the criminal responsibility of a child has been superseded.

Bearing in mind that chapter three (3), of the project would do an analysis of Nigeria legislation dealing with juvenile justice administration. It suffices to state at this juncture that child specific legislation in Nigeria are Children and Young Persons Act, Children and Young Persons Laws of the various States in Nigeria and the Child Rights Act. The Children

³⁸ It is important to note that the provisions of the Child Rights Law of some States put the age of criminal responsibility below 18 years.

³⁹ S: 36 (4) (a) *CFRN*. 1999.

⁴⁰ S: 204 *CRA*.

⁴¹ S: 274 *CRA*.

and Young Persons Act is the premier legislation dealing with matters affecting children and young persons in Nigeria.

The Children and Young Persons Law applicable in northern Nigeria and that of the various states in Nigeria, re-enacted the provisions of the CYPA to necessarily take into account their socio-cultural, political and religions peculiarities. Instructively, the provisions of the Child Rights Act relating to child justice administration, is the most comprehensive piece of legislation in Nigeria affecting children.

Essentially, the CYPA and the CYPL provides for special handling of matters relating to the welfare and treatment of young offenders through the establishment of juvenile courts. The juvenile courts are established to handle issues, such as: (i) Bail of children arrested. (ii) Custody when children are not taken on bail. (iii) Association of children with detained adults while in custody. (iv) Remand and committal to custody. (v) Conditions under which a parent or guardian may attend court.

Fundamentally, the provision of the Child Rights Act relating to Child Justice Administration is the most comprehensive piece of legislation in Nigeria affecting children. Virtually, all issues affecting a Child are

covered by the Act. Specifically, the Act⁴² prohibit the subjection of any child to the criminal justice process, and guarantees the due process to any child subjected to the Child Justice System. The guarantee provided by the Act cover all stages of investigation, adjudication and disposition of the Child. Some of the States⁴³ that adopted the CRA replicated the foregoing provisions of the Child Right Act.

It is important to mention that the Child Rights Act and the States Laws has sought to apply the principles contained in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (otherwise known as the Beijing Rules) in Child Justice Administration. Generally, the Beijing Rules was aimed at developing a child justice system that should be fair and humane, emphasizing the wellbeing and rehabilitation of the juveniles.

The overriding principle under the Act and the State Child Rights Laws in Child Justice Administration as it relates every action concerning a Child is that, the best interest of the Child shall be the paramount consideration.

⁴² Part xx (sections 204-238) *CRA* Op. Cit.

⁴³ Part xx (sections 205-239) *The Child Right Law of Akwa Ibom State*, 2008; Part xx (section 204-238) *Child Right Law of Kogi State*, 2009. Part xx (204-238) *Kwara State Child's Right Law Gazette* No. 7, Ilorin 25th October, 2007 Vol. 41.

2.4 The Stages of Juvenile Justice Administration

Under this sub-title, the research focuses on the stages of juvenile justice administration in Nigeria and the respective roles played by police, courts, prisons or remand homes or borstal institutions, in relation to the various stages.

Three stages of the Juvenile Justice Administration have been identified. These stages differentiate the phases which a child offender passes through. These stages are:

- i. The Pre-trial stage.
- ii. The Trial stage.
- iii. The Post-trial stage.

In these three stages, which are discussed below, different agencies or institutions are directly involved.

2.4.1 Pre-trial Stage

In the juvenile justice system, the pre-trial stage is very crucial. This is where the juvenile first comes in direct contact with the justice system. This stage brings into play the role(s) of the Police or other Law Enforcement Agencies in Juvenile Justice Administration. In other words, this stage marks the initial contact between a Juvenile and the Police or

Law Enforcement Agencies. The importance of this stage cannot be over emphasized in the juvenile justice system. The pre-trial stage, to a large extent determines the juvenile subsequent attitude towards the state and society and may also affect the success of further interventions by the juvenile justice system.

Note that children come into contact with the criminal justice system by the police through three main streams:

- i. **Direct apprehension.** The police have the power to arrest any person who is reasonably suspected of having committed an offence⁴⁴. Also, the police may arrest any person who commits offence in their presence. This power extends to the direct apprehension of a person in flight after having committed an offence. The law authorized the use of reasonable force in the course of making a lawful arrest⁴⁵. Thus, a child could also be apprehended in this manner.
- ii. **Official Complaint.** Where a child is accused of committing a crime or infringing penal provisions, an official complaint may be made to the police. The parent, guardian, neighbours or victim of the crime may make complaint. A child may also be reported to

⁴⁴ Section 10 *Criminal Procedure Act* Op. Cit, Section 26 *Criminal Procedure Code* Op. Cit, Section 24 *Police Act*, Op. Cit.

⁴⁵ Ibid.

the Police as beyond parental control or in need of care and attention.

- iii. ***Taskforce or Police Raids.*** Another mode of contact between a suspected juvenile offender and the Police in most cities in Nigeria is by Taskforce or Police Raid. Although, the offence of wandering has been abolished, it is fairly a regular occurrence for the Police to carry out surprise raids of specific areas known to be notorious for criminal or other anti social activities such as motor parks. In the process, many children who live on the streets and person regarded as being without legitimate means of livelihood are picked up.

Of all the modes of contact the surprise raids by Police or Law Enforcement Agencies violates the Child's Right the most. This is because, quite often, during such raids children are arrested with adults and without distinction in treatment. In raid situations, there are no separation between children in need of care and protection and children identified and arrested for involvement in criminal activities.

It is observed, that child-specific laws in Nigeria has elaborate provisions to ensure that children in conflict with the law or in need of care and protection are treated in a manner that guarantees respect and

protection. However, experience has shown that in the exercise of the statutory powers of the Police to arrest, many children are arrested during police raids and these children are sometimes maltreated. In order to check these abuses, the power of the police to arrest children need to be monitored and be in constant check.

The paramount consideration therefore, is that, initial contacts between Law Enforcement Agencies and a Juvenile offender shall be managed in such a way as it would respect the legal status of the juvenile, promote the wellbeing of the juvenile and avoid harm to him or her with due regard to the circumstances of the case.

Having considered the forms which a juvenile offender may come into contact with the police or law enforcement agencies, it is now imperative to state what is involved in the pre-trial stage.

The pre-trial stage is comprised of arrest, detention and processing of bail.

A. Arrest

- a. There is no law which specifically provided for the way and manner which children should be arrested. However, the United

Nation Convention on the Rights of the Child provides that the arrest should be carried out in conformity with the law⁴⁶. It is the absence of any specific provision relating to ways and manner that the arrest of children could be effected that the provisions of the Constitution of the Federal Republic of Nigeria, the Criminal Procedure Act, the Criminal Procedure Code as well as the Child Rights Act becomes applicable. The recourse to these statutes is consistent with UNCRC standard. This is to the effect that arrest must be in conformity with the law.

The constitution of the federal republic of Nigeria guarantees the right to personal liberty of every citizen⁴⁷. Accordingly, nobody shall be deprived of his or her liberty, save in certain circumstances and in accordance with a procedure permitted by law. Similarly, the right to life is guaranteed, save in limited exceptions. One of such exception is that right to liberty may be violated "in order to effect a lawful arrest or to prevent the escape of a person lawfully detained"⁴⁸. Though, the constitutional provision does not mention children, it is clear that the section also applies to children.

⁴⁶ Article 37 (b) *UNCRC*.

⁴⁷ Section 48 *CFRN*, 1999.

⁴⁸ Section 35 (i) *CFRN*, 1999.

The Police Act and the various Criminal Procedure Laws empower the Police to arrest any person including a child who is reasonably suspected of having committed an offence, unless the law creating the offence directs to the contrary⁴⁹. Therefore, the police may arrest any person who commits an offence in his presence⁵⁰. Note that, while the Criminal Procedure Code listed circumstance under which the police may arrest, it was short of suggesting the mode of arrest⁵¹. Nevertheless, the procedure for effecting an arrest requires that a police officer actually touches or confines the body of the person to be arrested unless there is a submission to the custody by word or action⁵². An arrested person is not to be subjected to unnecessary restraint except in certain circumstances⁵³.

The use of force is only allowed where the offender resists or attempts to evade arrest. However, a person making an arrest can only be used such force as may be reasonably necessary to overcome any force used in resisting arrest. Where a person authorized by law to use force uses excessive force such a person would be summarily liable⁵⁴.

⁴⁹ Section 20 Police Act, Cap P19 *Laws of the Federation of Nigeria*, 2004.

⁵⁰ Section 26 (a) Criminal Procedure Code, Cap 30 *Laws of Northern Nigeria*, 1963.

⁵¹ Section 26 (a) – (m) – Ibid.

⁵² Section 3 CPA, Section 37 *CPC*.

⁵³ Section 4 CPA and Section 37 of the *CPC*.

⁵⁴ Akinseye-George Y. Op. Cit. Pp. 36

However, exceptions exist where the right of any person inclusive of children, to personal liberty could be violated without infringing on the law. The exceptions are⁵⁵.

- i. For the purpose of bringing him before a court in execution of the order of the court or upon reasonable suspicion of his having committed a criminal offence or to such extent as may be reasonably necessary to prevent his committing a criminal offence.
- ii. In the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare and
- iii. In the case of persons suffering from infection or contagious diseases, person of unsound mind, any adult or vagrants for the purpose of their care and/or treatment or the protection of the community.

In the course of this study, it was found that in the area of arrest of children, verbal abuse by police, indiscriminate use or threat of physical force, during arrest, direct assault by police, handcuffing and unnecessary restraint are the commonest forms of abuses.

⁵⁵ Sections 35 (i) *CFRN*.

B. Detention

Detention is the second phase of the pre-trial stage. Contrary to ubiquitous provisions in Nigeria statutes and international treaties regulating detention of children, evidence abounds that children are not only detained in police cells, prisons and other custodial institutions but exposed to all manners of abuses, denials and deprivations.

At this juncture, it is important to analyse the laws and practice in Pre-trial Detention or Custody of children in order to test the legality or otherwise of these abuses.

The Constitution of the Federal Republic of Nigeria provides that any person arrested must be brought before a court of law within a reasonable time⁵⁶. The Constitution defines reasonable time to mean (a) In the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day, and (b) In any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable⁵⁷. The import of this constitutional provision is that a juvenile offender must be taken before a court within a period of one or two days depending on the circumstances.

⁵⁶ Section 35 (4) CFRN, 1999.

⁵⁷ Section 35(5) CFRN, 1999

The Children and Young Persons Act as well as the Children and Young Persons Laws of the various states has provision that a child under sixteen (16) years of age who cannot be brought before a court of summary jurisdiction when apprehended, should be released on bail to his guardian or parent as soon as possible, unless the case is one of homicide or grave offences, or it is in the interest of the child and it will defeat the ends of justice. In addition, the law provides that a juvenile not released on bail by the police is to be detained in a place of detention (a remand home). Where that is not practicable, the Police or Prison authorities are to make arrangement to prevent the association of the Child or Young Persons with adult offenders as far as practiceable⁵⁸.

Apart from the provisions of Nigeria statues highlighted above, several International Instruments protect a juvenile offender during pre-trial detention. The Beijing Rules provides that pre-trial detention should be a last resort and for the shortest possible time.⁵⁹ Where pre-trial detention become inevitable, juvenile in pre-trial detention should be kept separate from adults, be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by United Nations and while in custody should receive care, protection and all necessary

⁵⁸ Section 35 CYPA and S: 3 CYPL

⁵⁹ Rules 13:1 Beijing Rules.

individual assistance – social, educational, vocational, psychological, medical and physical that they may require in view of their age, sex and personality.⁶⁰

In a similar vein, UNCRC provides that the arrest, detention or home 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 appropriate period of time⁶¹. The provisions of the CRA which is in consonance with UNCRC is that detention pending trial shall be used only as a measure of last resort and for the shortest possible period and wherever possible, be replaced with alternative measures, including close supervision, care by and placement with a family or in educational setting or home and while in detention, should be given care and protection etc⁶².

The combined effect of the provisions of CYP A, CYPL, the Beijing Rules, UNCRC is that in pre-trial detention or custody of juvenile offenders, special rules applies. These rules include:

- i. The need to ensure that juvenile offenders are detained in remand homes, not prisons or police cells.
- ii. The need to ensure that juvenile offenders in pre-trial detention are kept separate from adults.

⁶⁰ Rules 13:4, 13.3, 13:5 respectively of Beijing Rules

⁶¹ Article 37 UNCRC.

⁶² Section 212 (a)-(b) and (2) CRA.

- iii. The need to provide juvenile in pretrial detention, care, protection and necessary individual assistance in the education, vocational, medicals etc.

In practice, there are no remand homes or approved institutions in most States in Nigeria and where there exist, they are not equipped to serve their statutory functions. Further, detention of juvenile offenders in Police Cells or Prisons with adult offenders was quite prevalent. Most of the times, juvenile offenders were detained in Police Cells and Prisons for over a period of one to three months before their first appearance in court. Places of detention for juveniles are bereaved of requisite hygienic condition and facilities to provide juvenile offenders with the much needed care protection, socio-educational needs appropriate to their status – as a child.

C. Bail

This is the third phase of the pre-trial process. Generally, once a child is placed in police custody upon arrest, the issues of bail ought to arise. Importantly, Bail as a component of the pre-trial process pertains only to the power of the Police to grant or withhold the grant of bail to an accused juvenile.

Firstly, it must be acknowledged that the bail provisions in the Constitution⁶³ and the Criminal Procedure Laws⁶⁴ apply to both the adult and juveniles. This is to the effect that, any person arrested by the police or arrested by any other competent person or authority and handed over to the police on suspicion of having committed an offence must be taken to Court by the Police within 24 hours, if there is a court of competent jurisdiction within 40 kilometers of the place where the alleged offence was committed or within 48 hours or such a longer period as it considered reasonable where there is no court within 40 kilometers of the place of the alleged commission of the offence. Where a capital offence is alleged against a person detained by the Police, the police may detain the person longer than 24 hours or 48 hours as the case may be.

The provisions of Nigeria's legislation as it relates to Police Bail, to a large extent, is in complete agreement with the provisions of the Beijing Rules and the UNCRC being that a juvenile who has been arrested but can not immediately be brought before a court must be released on bail by the police.

Notably, the provisions of the CYPA and CYPL listed factors which will guide the police in the exercise of its discretion to grant or withhold bail

⁶³ Section 35 (4) and (5) CFRN, 1999

⁶⁴ Sections 17 & 18(a) CPA and Sections 290 and 340 CPC

to a juvenile offender. These includes: (i) where the charge is the one of homicide or other grave crime or (ii) whether it is necessary in the interest of such persons to remove him from association with any reputed criminal or prostitute or (iii) whether the officer has reason to believe that the release of such persons would defeat the ends of justice⁶⁵ or (iv) whether by reason of the granting of bail the proper investigation of the offence would be prejudiced or (v) whether there is a serious risk of the accused escaping justice⁶⁶.

In the course of this study, through visit to some police stations, and interaction, it has been revealed that a large number of children in police custody are not granted bail. On the grounds that sureties are not provided or the alleged offence is rampant in the area or suspect may jump bail, or may interfere with investigations. Other grounds for denial of bail are the juvenile offender is already in remand homes or guardians or parents insistence, or bails not requested, bail granted but could not meet bail conditions or offence notailable etc.

2.4.2 Trial Stage

This stage brings into fore the role of courts in the juvenile justice administration. Note that save in circumstances where the juvenile

⁶⁵ S. 3 CYPA AND Section 3 CYPL

⁶⁶ Section 340 CPC.

commits an homicidal offence resulting in the death of his victim or where the juvenile is charged jointly with adults, juvenile courts are the only courts with jurisdiction to try juvenile offenders. It is against this background, that in discussing the trial stage in juvenile justice system, the research shall attempt a discussion on juvenile courts under the CYPA or CYPL and Family Courts under the CRA. Attempt shall be made to elucidate, whether in the operations of these courts, they have measured up to their statutory mandate or international standard in the administration of Child Justice. The role of the police in prosecution of juvenile offenders may equally be x-rayed.

a. Juvenile Courts

The juvenile court is a court constituted under the authority of each State law, inclusive of Kogi State where the CYPL applies. Importantly, under section 6 (i) of the CYPA a juvenile court for the purpose of the hearing and determination of cases relating to children or young person is constituted by a magistrate either sitting alone or with any other person appointed by the chief judge of a state. Persons sitting with the magistrate on juvenile court are commonly referred to as assessors.

In general, the Chief Judge is given discretion by the enabling law to appoint a panel or assessors for each magisterial district and where he

does so, the court is constituted by a magistrate as chairman and other persons selected from the panel by the magistrates not being more than two in number⁶⁷. In practice the magistrate in his selection, would usually ensure that at least one woman is chosen from the panel to sit with him.

The objective of the juvenile court goes beyond dealing with criminal cases. The main objective of juvenile courts is for the welfare of children in need of care and attention and the treatment of children in conflict with the law.

From the provisions of CYPA and CYPL applicable to Kogi State, it is evident, that there are no separate or specialized juvenile judges. Rather, a magistrate is allowed to wear two caps by sitting as a magistrate in a regular court and at other times with or without other persons called assessors.

All young offenders are subject to trial by the juvenile courts except in two instances. These instances include where the penalty for the offence is the penalty of death and where a juvenile is charged jointly with an

⁶⁷ Rules 3 and 4 of Juvenile Court Rules, under the CYPA, Cap. 32 *Laws of the Federation of Nigeria and Lagos* 1958.

adult⁶⁸. These exceptions are to the effect that, such juveniles found in these categories shall be tried in regular courts.

Strictly speaking, juvenile courts are only courts that has jurisdiction over Children and Young Persons bearing in mind the afore-stated exceptions.

In ***Ibitoye Vs. Permanent Secretary, Ministry of Labour and Social Welfare***⁶⁹ the high court reiterated the point that juvenile courts are courts of criminal jurisdiction for the trial of children and young persons.

It would appear that the most important preliminary consideration by a juvenile court in the trial process or before assuming jurisdiction in the trial of a young person is the determination of the age of the juvenile offender. Usually the age is determined by "(i) adducing direct evidence relating to the age such as a birth certificate (ii) oral testimony as to the age of the accused person by parents or relations; and (iii) medical examination by a medical practitioner in a government medical institution"⁷⁰.

⁶⁸ Section 8 (2) CYPA

⁶⁹ (1967) NMLR 76.

⁷⁰ Osamo B. *Fundamental Procedure of Criminal Law in Nigeria*, Dee Sage Nig. Ltd. Ojodu (2004), Pp. 27.

On imposition of punishments, juvenile courts cannot impose imprisonment on juvenile offenders⁷¹. The only proviso is that, young person may be ordered to be imprisoned if there is no suitable way of dealing with him⁷². Further where a young person is ordered to be imprisoned, he shall not be allowed to associate with adult prisoners⁷³. The operating word is to "associate", impliedly; imprisoned juvenile offender could be kept in the same facility. This standard is not good enough.

Nevertheless, the following punishments may be imposed by juvenile courts;

- a. The juvenile or the juvenile and his parents may be ordered to enter a recognizance to be good behaviour
- b. The juvenile may be placed under the supervision of a probation officer, or relative or other person.
- c. The juvenile may be sent to a corrective institution, such as Borstal,
- d. The juvenile or the juvenile and his parents may be ordered to pay fines, damages or costs⁷⁴.

⁷¹ Section 11 (i) CYPL and Section 12 (i) CYPA.

⁷² Section 11 (CYPL and Section 12 (2) CYPA.

⁷³ Section 11 (3) CYPL and Section 12 (b) CYPA

⁷⁴ Section 12 (2) CYPA and Section 9 of CYPL.

Characteristics of juvenile courts include (i) juvenile courts are not open to the public. Only members and officers of the court and the parties to the case, their legal representatives and accredited members of the press are allowed in court⁷⁵. (ii) the identity of juveniles shall not be published by any person except with leave of the court. Any person who acts in contravention of this provision shall be liable to a fine of ₦100.00; (iii) the expressions 'conviction' and 'sentence' shall not be used in relation to a juvenile dealt with in a juvenile court. Instead, a finding of guilty shall be recorded, where the juvenile committed the offence⁷⁶.

In addition, a juvenile court shall sit either in a different building or room from that, in which regular courts are held, or on different days or at different times from those at which the regular sittings of court are held. Juvenile shall not be allowed, while waiting before or after their attendance in court to associate with adults charged with or convicted of any charge, save where a juvenile is charged jointly with adults⁷⁷. Furthermore, a juvenile who is found to have committed a capital offence cannot be sentenced to death⁷⁸ he can only be detained at the pleasure of the governor⁷⁹ the Supreme Court stated in the case of **Modupe V.**

⁷⁵ Oluwatoyin D. *Criminal Procedure in Nigeria, Law and Practice* (Black store Press Ltd, (1990)

⁷⁶ Section 6 (5) CYPA

⁷⁷ Section 6 (5) CYPA.

⁷⁸ Oluwatoyin D. Op. Cit.

⁷⁹ Section 368 (3) CPA and Sections 270 and 272 CPC.

State⁸⁰ that where the evidence before the court established that a juvenile had committed a capital offence, it would be wrong of any court not only to sentence him to death, but also to even pronounce such a sentence.

At this juncture, it is crucially necessary to take a look at the role of the police and the trial procedure in Juvenile Courts. Generally, it is the management of the trial process that will determine greatly whether the provision of the law has been complied with and applied for the benefit of the juvenile offender.

The trial procedure in Juvenile Courts, particularly for children in conflict with the law starts with arraignment on the first day of the trial. Arraignment of the juvenile in juvenile court usually comes after police arrest and all investigations concluded. During trial, the prosecuting officer who prosecutes the child offender is a policeman. It is also the requirement of law that before trial proceedings, the court orders the investigating police officer to locate and notify the parents or guardians of the charges against him or her⁸¹.

⁸⁰ (1988) 9 SCNJI.

⁸¹ Owasanoye B. and Wernharm M. (eds) *Street Children and Juvenile Justice System in Lagos Nigeria Report*, 2004, Pp.42

A juvenile court properly constituted in line with the law and with strict adherence to the rule guiding its trial processes, the court shall read the charge(s) and explain to the juvenile offender in the language he understands. The importance of this step is to avail the child offender the opportunity to deny or explain if he or she has committed the alleged offence(s)⁸². Soon after this process, it is normal for the grant of bail to follow as prescribed by law.

In order to ensure best practice and to respect the “best interest” principle of the child, some basic procedural safeguards are required. These basic procedural safeguards includes, the presumption of innocence, the right to remain silent, the right to the presence of a parent or guardian, the right to cross examine witnesses and the right to appeal to a higher authority⁸³. Similarly, throughout the proceedings the juvenile should have a right to be represented by a counsel or to apply to free legal aid and the parents or guardian of the juvenile should be entitled to participate in the proceeding unless the court consider their exclusion necessary in the interest of the juvenile⁸⁴. Finally, the juvenile’s right to privacy is to be respected at all stages of the proceeding⁸⁵ and he is entitled to have the matter determined as speedily as possible⁸⁶.

⁸² Ibid

⁸³ Rules 7 Beijing Rules.

⁸⁴ Rules 15 (2) Beijing and Article 37 © UNCRC.

⁸⁵ Rules 8 Beijing Rules & Article xvii (d) UNCRC.

⁸⁶ Article 37 UNCRC.

May it be reiterated that on the question of bail of juvenile offenders during trial, grant of bail is usually delayed for different reasons. The usual reason is that the parents or guardians are absent, could not be located or unable to fulfil conditions of bail. Consequently, the child may be remanded at a remand home.

In the trial of juvenile offenders, the length of time involved should be of paramount consideration. Magistrates are enjoined to ensure that due process is followed throughout the course of the proceedings and that the proceeding should be expeditious and concluded quickly without giving room for technicalities. However, the usual explanation for delays in the quick determination of cases affecting juvenile offenders ranges from impossibility of locating or tracing accused children's sureties (mostly parents or guardians) when released on bail; non-appearance of complainant in court on trial dates, settlement of disputes and/or reconciliation of the accused and the complainant, (i.e. victims of the crime....⁸⁷.

As laudable as the intentions and objectives of the law in relation to juvenile proceedings were, studies have shown that in Kogi State, like some other states of the Federation, a greater percentage of juvenile

⁸⁷ Owasanoye B. & Werharm M. (eds) Op. Cit. Pp 42.

were not represented by a lawyer during trial. Again, a significant number of juvenile offenders have their cases disposed in court with the assistance of social welfare workers without their being given opportunity of participating in the proceedings or expressing themselves freely. In some cases, juvenile offenders were denied contact with their friends and relatives while in custody or awaiting trial. In other cases, where the juvenile is on trial, it usually take a long period of time for the matter to disposed.

B. Family Courts

Family courts are established pursuant to the provisions of the Child Rights Act, 2003. The courts are established for the purposes of hearing and determining matters relating to children⁸⁸. There are two levels of family courts. Family court at the High Court level and family court at the Magistrates court level. In jurisdictions where the Child Rights Law are in place, juvenile courts has been replaced with family court.

The family court at the High Court level shall be constituted by a judge and two assessors, one of whom must possess attributes of dealing with children and matters relating to children preferably in the areas of child psychology and education⁸⁹. At the magistrate court level, the family

⁸⁸ Section 149 and 204 CRA

⁸⁹ Section 152 (3) (a) CRA

court shall be constituted by a magistrate and two assessors, one of whom shall be a woman and the other person who has attributes of dealing with children and matters relating to children preferably in the area of child psychology education⁹⁰.

In terms of appointment of judges, magistrates and assessors of the family courts, at both High Court and Magistrate Court levels the appointment are made by the Chief Judge of the various states for the states and the Chief Judge of the Federal Capital Territory, Abuja⁹¹.

Family courts has unlimited jurisdiction to hear and determine (a) any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim in respect of a child is in issue and (b) any criminal proceeding involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a child, against a child or against the interest of the child⁹².

Just like the juvenile court, family courts exercise both civil and criminal jurisdiction on matters affecting or relating to children.

The features of family courts are quite similar to those of juvenile courts.

Generally, the features of family court includes, exclusion of person other

⁹⁰ Section 153 (3) (a) CRA.

⁹¹ Section 152 (2) and Section 153 (2) CRA.

⁹² Sections 151 (1) (a) (b) CRA.

than members or officers of court; the parties to the case, their solicitor, and counsels parents or guardian of the child; and other person directly concerned in the case, and members of the press from attending the court, during proceedings affecting or relating to children. Prohibition of publications of the child name, address, school, photograph or anything likely to lead to the identification of the child where matter is before the court; all proceedings shall be conducive to the best interest of the child.

In any case, most states that have domesticated the Act or passed the Act as State law are yet to have functional family courts in place. The submission is that the continuous trial of juvenile offenders in juvenile court in such states is a nullity where the State Child Right Laws repeals Children and Young Person Laws of those states.

2.4.3 The Post-Trial Stage

The post trial stage is the last in the criminal justice circle. This stage deals with correctional institutions/prisons and borstal where those adjudged by the court as guilty are kept on reformatory or retributive punishment⁹³. As it relates to a child offender, this stage marks the anti-climax of the criminal proceedings affecting or relating to a child as, it is the stage, where guilt or innocence of the juvenile offender will be

⁹³ Daudu J. B. SAN, Welcome address of the President of Nigeria Bar Association to all participants on the first criminal reform conference at International Conference, Abuja on 18th July, 2011.

pronounced or where the allegation against him or her will be “proved” or “not proved” as required by law. Where the child is found guilty or the allegation against him “proved”, the court orders the appropriate punishment to be given to the child, in line with the provisions of the law.

This stage is crucial. At this stage, children are sent to approved institutions or borstal homes, or in serious cases, to prison depending on the nature and circumstances of their case. There are four (4) types of custodial institutions for juvenile offenders. These are Remand Homes or centre(s), approved school(s) borstals and prisons⁹⁴. A remand home or centre is a place of detention for juvenile offenders not less than 16 years of age but under 21 years awaiting trial, although, it may once in a while accommodate a convicted juvenile⁹⁵. Remand centres are intended to serve as observatories where juveniles may be detained or observed while inquiry is being conducted to assist the court in reaching decisio⁹⁶ on the other hand, a borstal is a federal institution for the detention of convicted offenders of ages 16-21 years⁹⁷. A borstal serves both as a place of detention for older young offenders covered by CYPA and as an intermediate place of detention for young adults who do not fall within the preview of the CYPA, on the presumption that they too may benefit

⁹⁴ UNICEF, *Children's and Women's Rights in Nigeria*, A wake-up (situation Assessment and Analysis 2001 Op. Cit. Pp. 230, See also Section 13 (3) and (4) CYPL.

⁹⁵ Section 3 (1) (a) *Borstal institutions and Remand Centres*, Act, Cap B11 *Laws of Federation of Nigeria*, 2004.

⁹⁶ UNICEF, *Children's and Women's Right in Nigeria* Op. Cit. Pp. 230.

⁹⁷ *Ibid*, see also Section 3 (i) (b) Cap BII CFN.

from the specialised treatment that is supposed to be available in borstals⁹⁸. Though children are not supposed to be kept in prisons, some children end up in prisons either because they were born there or taken into prison by their mothers or because they are committed to prison under custodial order. Police cells are detention centres of sort to some children. Children who have been arrested for an alleged offence and who are waiting to be taken before the juvenile are detained in police cells.

2.5 Problems Associated with Juvenile Justice Administration in Nigeria

In this sub-title, the research appraises the problems facing juvenile justice administration in Nigeria. These problems are generally manifest in all the stages of the juvenile justice system, starting from pre-trial, trial and post trial stages. These problems would be highlighted and assessed against the backdrop of the provisions of the CYP, CRA, UNCRC, AUCRWC and Beijing Rules among others.

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

⁹⁸ UNICEF, *Children's and Women's Right in Nigeria* Op. Cit. Pp. 231.

- 1. *Physical abuse of juveniles during arrest and detention by police:*** it is observed that quite a number of juveniles experience severe and some physical abuse during arrest and detention. In some cases juveniles were beaten, tortured or threatened with torture or imprisonment to confess to crimes they may not have committed. These observations are in line with UNICEF report⁹⁹ and a study by Ayua I. A. & Okagbue I. E.

- 2. *Inadequate number of police personnel and lack of requisite training for police, judicial officials, social welfare workers and prison officials:*** The police are understaffed and under resourced and many of Rank-and-File police have low level education and few have received any training in human rights and even fewer in the rights of the child. In a similar vein, though a substantial majority of judicial officers possess requisite certificate, they lack the experience and training in child related issues. Importantly, Magistrates, who handles the bulk of juvenile offences lack specialised skills in juvenile justice matters.

Child justice administrators, social welfare officers, probation workers did not possess the specialised skills and facilities for treatment of child

⁹⁹ UNICEF, *Juvenile Justice Administration in Nigeria* (a fact sheet) UNICEF FGN, Abuja.

offenders. In line with the laws and international instruments or protocols, personnel involved in juvenile administration are expected to have a specialised and regular training in juvenile matters.

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

4. *Non-establishment of juvenile or family courts:* Most states of the federation including Kogi State do not have permanently

constituted juvenile courts. Instead, in most states, designated magistrate courts exercised jurisdiction to hear juvenile cases ad-hoc. In states where the Child Rights Laws are in place, such as Kogi State, family courts are not yet constituted or established to determine cases affecting or relating to children. The implication of this is that, young offenders are often tried and sentenced in adult courts with all the paraphernalia of formal judicial process.

- 5. *Lack of legal representation:*** The near absence of contact between children in conflict with laws and legal practitioners from the time of arrest to remand, through trial and finally, sentence is a very serious militating factor against juvenile justice administration. There is no special legislation to make provision for the extension of legal aid to juveniles. This simply presupposes that a "juvenile offender must therefore, fall back on the general provisions in the law which make legal aid available to persons earning less than ₦1,500.00 per annum, in respect of narrow range of criminal offences.¹⁰⁰ The Children's rights in Nigeria would be better protected if all children charged with criminal offence receive free legal aid, irrespective of the nature of the offence, as a basic entitlement.

¹⁰⁰ Schedule 2, Legal Aid Act, Cap L9 *Laws of Federation of Nigeria*, 2004.

- 6. *Non-recourse to alternative measures and diversion options in the law.*** The CYPA/CYPL gives sufficient latitude to a juvenile judge to deal with a child found guilty of an offence. The CYPA provides the following options, dismiss the charge, discharge the offender if he enters into a recognizance, discharge the offender and place him or her under a probation officer, commit the offender to the care of a relative or other fit person, send the offender by means of a corrective order to an approved institution, order the offender to be whipped, order the offender or the parents to pay a fine or damages or give security for good behaviour¹⁰¹. The non recourse to these listed options explains why there are so many children under custodial sentence.
- 7. *Inadequate funding:*** Generally, the juvenile justice machineries are not properly funded owing to several reasons. Majorly, there is the tendency at the state level to confuse juvenile criminal justice system with the activities of the department of social welfare in the Ministry of Women Affairs and Social Development. In another vein, there is the general perception that administration of criminal system is all embracing and that the institutions and agencies are

¹⁰¹ Section 15 CYPA and Section 9 CYPL

the same. In Kogi State, no specific funding is made for juvenile institutions. The budgetary provisions by the Ministry of Women Affairs and Social Development for the social welfare department are hardly released. This may be as a result of the confusion or the misunderstanding of not seeing the operation of juvenile justice agencies as distinct. As a result of poor funding, juvenile courts are not structured in the manner required by law to operate optimally, facilities and infrastructural needs of the institutions in the juvenile justice sector are hardly met and specialised and regular training for human elements involved in the juvenile criminal justice system is deemphasized.

2.6 Conclusion

With the enactment of the CRA and its subsequent adoption in some states of Nigeria, very many problems associated with juvenile justice administration attributable to the provisions of CYPA, has been cured. It is submitted that the provisions of the CRA are consistent with the standard set by UNCRC, AUCRWC and Beijing Rules and other international instruments and protocols on the promotion and protection of the rights of the child.

Nevertheless, as it would appear from the foregoing enumerated constraints and challenges, there is the dire need for reforms of the institutions and adequate funding of institution responsible for juvenile justice administration in Nigeria. Institutions, such as, the police, courts and detention centres as well as social welfare departments are to be child-friendly and performance driven. Of great importance to the workings of these institutions, is the capacity building of the persons and their specialization in child-centred skills. The proper understanding of the laws and international instrument on juvenile matters could only be attained, where the persons who drive the process are adequately trained to appreciate the law international standards on juvenile justice administration.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK INVOLVED IN JUVENILE JUSTICE ADMINISTRATION

3.1 Introduction

The effectiveness of any criminal justice system depends on the laws in place and the institution saddled with the task of ensuring that the provisions of the laws are given effect. Therefore, in this chapter the research focuses on the legislation that regulates juvenile justice system and the institutions involved in juvenile justice administration. Legislation considered are the Children and Young Persons Law¹⁰², the Child Rights Act¹⁰³ and/or the Child Right Law, Kogi State.¹⁰⁴

Further in this chapter, the following juvenile justice institutions were discussed. The institutions are; the police, the court, the prisons and other custodial institutions.

3.2 Nigerian Legislation on Juvenile Justice Administration

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

¹⁰² Cap 21 *The Laws of Northern Nigeria*, 1963.

¹⁰³ Gazette No. 116, Vol. 90, 23rd December, 2003.

¹⁰⁴ *Kogi State Child Right Law*, 2009.

substantive criminal law, such as the Penal Code Law¹⁰⁵ and the Criminal Code¹⁰⁶ applies to children. This is so, as cases involving children are criminal in nature. In short, there are specific provisions in these laws relating to children. For instance, the age of criminal responsibility provisions strictly applies to children. Further the substantive criminal law has several provisions that protect children against harm and sexual exploitations¹⁰⁷.

The Criminal Procedure Code¹⁰⁸ and the criminal Procedure Act¹⁰⁹ are the procedural laws regulating all criminal trials inclusive of the trial of children.

However in this research, emphases were on child-specific legislation in Nigeria. To this end, discussion shall centre on the Children and Young Persons Law (CYPL)¹¹⁰ and the Child Rights Act¹¹¹ or the Child Rights Law of Kogi State, 2009.

¹⁰⁵ Cap 89, *The Laws of Northern Nigeria*, 1963.

¹⁰⁶ Cap C38 *The Laws of the Federation of Nigeria*, 2004.

¹⁰⁷ Section 216 against indecent assault of boys under 14 years, section 222 prohibiting indecent treatment of girls under 16 years, section 225 adoption of girls under 18 years with intent to have carnal knowledge, all of the criminal code and sections 236 causing death of quick unborn child, section 237 abandonment of a child under 12 years, section 238 cruelty the children, section 271-274 adoption and kidnapping of children, section 278 buying and selling of children for immoral purpose, all of the penal code.

¹⁰⁸ Cap 30 *The Laws of Northern Nigeria*, 1963.

¹⁰⁹ Cap 21 *Laws of Northern Nigeria*, 1963.

¹¹⁰ Gazette No. 116, Vol. 90, op. cit.

¹¹¹ Cap. C41 *The Laws of the Federation of Nigeria*, 2004.

It may be noted from the onset however, that, the provisions of CRA are in pari materia with the provision of CRL, Kogi State. Kogi state wholesomely adopted the Child Rights Act and where exceptionally necessary, made additions or subtractions to suit its own peculiarities.

3.2.1 Children and Young Persons Law

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

Principally, the law (CYPA) was enacted to "make provision for the welfare of the young and the treatment of young offenders and for the establishment of juvenile Courts". The purpose of CYPA was not quite the same with that of CYPL. The CYPL was enacted "to make provision for the welfare of the juveniles and the treatment of young offenders and to prohibit the participation of juveniles in political activities". Both laws are in agreement as to "the welfare of juveniles or young person and the treatment of young offenders. Unlike the CYPA, the CYPL clearly prohibit

the participation of juveniles in political activities and did not provide for the establishment of juveniles court. As it were, the Law provides for the trial of juveniles in "a Court of summary jurisdiction". Magistrate courts are courts of summary jurisdiction and thereby assume the jurisdiction of juvenile courts when trying young offenders in the Northern Region of Nigeria.

At this juncture, it is important to note that there are differences in the age and criminal responsibility of the juvenile in Nigeria¹¹². Both the CYPA and CYPL defines a child as a person under the age of 14 years. The CYPA defines a young person as a person who has not attained the age of 14 years, but is under the age of 17 years¹¹³. The CYPA on its part defines a young person as a person who has not attained the age of 14 years but who has not attained the age of 16 years¹¹⁴.

In the trial of a juvenile, the question of bail, pre-trial custody and detention as well as the composition and procedure of the juvenile courts are very key issues.

¹¹² Section 30 of the Criminal Code Act, op. cit. and section 50 of the Penal Code. Op. cit

¹¹³ Section 2 of CYPL

¹¹⁴ Section 2 of CYPL

On the issue of bail, the provision of CYPA and CYPL are similar¹¹⁵. The Laws provided for the release of a juvenile offender, apprehended with or without warrant by a police officer. Such release may be on a "recognisance 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".

However, the above bail condition does not apply

*(a) to a person accused of homicide or other grave crime or (b) to a situation where it is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute or (c) "to a situation where the officer has reason to believe that the release of such a person would defeat the end of justice"*¹¹⁶.

On the last condition, we are in complete agreement with a scholar who stated that it "appears too vague and be abused to unnecessarily deny bail to young offenders"¹¹⁷.

The import of the foregoing provisions, save in the circumstances that constitute the exception, once a child is placed in police custody upon arrest, the issue of bail ought to arise. Notably, the pre-trial provision on

¹¹⁵ Section 3 of CYPA and Section 3 of CYPL

¹¹⁶ Section 3 (a), (b) and (c) of both CYPA and CYPL

¹¹⁷ Ijaiya H. Op. Cit. Pp. 576.

bail pertains only to the power of the police to grant or withhold bail to an accused person.

The provisions of CYPA and CYPL concerning bail is in consonance with the provisions of section 35(4) and (5) of the 1999 Constitution and sections 17 and 18 of the Criminal Procedure Act and section 340(1) of the criminal procedure code. These statutory provisions granted the police wide discretionary power on bail.

The other crucial issue in juvenile justice administration is the question of pre-trial custody or detention. Both the CYPA and CYPL provide that a child not released on bail by the police is to be detained in a place of detention¹¹⁸. The place of detention recognised by the statutes is Remand Homes¹¹⁹. Alternatively, in the absence of Remand Homes or where Remand Homes are not conveniently located, a child may be detained in an Approved Institution, Prison or Police Station or any other suitable place or in the care and custody of such a person as the police officer or court may think proper¹²⁰.

In most jurisdictions, child friendly detention centres as provided by the statutes are not available. For instance, in Kogi State there are no

¹¹⁸ Section 4 CYPA and section 4 CYPL

¹¹⁹ Section 13 (3) CYPL and section 16 (2) CYPL.

¹²⁰ Section 13 (4) CYPL and section 16 (3) CYPA.

Remand Homes or Approved Institutions. The practice is to remand or detain child offenders in the Police Cells or prisons without regard to the unique status and provision of the law. Notwithstanding the constitutional provisions as to the time limit within which a person who is arrested or detained is to be brought before the court¹²¹, children are often kept in the custody for quite “unreasonable time”. This practice is a violation of the standard set by international instrument which Nigeria subscribed to. The international standard is that detention of a child should only be as a last resort and for the shortest time possible¹²².

The third most critical issue in the determination of the effectiveness of juvenile justice administration has to do with the constitution and procedure of the juvenile courts. The CYPL does not expressly make provision for the establishment of juvenile courts. The law only vest jurisdiction on “court of summary jurisdiction”¹²³ to try juvenile offenders. The way and manner the court of summary jurisdictions are to be constituted for the purpose of trial proceedings in a juvenile case is not contemplated by the CYPL. However, in practice designated Magistrates sits over juvenile matters, having regard to the requirements provided in sections 8,9,10 and 11 of the CYPL respectively. These sections are with respect with the attendance of the parent or guardian of juvenile during

¹²¹ Section 35 (4) CFRN, 1999

¹²² Rules 13:4, 13:3 and 13:5 Beijing Rules

¹²³ Section 3 CYPL

trial, method of dealing with juvenile whose quit has been established, appropriate alternative orders and restrictions on punishment.

This standard, no doubt, left much to be deserved. The implication is that the procedure is at the discretion of the Magistrate. It is difficult to guess the reason why the equivalent of section 8 of CYPA dealing with the procedure was excluded from the CYPL.

On the other hand, the provisions of the CYPA are quite explicit as to the constitution and procedure of the juvenile courts. The procedure for the trial of juvenile offenders is provided in section 8 of the CYPA. The section regulates the trial procedure of juvenile courts in Nigeria, including the right of the juvenile offenders to due process. Similarly, the CYPA confers exclusive jurisdiction on juvenile courts to try juvenile offenders.

Under section 6 of the CYPA, a juvenile court for the purpose of hearing and determination of cases relating to children or young persons is constituted by a magistrate either sitting alone or with any other person appointed by the Chief Judge of a State. This provision seems to suggest that, there are no separate or specialised juvenile judges. Rather a magistrate is allowed to wear two caps by sitting as a magistrate in

regular court and as a juvenile judge at other times with or without other persons called assessors.

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

3.2.2 Child Right Act

The Child Right Act is the most comprehensive piece of legislation in Nigeria dealing with all issues relating to children. Its application is however limited to the Federal Capital Territory being a law concerning children, a residual matter within the legislative competence of states. Kogi State like several other states in Nigeria has adopted the Law as a State Law.

Importantly, the CRA has introduced a juvenile justice administration system known as child justice administration. A very salient provision of the Act which is a fundamental departure from the provision of CYPA and CYPL is that, it specifically removes a child from the purview of the criminal justice process or criminal sanctions. It provides that “no child shall be subjected to the criminal justice process or criminal sanctions,

but a child alleged to have committed an act which would constitute a criminal offence if the child were an adult shall be subjected only to the child justice system and the process set out in the Act"¹²⁴. The CRA provided for the establishment of family court at the High Court level and family court at the Magistrate Court level.¹²⁵

These courts are conferred with unlimited jurisdiction to hear and determine, among others, any criminal proceeding involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a child, against a child or against the interest of the child¹²⁶.

The child justice procedures in Family Courts are specifically contained in sections 217 of the CRA. Under the CRA, the procedures for handling the child initial contact with the Law are clearly set out¹²⁷. Primarily, the court or the police are required to notify the parent or guardian of the child immediately or within the shortest time possible depending on the circumstances of each case and consider the issue of the release of the child without delay¹²⁸. The police in the course of investigation or the courts during adjudication are obliged to handle a child offender in such

¹²⁴ Section 204 CRA

¹²⁵ Section 149 and 150 CRA

¹²⁶ Section 151 (b) CRA

¹²⁷ Section 217 CRA

¹²⁸ Ibid

a way or a manner that respect the legal status of the child, promote the best interest and well being of the child and avoid harm to the child, having regard to the situation of the child and the circumstance of the case¹²⁹.

In order to guarantee and protect the interest of the child offender, the CRA lays profound emphasis on the competence, training and professionalism of all persons dealing with a child offender. Section 206 (1) of the CRA listed this category of persons to include Judges, Magistrates, officers of the Specialized Police Unit, Supervisors and Child Development Officers. Realizing the importance of the police in child justice administration the CRA established a specialized police unit which shall consist of police officers to exclusively deal with children and primarily engaged in the prevention of child offences¹³⁰.

It is the specialized police units in the Nigeria Police Force, that has as its function (a) the prevention and control of child offences, (b) the apprehension of child offenders, (c) the investigation of child offenders and (d) such any other function that may be referred to the unit by the Act¹³¹.

¹²⁹ Section 211 (c) (i) – (iii) 214 (2) (a) – (c) CRA

¹³⁰ Section 207 (i) CRA

¹³¹ Section 207 (ii) CRA

Under the child justice administration provisions of the CRA, the Police, prosecutor or any other person dealing with a case involving a child offender has the power to dispose the case without formal investigation or trial¹³². The means of settlement suggested by the Act includes supervision, guidance, restitution and compensation of victims. The only qualification for the exercise of this discretion, is that the offence in question must be of a non-serious nature and that there is the need for reconciliation, taking into account the disposition of the family, school institution or where the police deems it necessary or appropriate in the interest of the child offender and the parties involved.¹³³ In line with the above discretionary powers of the police, is the requirement that detention pending trial shall be used or resorted only as a last resort and for the shortest period of time¹³⁴.

Where however, in view of the circumstance of the case, the court did not release a child offender to bail, he shall be remanded in a state government accommodation¹³⁵. Ironically, state government accommodation is not defined in the Act. By inference, state government accommodation may be interpreted to include Homes or Centres established by the state government for such purposes.

¹³² Section 209 CRA.

¹³³ Ibid

¹³⁴ Section 212 CRA.

¹³⁵ Section 218 CRA.

The Act guaranteed to the child, fundamental rights to presumption of innocence, the right to be notified of charges, the right to remain silent, the right of legal representation and free legal aid among others¹³⁶, as well as rights to fair hearing and due process¹³⁷.

The court in the determination of cases involving a child offender is prohibited from ordering the imprisonment of the child offender, subject the child offender to corporal punishment or death penalty or have death penalty recorded against a child offender¹³⁸. The child offender can only be deprived of his liberty if he is found guilty of "(i) a serious offence involving violence against another, (ii) persistence in committing other serious offences and there is no appropriate response that will protect the public safety"¹³⁹ where however, the court decides against institutionalisation, it shall utilize such disposition measures such as; dismissing the charge, discharging the child offender on his entering into recognizance, placing the child under care, guidance and supervision, including supervision by a supervision officer¹⁴⁰. Again, a child offender can be committed to the care of a guardian and supervision by a relative or any other fit person. A child offender may equally be ordered to participate in group counselling. He may also order to pay a fine,

¹³⁶ Section 210 CRA.

¹³⁷ Section 214 CRA.

¹³⁸ Section 221 CRA.

¹³⁹ Section 215 (d) (i) and (ii) CRA).

¹⁴⁰ Section 223 CRA

damages, compensation or costs or to undertake community service. The child offender may equally be to live in educational settings or ordering the parents or guardian of the child to pay a fine, damages compensation or costs, or to give security for good behaviour of the child etc¹⁴¹.

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

3.3 Appraisal of Institutions Involved in Juvenile Justice Administration

The Police, Courts and the Prisons are the principal institutions involved in Juvenile Justice Administration. In this sub-title, attempts shall be

¹⁴¹ Ibid.

made to appraise the performance of these institutions in the exercise of their statutory functions in Juvenile Justice Administration.

3.3.1 The Police

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

In addition to such powers and duties that may be conferred upon them by the Law¹⁴², the Police Act provides that the Police "shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of Law and order, the protection of life and property

¹⁴² Section 214 (2) (b) CFRN, 1999.

etc”¹⁴³. A child offender, no doubt falls within the armpit of persons caught with the statutory function of the Police.

The duties of the Police in the child justice system did not end after apprehending the Child and taking the child to the welfare office. The Police carry out the investigation of the case and prosecutes the child offender. With it all these functions in mind, it is a truism that the Police is the nerve centre of Juvenile Justice System. Of great importance, is the initial contact between the Law enforcement agency, that is, the Police and the Juvenile offenders. The management of this initial contact will determine the success or failure of further interventions by the other arms within the Juvenile Justice system.

Notwithstanding the overwhelming role of the Police in the Juvenile Justice system it has been observed, that the Police in this country often do not have the requisite skill to handle children in order to minimize the effect of the arrest on the psyche of the child. It was also found that there are even cases when the photograph of children suspected of committing some crimes are splashed on the pages of newspapers. And sometimes too, children are paraded on television along with adult

¹⁴³ Section 4 Police Act Cap P19 *Law of the Federation of Nigeria*, 2004.

suspects contrary to the provisions of the law and regard to their status as a child.

It is our opinion that these practices are short of the standard set by the statutes and international instruments. To this extent, the practice not only constitutes a violation of the rights of the child, it also amounts to a contravention of the standard minimum rules for the treatment of child offenders.

3.3.2 The Courts

Specifically, the courts vested with jurisdiction to entertain and determine all criminal cases relating to or involving children are, Juvenile Courts, Courts of Summary Jurisdiction i.e. Magistrate Courts and Family Courts. While Juvenile Courts or Magistrates are established pursuant to the provisions of Children and Young Persons Act or the Children and Young Persons Laws, Family Courts are established pursuant to the provisions of the Child Rights Act¹⁴⁴.

In terms of procedure, these courts are all required by Law to observe due process, principles of fair hearing, and regard to the legal status of the child. With respect to Juvenile Courts, the court is constituted by a

¹⁴⁴ Section 6 CYPA, Section 3 CYPA and Section 149 CRA

Magistrate sitting alone or with assessors who are appointed by the Chief Judge of the State. May it be quickly reiterated that the real intendment of the Law in establishing Juvenile Courts is for the Welfare of Children in need of care and attention and the treatment children in conflict with the Law.

A mention is necessary at this juncture of the fact that, after arraignment the courts are expected to consider the issue of bail to the child offender immediately and to ensure that the trial is expeditiously concluded. It is also a paramount consideration in Juvenile proceedings to guarantee the child's right to privacy i.e. court proceedings involving children are to be in camera to avoid social stigma. Finally, Juvenile courts cannot impose imprisonment on Juvenile offenders save in circumstances contemplated by Law. Note that the Family Courts system under the CRA has features that are similar to Juvenile Courts. In the FCT where CRA is in place or State like Kogi State where the CRL are in operation, family Courts are to replace Juvenile Courts.

An appraisal of the performance of Juvenile Court system suggests clearly that the system is bedevilled by lack of skilled manpower and facilities. Magistrates that preside over Juvenile matters only have the general knowledge of Law and no special training or qualification in

Juvenile issues. Similarly, contrary to the provisions of the Law, child offenders are quite often ordered to be detained, particularly when the offence alleged is committed with adults. Owing to several reasons child offenders are kept in custody for a fairly long time in violation of the constitutional provisions and their status as children.

In Kogi State, where very few case goes to full trial in Courts affected Juveniles have no legal representation or access to free legal services. The full realization of the objectives of CYPA, CYPL and CRA/CRL will greatly depend on the availability of free legal representation to child offenders. In states under the application of CRL, Family Courts are not yet established in line with the provisions of the Law several years after its enactment. The implication is that Juvenile Courts hitherto vested with jurisdiction are now superseded and are to be replaced with family Courts.

3.3.3 The Prisons

In Juvenile Justice, custodial institutions recognised for children by law are Remand Homes, Approved Institutions, Borstal institution and the Prison depending on the nature and circumstances of their case.

The research found that in most states, particularly these centres are non-existent or where they exist, the facilities are a mockery of the best practice. As a result of these constraints child offenders are usually detained or kept in Police cells or Prisons with adult offenders. This is a deviation no doubt.

3.3.4 Other Agencies or Institutions

The role of the social welfare department in Juvenile Justices machinery is worthy of mention. Generally, the social welfare department or officials are involved in investigation, preparation of social inquiry report and sometimes used to contact Juvenile parents.¹⁴⁵ The CRA made provision for the appointment of fit and proper persons as probation officer¹⁴⁶. Note that, when a Juvenile offender is placed under the supervision of a probation officer, it is the duty of that officer to visit or receive reports from the Juvenile under probation, to see that the Juvenile observes conditions of his recognizance, to report his behaviour to the Court and to advice, assist and befriend him where necessary to endeavour to find him suitable for appointment.¹⁴⁷

¹⁴⁵ S: 6 CYPA, Section 3 CYPL and Section 149 CRA.

¹⁴⁶ *The Right of the Child in Nigeria* Op. Cit. Pp. 273.

¹⁴⁷ Section 17 (1) and (2) CYPA.

Traditionally, social welfare officers from the Social Welfare Department of the Ministry of Women Affairs are appointed to the Courts as probation officers.

Under the CRA, a Child Right Implementation Committee is established¹⁴⁸. The functions of this committee are provided in section 265 (a) – (c) of the CRA. Importantly, it is the responsibility of the committee to initiate actions that will ensure the observance and popularisation of the rights and welfare of a child. In the emerging processes of the implementation of the CRA, the committee is an indispensable institution in Juvenile Justice Administration.

3.4 Conclusion

Generally, the enactment of the Child Right Acts and its adoption in some states has taken care of some not too satisfactory provisions and shortcomings in the colonial CYPA/CYPL. Viewed against the backdrop of the comprehensive provisions of the CRA on child justice administration, it is evident that a legislation that satisfies international standard on the treatment of juvenile offenders is now in place in Nigeria. It is our opinion that merely having this enactment in place is not sufficient. Steps must be taken to ensure the enforcement of its provisions.

¹⁴⁸ Section 264 (1) CPA.

Consequently, we recommend that states in Nigeria, including Kogi State, where child right law, has been enacted to put in place necessary implementation structures. These structures include the following:

- i. Child Right Implementation Committee (CRIC) should be constituted and empowered to exercise that functions under the law.
- ii. Family courts should be constituted, firstly, at the Magistrate Court level to determine cases affecting juveniles. As it were juvenile courts no longer have jurisdiction to hear and determine juvenile cases in the face of express provisions of the CRA/CRL ousting their jurisdiction.
- iii. States that have not adopted the CRA should do so; this is to avoid creating inequality in the treatment of juvenile offenders across the country.

The institutions involved in juvenile justice administration such as the police, courts and prisons need to be strengthened, re-structured and reformed to meet modern trends and best practices in the administration of juvenile justice. Essentially, these institutions are to be;

- i. Properly funded and strengthened in terms of training, professionalism and re-orientation.

- ii. Provision of logistics and facilities should be made a priority, if the institutions are to be effective and efficient in the discharge of their responsibilities.
- iii. The need for collaboration among these agencies is imperative.
- iv. A supervisory mechanism should be put in place to oversee the activities of these institutions. This would greatly facilitate their compliance status with provisions of the law and other international instruments.

CHAPTER FOUR

INTERNATIONAL INSTRUMENTS, TREATIES AND PROTOCOLS ON JUVENILE JUSTICE ADMINISTRATION

4.1 Introduction

It is important to note that the development of child specific legislation in Nigeria is a function of some international instruments or treaties. Consequently in this chapter the study focuses on some salient provisions of the following international instruments:-

1. United Nations Convention on the Right of the Child (CNCRC).
2. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), and
3. United Nations Guidelines for the Prevention of Juvenile & delinquency (Riyadh Guidelines).

4.2 United Nation Convention on the Rights of the Child (UNCRC)

The United Nation Convention on the Rights of the Child is an International Human Rights Treaties, which provides for universally accepted standards in relation to Child Rights. Nigeria ratified the UN Convention on the Rights of the Child in 1991. The CRC defines a child as every human being below the age of 18 years.

The most relevant provisions of the CRC on the administration of juvenile justice are included in articles, 37, 39 and 40 respectively. Most particularly, Article 37 and 40 of the convention is to the effect that children in conflict with Law have the right to treatment that promotes their sense of dignity and worth and also those treatments that take into account their age and aims at their re-integration into the society¹⁴⁹. Prima-facie, article 37 specifically protects children from torture, cruel punishment, unlawful arrest and arbitrary deprivation of liberty. It further states that the arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time. This right applies regardless of the reason for the deprivation that is whether the child is detained for investigation, awaiting trial, convicted or placed for the purpose of care and protection.

The article provides that if a child is deprived of his liberty, this should be done in a manner that is humane and respectful of the inherent dignity of human beings and which takes into account of the special needs of a person of that age. Further, the article provides for the separation of children offenders from adults unless its in the best interest of the child not to be separated.

¹⁴⁹ Article 1 UNCRC

Article 39 on the other hand, recognizes the right to rehabilitation and social re-integration of children victims of neglect, exploitation and abuse. Article 40 sets minimum procedural safeguards to be guaranteed to a child who is accused and convicted of crime. The article posited that such a child shall be treated in such a manner which promotes the dignity and worth of the child, reinforces the child's respect for the Human Rights and Fundamental Freedom of others and which take into account the child age and desirability of promoting the child's re-integration and the child resuming a constructive role in the society. The procedural safe guards includes the recognition of the child Right to be presumed innocence, the right of the child to be notified of charges, right to remain silent, right to presence of a parent or a guardian and the child right to free legal representation. The article imposed due process, and fair hearings principles and respect to the privacy of the child at all stages of the proceedings.

In conclusion, the provision of articles 37, 39 and 40 was incorporated in sections 204-238 of the CRA relating to child justice administration.

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

The Beijing Rules was the first international comprehensive statement to specifically focus on juvenile justice administration. Its aim was to develop a juvenile justice system that should be fair and humane, emphasizing the well-being and rehabilitation of the juveniles: the Beijing Rules insist on the principles of proportionality; that is, it ensures that the reaction of the authorities is proportionate to the circumstances of the offender as well as the offence.

Notably, there are seventeen (17) key provisions in the Beijing Rules¹⁵⁰.

1. The fair and humane treatment of juveniles who are in conflict with Law, thus promoting the wellbeing of the child.
2. Impartial application of the rules to juvenile offenders, without distinction of any kind such as race, colour, sex, language, religion, political or other opinions, national, ethnic or other social origin, property, birth or other status.
3. The accordance of respect for the juvenile's right to privacy.
4. The accordance of due process rights to the juvenile offender, including the right to a fair hearing and an expeditious pre-trial, trial and disposition processes.

¹⁵⁰ UNICEF, *Juvenile Justice Administration in Nigeria* (a course manual for law enforcement official working with juvenile offenders) United Nations Children Fund (2003)Pp. 14-15.

5. Strict confidentiality of the records maintained at all times.
6. The system must react proportionately to both offender and offence (principle of proportionality).
7. The use of community programmes for diversion from formal court procedures, with the juvenile consent.
8. The use of detention only as a measure of last resort, for the shortest possible period of time.
9. Juveniles should be detained separately from adults.
10. Proceedings should always be conducted in the best interest of the child.
11. Proceedings should be conducted in a manner that encourages the child's full participation.
12. Deprivation of a child's liberty should be carefully considered and only for serious offences.
13. Capital and corporal punishment should be abolished.
14. Institutionalisation should be a last resort measure after consideration of all alternatives.
15. There should be continuous and specialized training for Police Officers dealing with Juveniles.
16. Where Juveniles do undergo institutional treatment, educational services should be provided to enable juvenile's to return to society.

17. Release should be considered as soon as possible after arrest.

Although the Beijing Rules is not a treaty per-se, many of the provisions have become binding on the states by virtue of its incorporation in the CRC and most importantly, the provisions of sections 204 to 238 of the CRA is a complete codifications of the 17 key principles of the Beijing Rules.

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

The Riyadh guidelines emphasise a holistic nature of administration of juvenile justice as it stress the importance to pursue child centred orientation in any preventive programme. A successful prevention of Juvenile delinquency requires efforts on the part of the society to ensure the wellbeing and harmonious development of adolescents with respect for and promotion of their personality from early childhood. Young persons should have active role and partnership within society and should not be considered as mere objects of control.

The general prevention policies are discussed extensively in part 3 of the guidelines which stipulates that comprehensive prevention plans should be instituted at every level of government.

The following are the comprehensive prevention plans¹⁵¹.

1. An in dept. analysis of the problem and list of available programmes, services facilities and resources;
2. Well defined responsibilities for all role players involved in prevention;
3. Coordination of prevention efforts between governmental and non governmental agencies;
4. Constant monitoring of policies on prevention;
5. Methods for effectively reducing opportunity to commit delinquent acts;
6. Community involvement;
7. Inter-disciplinary cooperation between national, state, regional and local governments, with the involvement of private sector and child care, educational, social, law enforcement and judicial agencies.
8. Youth participation in delinquency prevention policies and processes including community resources, youth self help initiative, and victim compensation and assistance programmes;
9. Specialised person at all levels.

In greater detail, the guideline are to be implemented in the context of the economic, social and cultural condition prevailing in the state. Further in dealing with children, method used must be inform of

¹⁵¹ UNICEF, *Juvenile Justice Administration in Nigeria* Op. Cit. Pp. 20.

correction and not inform of punishment. Imprisonment, detention and the use of formal agencies of social control should only be used as a means of last resort.

Finally, the aim of prevention measures should be to promote human rights in general and children's rights in particular. This conclusion is predicated on article 24 of Riyadh guidelines which provides "particular attention should be extended to young persons who are at social risk".

Note that the Riyadh guideline is not a treaty. Therefore, the guidelines can only be considered as offering authoritative guidance but their provisions do not constitute legally binding obligations for states.

4.5 Other International Instruments

Apart from the aforementioned international instruments, the African Union Charter on the Rights and Welfare of the Child (AUCRWC) in article 17 contained detailed provision applicable to administration of Juvenile Justice. The provisions of the article are materially the same with the provisions of article 40 of the UNCRC on the same matter, herein before discussed. A mention need to be made of United Nation Rules for the Protection of Juvenile's deprived of their liberty. This instrument equally

constitutes an international framework on Juvenile justice administration. The Rules set out standard applicable when a Juvenile is confined to any facility.

4.6 Conclusion

It is settled from the foregoing that most national laws strives to ensure that international instruments, are domesticated to ensure their application and to enshrine best practices. It is to this end that the Child Rights Act incorporates the provisions of the United Nations Convention on the Rights of the Child and other International Instrument.

CHAPTER FIVE

AN APPRAISAL OF MACHINERY FOR JUVENILE JUSTICE

ADMINISTRATION IN KOGI STATE

5.1 Introduction

In this chapter the research specifically focuses on the general state of juvenile justice system in Kogi State. Consequently, institutions responsible for juvenile justice administration in the state, such as the police, juvenile courts, the prisons and the Social Welfare Department of the Ministry of Women Affairs and Social Development shall be discussed within the context of their actual operations and performance. In doing this, attempt would be made to examine these institutions and assess their compliance status with the parameters of international instruments, treaties and protocols.

Importantly, these institutions are fashioned to operate within a legal framework. It is against this backdrop that legislation or laws regulating the machinery of juvenile justice administration in Kogi State would be highlighted and its relevant provisions articulated. The regime of the laws applicable to the management and control of juvenile justice administration in Kogi State are: the Constitution of the Federal Republic of Nigeria (CFRN) 1999, Children and Young Persons Law, Cap 21. The laws of Northern Nigerian 1963, The United Nations Convention on the

Rights of the Child, Child Right Law of Kogi State, 2009. The Penal Code, Cap 89, the laws of Northern Nigeria, 1963, The Police Act Cap P19, the Laws of the Federation of Nigeria 2004, the Criminal Procedure Code, Cap 30 Laws of the Northern Nigeria 1963 amongst others.

5.2 Administration of Juvenile Justice in Kogi State

The juvenile justice system in Kogi State just like other states in Nigeria is part and parcel of the general criminal justice system. The philosophy and objective of a special system of criminal justice for juveniles is borne out of the fact that, the rights, needs, dispositions and vulnerability of children are quite peculiar and very different from those of the adults. It is an accepted view, that rehabilitation instead of punishment, prevention rather than retribution shall be the principal focus of the juvenile justice system.

Penultimate the enactment of Kogi State Child Rights Law in 2009, juvenile justice machinery in Kogi State was based on the principle of the Children and Young Persons Law, Cap. 21 Laws of Northern Nigeria 1963 applicable to Kogi State. Principally, the law was enacted "to make provision for the welfare of the juvenile and the treatment of young

offenders and to prohibit the participation by juvenile in political activities¹⁵².

In addition to the distinctions made between a child and young person, in terms of the definition the provisions of the CYPL is inconsistent with the provisions of CRL which defines a child as a person under the age of eighteen (18) years¹⁵³. The age of criminal responsibility in Kogi State is in line with the provisions of the Penal Code Law, Cap 89 the laws of Northern Nigeria 1963 applicable in Kogi State. The law provides that a child under the age of seven (7) years does not have criminal responsibility. It further provides that from seven (7) – twelve (12) years a child can only be found responsible, if it can be proved that he/she had the capacity to know that the act or omission should not have been carried out¹⁵⁴.

It is vitally important to note that the penal code provisions on the dichotomy as to the age of criminal responsibility has been superseded by the provisions of CRL Kogi State. The CRL Kogi State does not specifically make any provision on the age of criminal responsibility. This

¹⁵² Cap 21 *Laws of Northern Nigeria, 1963*

¹⁵³ Section 273 *CRL Kogi State 2009*

¹⁵⁴ Section 50 Penal Code Law cap 89, *The Laws of Northern Nigeria, 1963*

is in recognition of the fact that, any one under eighteen (18) years of age have no criminal responsibility¹⁵⁵.

The law provides thus "no child shall be subjected to the criminal justice process or to criminal sanctions...."¹⁵⁶. Nevertheless, the law provides that a child alleged to have committed an act which would constitute a criminal offence shall only be subjected to a child justice system and processes.¹⁵⁷

It is humbly suggested that the implication of CRL provisions is that children below seven (7) years are no longer doli incapax. They are treated in the same category with children above seven (7) years of age but below eighteen (18) years. This conclusion is predicated on the provisions of section 270 of CRL, Kogi State 2009. In effect, the law superseded the provisions of all enactments relating to children. And where any provision of any other law relating to children is inconsistent with the CRL, the provisions of such law, to the extent of its inconsistency, is void.

The CRL prohibits the subjection of any child to the criminal justice process. It guarantees the due process to any child subjected to the child

¹⁵⁵ Ibid

¹⁵⁶ Ibid

¹⁵⁷

justice system at all stages of the juvenile justice process from the stage of investigation, adjudication and disposition¹⁵⁸.

Importantly, the provisions of the CRL, Kogi State is consistent with the standard set by the Beijing Rules. The general principle of the Rules and the CRL, Kogi State is aimed at ensuring the development of a child justice system that is child friendly, fair, and humane having as its cardinal goal, the well being and rehabilitation of children that may be in conflict with the law.

May it be observed that Kogi State though enacted the Child Rights Law it is yet to be fully implemented. The requisite machineries for implementation are not yet in place. Family courts are not yet established, Remand Homes and Detention Centres for children are equally not yet in place. The specialized police unit as envisaged by the law as the hub nub of the child justice process has not been established. It would appear that no cogent reason has been offered for the non-implementation of the provisions of CRC. The responsible ministries seem to have exhibited inadvertence.

¹⁵⁸ Section 204 – 238 *CRL Kogi State 2009*

On a final note, to really discuss and understand the administration of juvenile justice system in Kogi State, an appraisal or assessment of the performance of the institutions responsible as well as legislation in the State on Juvenile Justice Administration is imperative.

5.3 Appraisal of Institutions Responsible for Administration of Juvenile Justice in Kogi State

In this subtitle, the research will appraise and assess the performance of existing traditional juvenile justice institutions such as the police, the courts, the prisons, in the state in order to determine their effectiveness and efficiency against the parameters of the provisions of CYPL, CRA, UNCRC, AUCRWC and Beijing Rules. The Social Welfare Department of the Ministry of Women Affairs and Social Development as well as the Directorate of Citizen's Rights in the Ministry of Justice will be analysed.

The thesis will adopt the following suggested indicators in evaluating the performance of the aforementioned juvenile justice institutions. The assessment of these institutions using assessment indicators would be based upon the personal experience of the researcher as a State Counsel, a prosecutor and the Secretary of the State Child Right Implementation Committee (a committee constituted pursuant to the provision of CRL 2009) as well as interview with key role players in these institutions.

Similarly, Assessment Tool to Assist State Government in the Implementation of Child Justice Administration in Nigeria developed by UNICEF will be guide¹⁵⁹.

The assessment indicators are as follows:

1. What is the situation of children in conflict with the law in Kogi State?
2. Are there specialized system of institutions handling cases of children offenders in the state?
3. How do children's contact with justice system managed and how does it affect them?
4. Are there detention facilities for child offenders in the state and how long are children held in custody?
5. Are there complaint mechanism for children deprived of their liberty and adequate legal representation for child offenders in the state?
6. Are there facilities providing aftercare or rehabilitation for children leaving detention?
7. Is there collaboration and proper coordination between juvenile justice institutions in the state?

¹⁵⁹ UNICEF Assessment Tool to assist State Government in the implementation of child justice administration in Nigeria UNICEF (2008). The book seeks to provide State Government with a method of identifying key issues and areas of intervention in child Justice Administration.

8. Are there adequate funding provision or budgets for juvenile justice institutions?

These indicators would be applied on the basis of each institution assessed.

5.3.1 State Juvenile Welfare Centre of the Nigeria Police

The police is an important arm of the juvenile justice system. This is so because, a child offender come first into contact with police, before any other institution in the juvenile justice machinery. The general duties attributed to the police are; the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations which they are directly charged¹⁶⁰. These statutory functions of the police not only explain their centrality in the criminal justice system in Nigeria but also in juvenile justice administration.

In the course of this research, it was found, that in Kogi State like other States of the Federation including FCT, Police has a designated unit that handles all matters relating to children. In states, the unit is called State Juvenile Welfare Centre, (herein under referred to as SJWC). The State

¹⁶⁰ Section 4 of the Police Act Cap. 19 *Law of Federation of Nigeria*, 2004.

Juvenile Welfare Centre operates under the direct command and control of each State Commissioner of Police. Supposedly, all complaints or all matters relating to children fall within the exclusive jurisdiction of the Unit. This presupposes that, it is a specialized referral unit, to which any complaint, upon the determination of the age of the offender as a child is taken to for investigation and subsequent actions.

It is the prerogative of the unit to prosecute the child in the appropriate court or exercise their discretion in appropriate cases, to release such a child on a recognizance being entered into by him or by his parent or guardian, with or without sureties..."¹⁶¹ It is observed that the SJWC established within each State Police Command to handle all matters relating or affecting children, have now been accorded a statutory endorsement in the CRA and CRL, 2009. Both the CRA and the CRL, 2009 provides for the establishment of a "Specialized Children Police Unit" with the mandate to frequently or exclusively deal with children or primarily engaged in the prevention of child offences"¹⁶².

Similarly, all the functions hitherto exercised by the SJWC have been comprehensively codified in the CRA and CRL, 2009¹⁶³. In the main, the Specialized Children Police Unit is saddled with the responsibility of

¹⁶¹ Section 3 CYPL

¹⁶² Section 207 (a) and (b) of CRL, 2009, see also section 207 (a) and (b) of the CRA.

¹⁶³ Section 207 (2) (a) – (d) CRL 2009, see also section 207 (a) and (b) of CRA.

prevention and control of child offences, apprehension of child offenders, investigation of child offences and such other functions that may be referred to the unit either by the law or any other enactment.

The basic distinction between the conventional police in criminal justice system and the Specialized Police Units saddled with the task of handling matters affecting children in conflict with the law is the requirement of specialty of the men and officers in children and regular professional training on issues or matters relating to children. The specialty requirement and the regular training is to inculcate in the men and officers of the police the right attitude and conduct, in line with best practices in the handling of children who may run fowl of the law.

The statutory standard is that the Units are expected to operate and function in an environment that is completely child friendly and managed by men and officers of the police whose specialty is children.

It is important to reveal that, in the state, the state command is yet to establish the Specialized Children Police Units as required by the CRL, 2009. As it were, it was found that, the police are not quite conversant with the requirements and the provisions of the law on the subject matter. Another reason seems to be the erroneous perception that SJWC

is already a specialized unit, specifically designated to handle juvenile and welfare matters of children.

In practice, the SJWC only operates at the state capital in an office bereaved of any facility and located at the 'A' Division of the Nigeria Police, Lokoja, The officers of the SJWC are not aware of the passage of the Child Right Law in the state and knows nothing about its provisions or the CRA equivalent. Though, UNICEF occasionally trains officers of the unit on provisions of the CRA in dealing with matters affecting children. It was found that, as a result of incessant transfer, those that benefited from the training have left the command or posted to another unit or even sometimes, wrong persons are sent for the training.

The office is equally manned by women police and officers that have no requisite training and capacity imposed by law and other international instruments. The SJWC is not only completely neglected in terms of funding but lacking in any form of facilities. Women and officers of the centre rely on handouts from parents or guardians of juveniles or some form of self denials to do their work.

Another critical requirement is the need that the Specialized Children Police Units or SJWC should have child-friendly detention facilities,

especially in cases where bail of the juvenile offender is not attainable. The way SJWC operates in the state is that children in conflict with the law are kept behind police Counter. In some other occasions, child offenders or suspects stay behind Counters with adult suspects. This falls short of the standard set by the CRA, CRL, the UNCRC, AUCRWC as well as Beijing Rules. The challenges facing the officers of this unit are that, sometimes even when there are willing to perform and give effect to the provisions of the law, there are incapacitated by dearth of facilities, specialized training or refresher courses.

In the state children come into contact with the criminal justice system in two major ways; through direct apprehension, which happens where a child is reasonably suspected of having committed a crime and arrested by law enforcement officials and by official complaint. An official complaint may be made to the police by the parent, guardian, neighbours or victims of the crime. Perhaps, this is the commonest form of contact between the law enforcement agencies and juvenile offenders in Kogi State.

The bulk of cases handled by SJWC originated from complaints touching on unruly behaviour of children, mostly from parent or guardians. However, where children were directly apprehended on reasonable

suspicion of having violated a penal provisions or where direct complaint for commission of a crime is lodged at the divisional police units, the SJWC are never contacted. The reasons may include inadvertence or ignorance of the provisions of the law or distance or even deliberate mischief.

It must be emphasized that the police are given the power to dispose of cases involving child offenders without resorting to a formal trial and use other means of settlement, including supervision, guidance, restitution and compensation of victims and where necessary encourage parties to settle their cases. These alternative measures are seldom resorted to in the treatment of children in conflict with the law. At the SJWC, there is a minimal compliance.

Unfortunately, where children in conflict with the law are managed without respect to the provisions of the law, which establish their status as children, the tendency is that there are likely to be given treatment meant for adult offenders. This is the position in most Police Divisional Headquarters and police units spread across the width and breadth of the state. At the State Criminal Investigation Department (SCID) where very serious criminal cases are referred to from sub-stations, it was evident that SJWC were rarely contacted before a decision is taken on

the case. In all stations explored, there is no single child specialist within the true meaning of the law.

In conclusion, this study has revealed that the police in the state are faced with enormous challenges and constraints. Some of the constraints are; non availability of infrastructural facilities, lack of adequate training and knowledge in child specific legislation, poor staffing and inadequate funding among others. These inadequacies to a very large extent, undermines the effectiveness and efficiency of the crucial role of the police in the juvenile justice system.

5.3.2 Juvenile/Family Courts

Under the Children and Young Persons Law, child offenders are to be tried in courts of "summary jurisdiction"¹⁶⁴. This provision is in contradiction with the provisions of the CYPA¹⁶⁵ where the law specifically constituted the Juvenile Courts for the purpose of hearing and determining cases relating to children. However, in Kogi State, Magistrates Courts are designated to try juvenile offenders. In the course of the proceedings, however, features of juvenile courts are taken into account. Trial proceedings are conducted in chambers. The bulk of cases handled by the magistrates did not go through full trial as they are

¹⁶⁴ Section 3 of CYPL, Cap 21 LNN 1963.

¹⁶⁵ Section 6(1) CYPA, It is noteworthy that the provision of the CYPA regarding the constitution of juvenile courts and the procedure in those courts are not contained in CYPL.

mostly cases referred to the court from the social welfare department of the ministry of women affairs and social development.

Essentially, the application from the Social Welfare Department is usually for an order to send the juvenile offender to a Borstal institution in Ilorin or Kaduna.

In view of the foregoing it is difficult to properly assess their roles and the performance of the courts in juvenile justice administration in the state. Nevertheless it was observed that the magistrates aside from the general knowledge of law and human rights issues they lack specialized training in juvenile justice issues.

Notwithstanding the enactment of CRL, 2009 as well as its provisions relating to the establishment of family courts¹⁶⁶ there are no Family Court both at the Magistrate and the High Court levels. However, plans were under way to establish Family Courts with specialization over juvenile justice and other related matters thereto.

¹⁶⁶ Section 149 and 150 of CRL 2009,

5.3.3 Borstal Institution/Prisons

The law recognizes four (4) types of custodial institutions for juvenile offenders; namely, Remand Homes or Centres, Approved schools or institutions, Borstals and Prisons. It suffices to state at this juncture that both the CYPL and CRL 2009 prohibits any child to be imprisoned¹⁶⁷.

In Kogi State contrary to the provisions of the CYPL and CRL, 2009¹⁶⁸, there are no Remand Homes or Centres or an approved institutions.

The only detention facility for the juvenile in conflict with the law in Kogi State are the Borstal institution in Ilorin, Kwara State, Borstal institution in Kaduna, Kaduna State and the Federal Prisons located at Koton Karfe, Ankpa and Kabba. As for the Federal Prisons, it is observed that the few numbers of children found there are those suspected to have committed crimes along with adult offenders who are awaiting trial or serving a prison term. The condition of the prison, particularly that of Koton Karfe is in a terrible state and lacking practically in everything, ranging from hygiene to very necessary facilities.

Records from the social welfare department of the Ministry of Women Affairs and Social Development disclosed that out of the eleven (11)

¹⁶⁷ Section 11 (1) CYPL op. cit. and Section 221 (a) CRL 2009 op. cit.

¹⁶⁸ Section 13 (1) and 14 CYPL and section 248 – 250 CRL, 2009.

cases they have handled and referred to magistrate court, one (1) Juvenile was ordered to Borstal Institution in Kaduna while ten (10) other were sent to Borstal Institution in Ilorin. The Borstal institutions are the same, the most likely consideration is proximity.

In conclusion, these institutions except the prisons could not be assessed as they are nonexistent in Kogi State. The State needs to however, comply with the law and establish remand homes and Approved Institution to cater for juvenile offenders. The attitudes of government towards the establishment of these institutions suggest that juvenile issues are not considered a priority. The usual excuse is that of lack of funds and that plans are underway to establish the Remand homes or rehabilitation centres.

5.3.4 Social Welfare Workers

Kogi State Ministry of Women Affairs and Social Development has a Directorate that provides services to children in the following areas

- i. Abandoned children.
- ii. Maladjusted and delinquent children.
- iii. Children who are criminally inclined and those in conflicts with the law.

The Directorate of Social Welfare is equally expected to render services such as institutional care, rehabilitation services and counselling services.

In the realization of the mandate of the Ministry of Women Affairs and Social Development, Zonal Social Welfare offices were established in some local government areas in the state. These Zonal offices are saddled with the responsibility of rendering services to children in need and care as well as children in conflict with the law. The Zonal offices are manned by social welfare workers. The research disclosed that apart from the Lokoja Zonal office, all the other Zonal offices lack the requisite ability and capacity to handle juvenile matters. All the other Zonal offices practically referred all cases in their zone to the Lokoja Zonal office.

In the past three years, that is, from 2009 to date, aside from issues relating to children in need and care, the Lokoja Zonal office has handled eleven serious juvenile cases. Record in the Lokoja Zonal office suggest that children sent to magistrate for orders, commits offences such as stealing, drug addition, keeping bad friends, truancy etc. It was noted that there was no trial proceeding in all these cases. All the magistrate did were to grant orders to send the juvenile to Borstal institutions in Ilorin and Kaduna.

The relationship between the State Juvenile Welfare Centre of the Nigerian police and the Social Welfare Department of the Ministry of Women Affairs in the management of child offenders shows lack of coordination. Contrary to the procedure, laid down by the CYPL and CRL as to referral of juvenile case, to Social Welfare Workers before prosecution, the only cases referred to the social welfare Zonal office in Lokoja were cases of children in need and care particularly abandoned children.

It is therefore understood, that there is a disconnect between the juvenile justice institution in the state. May it be noted that, in Lokoja Zonal office where the buck of the cases are referred to or handled, there seems no serious commitment on the part of the Ministry of Women Affairs to encourage the Lokoja Office for Optimal Performance. The Zonal office is lacking in infrastructure and facilities.

5.3.5 Directorate of Citizens Rights

In 2004, Kogi State Government directed the establishment of the Directorate of Citizen's Rights in the Ministry of Justice. The function of the directorate among others is to provide free legal services to children, women and other indigent members of the public. The directorate is headed by a Director and a pool of Law Officers. Viewed against the

backdrop of the composition of the directorate it was obvious that it has the ability and capacity to implement its mandate.

However, in nearly a decade of its existence, it would appear that the citizens are not properly informed of its existence and the nature of services it renders. Even, the law enforcement agencies seem not aware or willing to exploit the opportunities offered by the directorate. This may be the explanation why the directorate is not optimally utilized. The establishment of this directorate is a clear indication that government is prepared to avail the vulnerable, including children legal representation to fully realize their rights.

It is noteworthy that the effectiveness and efficiency of juvenile justice machinery will depend largely on the quality and quantum of legal representation available to children in conflict with the law. Apart from array of challenges faced by the directorate, it is one institution that is quite prepared to offer legal services to children in conflict with the law.

5.4 Kogi State Legislation on Juvenile Justice Administration

In this subtitle, the research will attempt to highlight some of the main laws in Kogi State regulating the juvenile justice system. The regime of these laws includes, Children and Young Persons Law, Child Right Law.

The constitution, criminal Procedure Code Law, criminal procedure code, the police act as well as the United Nations convention on the Rights of the Child and Beijing Rules.

5.4.1 Children and Young Persons Law

Before the enactment of Kogi State Child Rights Law 2009, juvenile justice system in the state was based and regulated by the provisions of the Children and Young Persons Law, cap 21 Laws of Northern Nigeria 1963 (hereinunder referred to as CYPL) applicable to Kogi State. Principally, the law was enacted to make "Provision for the welfare of juvenile and treatment of young offenders and to prohibit the participation by juveniles in political activities"¹⁶⁹. The law defines a juvenile to include "a child and a young person". It further defines a child as "any person who has not yet attained the age of fourteen (14) years" and a young person as "a person who has attained the age of fourteen years but who has not attained the age of sixteen (16) years".

Note that subject to the provisions of the Penal Code¹⁷⁰ with respect to the age of criminal responsibility, all persons below the age of sixteen years could only be subjected to juvenile justice processes. Under the CYPL applicable to Kogi State, a child under sixteen (16) years of age,

¹⁶⁹ *The Children and Young Persons Law*, 1958 was enacted by the Legislature of the Northern Region of Nigeria.

¹⁷⁰ Section 50 Penal Code Law Cap 89, *The Laws of Northern Nigeria*, 1963.

who cannot be brought before a court of summary jurisdiction when apprehended, should be released on bail to his guardian or parents as soon as possible, unless the case is one of homicide or grave offences, it is the interest of the child and it will defeat the ends of justice¹⁷¹. In addition, the law provides that a juvenile not released on bail by the police is to be detained in a place of detention¹⁷² (a Remand Home¹⁷³). Where that is impracticable, the police or prison authorities are to make arrangements to prevent the association of the child or young persons with adult offenders as far as practicable¹⁷⁴.

It suffices to state that the provisions of CYPL as it relates to court of trial, bail, place of detention and the treatment of juvenile in detention, to a large extent is consistent with provisions of the UNCRC, AUCRWC and Beijing Rules.

Upon the enactment of the Child Rights Law, 2009 in the state, the application of CYPL has been superseded. Section 270 of the CRL provides that any provision of any law, pertaining to children that are inconsistent with CRL shall be void to the extent of its inconsistency.

¹⁷¹ Section 50 Penal Code Law Cap 89, *The Laws of Northern Nigeria*, 1963.

¹⁷² Section 3 CYPL.

¹⁷³ Section 4 CYPL.

¹⁷⁴ Section 13 CYPL.

5.4.2 Child Rights Law

Following the ratification of the UNCRC, the CRA was enacted as a Federal Law. It is however of a limited application. It is applicable only to the Federal Capital Territory. The implication is that, since matters relating to children falls within the residual list of the constitution, the states need to domesticate the CRA in form of a state law in order to enforce its provisions locally. Consequently, the Kogi State Government passed its own version of the CRA in 2009.

It may be mentioned that, the general principle of the CRL is anchored on the “best interest of the child. The Law provides that “in every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, courts of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration”¹⁷⁵.

Fundamentally, unlike the CYPL the CRL prohibits the subjection of any child to the criminal justice process and guarantees the due process to any child subjected to the child justice system under the CRL at all stages of investigation, adjudication and disposition of the child¹⁷⁶. Importantly, the law established family courts to hear and determine all

¹⁷⁵ Section 1 CRL, Kogi State 2009.

¹⁷⁶ Section 204 and 205 CRL.

matters relating to children¹⁷⁷. The family courts have unlimited jurisdiction to hear and determine both civil and criminal matters relating to or involving children¹⁷⁸. Pursuant to the principle, that, no child shall be subjected to a criminal justice process, a child shall not be ordered to be imprisoned or subjected to corporal punishment or subjected to death penalty¹⁷⁹. These provisions, undoubtedly suggest compliance to international standard far above the provisions of CYPL¹⁸⁰.

The criminal juvenile justice process begins with arrest or apprehension of a child by the police. The law provides that the contact between the police and the child shall be managed in such a way as not only to respect the legal status of the child, but that it should be managed in a way that will promote the best interest and wellbeing of the child and avoid harm to the child¹⁸¹.

The CRL empowers the police while dealing with a case involving a child offender to dispense the case without resorting to formal trial by using means such as settlement, including supervision, guidance, restitution and compensation of victim¹⁸². Under the CRL court adjudication as well

¹⁷⁷ Section 149 CRL, Kogi State 2009.

¹⁷⁸ Section 155 CRL, Kogi State 2009.

¹⁷⁹ Section 221, (a) (b) and (c) of the CRL.

¹⁸⁰ Section 211 CRL.

¹⁸¹ Section 209 CRL and Section 212 CRL.

¹⁸² Ibid.

as detention shall be exploited as a measure of last resort and for the shortest time possible.

In all the instances highlighted above, it is evident that the CRL has a far reaching provision that sought to apply the principles contained in UNCRC, AUCRWC and Beijing Rues in Child Justice Administration in Kogi State.

5.4.3 Constitution

The constitution of the Federal republic of Nigeria is the ground norm of all Laws in the country by reference to which the validity of all laws are determined.

The most important provisions of the constitution that is child-specific is the section that excludes persons who have not attained the age of eighteen (18) years, who are charged with criminal offence from public trial¹⁸³. In addition, the constitution guarantees to every person including children, trial rights such as presumption of innocence, the right to be notified of the charges, the right to remain silent as well as legal representation.

¹⁸³ Section 36 (5) (a) CFRN, 1999.

5.4.4 Penal Code Law

All cases involving children in conflict with the law are generally criminal in nature and are therefore within the scope of the substantive provision of the Penal Code Law¹⁸⁴. There are also specific provisions in the Penal Code Law relating to age of criminal responsibility of children as well as provisions protecting the right of the children. For instance, the Law provides that children below the age of seven are not criminally responsible for their actions. Further, children above seven (7) years but below twelve (12) years of age who has not attained sufficient maturity of understanding to judge the nature and consequence of such act cannot be held liable for an offence. In a similar vein, there are provisions in the law that criminalizes some acts or omission done to a child¹⁸⁵. These offences include causing miscarriage, cruelty to children, abandonment of children under twelve (12) years etc.

5.4.5 Criminal Procedure Code

Criminal Procedure Code¹⁸⁶ is the procedural law regulating all criminal trials inclusive of trial of adults and children. It equally has some specific provisions that apply to children and young persons. For instance, the law provides that where a person is convicted of an offence punishable with death and it appears to the court by which he is convicted that he is

¹⁸⁴ Penal Code Law Cap 89 *The Laws of Northern Nigeria*, 1963.

¹⁸⁵ Section 232 & 239 of the Penal Code Op, Cit.

¹⁸⁶ Criminal Procedure Law, Cap 30 LNN.

under the age of sixteen when he committed the offence, the court shall order that he be detained during the Military Administrations pleasure¹⁸⁷. The Criminal Procedure Code provides no death sentence shall be imposed on a person who is under seventeen years of age or on a pregnant woman¹⁸⁸.

5.4.6 United Nation Convention on the Rights of the Child and other International Treaties and Protocols

Nigeria is a signatory to UNCRC and other international instruments such as AUCRWC, Beijing Rules, etc, these instruments have comprehensive provisions dealing practically with all matters affecting or relating to children who may be in conflict with the law. These international instruments are applicable in Kogi State.

5.4.7 The Police Act

When children come in conflict with the law, their first form of contact with the criminal justice system is usually through the police. This brings the Police Act¹⁸⁹ into operation. Though, it is important that the application of the Police Act in juvenile matters shall only be done subject to the standard set by other laws.

¹⁸⁷ Section 272, CPC.

¹⁸⁸ Section 270, CPC.

¹⁸⁹ Police Act Cap P19 LFN 2004.

Generally, the juvenile justice system in the state, takes into account all the above stated legislation when dealing with children in conflict with the law. However, with the enactment of the Child Right Law in the state it is expected that in terms of laws, practice and procedure the provisions of the law (CRL) superseded the provisions of any other law dealing with children. The application and validity of all the above highlighted laws are determined by the provisions of the child Right Law of Kogi State.

5.5 Conclusion

Generally, the condition of juvenile justice administration in Kogi State left much to be desired. It is evident that the state performance against the background of the assessment indicators is very poor. As revealed from the foregoing discussions, all the institutions saddled with the responsibility of ensuring that the provisions of child-specific legislation in the state are implemented are non-existence and where they exist, there are so ill-equipped as to make their existence meaningless. On the part of government, no plausible reason has been given for their failure to establish these key components of juvenile justice sector.

It is against this backdrop that the state government should declare the child justice sector in the state an emergency and intervene accordingly.

The first most vital step is to fully implement the provisions of the CRA. The pro-activeness of the Ministries of Justice and Women Affairs in ensuring that this sector is given the necessary attention is sacrosanct. The Child Right Implementation Committee should through the Ministry of Justice and Women Affairs draw up an action plan, highlighting the key areas of need and ensure that government take appropriate action.

CHAPTER SIX

PENAL PROVISIONS AND DIVERSION SCHEMES AS ALTERNATIVE TO RETRIBUTIVE CRIMINAL JUSTICE

6.1 Introduction

This chapter focuses mainly on penal provisions of the CYPA/CYPL, CRA and discuss diversion schemes, within the framework of international instruments. This is with the view to establish the very objective of the juvenile justice system. Essentially, having realized the consequences of punitive or retributive treatment of juvenile offenders, this chapter will consider rehabilitation and reintegration as the main objective of juvenile justice system.

The foregoing objectives notwithstanding, our laws contain provisions which seems greatly inclined to punishment of juvenile offenders.

6.2 Penal Provisions Relating to Juvenile Justice Administration

Under this sub-title, the research highlights punishment provisions of the CYPA/CYPL, the CRA as well as the position of international instruments on criminalization and institutionalization.

Importantly, sections 11, 12, 13 and 14 of the CYPA deal with the punishment of Children and Young Persons in conflict with the law. In the nutshell, section 11(1) of the CYPA and CYPL expressly prohibited imprisonment of a child. It is however important that the provisions of section 11 (i) of the CYPA and CYPL seems different with the subsections (2) and (3) of the same section. Sub-section (2) provides that "no person shall be ordered to be imprisoned if he can be suitably dealt with in any other way, whether by probation, fine, corporal punishment, committal to a place of detention or to an approved institution or otherwise". Sub-section (3) provides that "a young person ordered to be imprisoned shall not be allowed to associate with adults.

As it were, these ambiguities, no doubt, may be predicated on the distinction the law made between a child and young persons. Understood loosely, a child cannot be imprisoned but a young person can.

In other words, it would appear that while section 11(1) forbids imprisonment of a child, section 11(2) permits imprisonment of young persons, however sparingly and only when other forms of non custodial punishment or correctional orders are not feasible. In the same view section 11 (3) allows imprisonment of a young person, the only qualification is that he shall not be allowed to associate with adults. The

general implications of these provisions, loosely understood mean, a child cannot be imprisoned but a young person can.

On the question of death sentence, the provision of section 12 of the CYPA is instructive. On death sentence, there is no similar provision in the CYPL. The section is to the effect that pronouncement of sentence of death against a juvenile offender who has not attained the age of seventeen years is prohibited. However, such a juvenile offender may be committed to custody at the pleasure of the Governor.

The provisions of the CYPA and CYPL on restrictions on punishment of juvenile offenders found potent expressions in the CRA. Unequivocally, the CRA provides that "no child shall be ordered to be (a) imprisoned; or (b) subjected to corporal punishment; or (c) subjected to death penalty or have death penalty recorded against him"¹⁹⁰. It is observed that ambiguities created in the CYPA and CYPL has been cleared by the wordings of the provision of the CRA. In effect the CRA categorically and explicitly prohibits imprisonment, corporal punishment and death sentence on a child offender.

¹⁹⁰ Section 221 (i) (a) (b) and (c) of the CRA.

The CYPA and CYPL listed the various dispositions at the disposal of juvenile courts when satisfied with the guilt of a child offender¹⁹¹. The Child Rights Act, (CRA) also listed the ways the court will deal with a child when it is satisfied that the child actually committed the offence¹⁹².

With the combined effect of the provisions of the CRA, a child offender whose guilt has been established shall be dealt with in the following ways;

1. by dismissing the charge; or
2. by discharging the offender on his entering a recognizance; or
3. by discharging the offender and placing him under the supervision of a probation officer or supervision officer; or
4. by committing the offender by means of corrective order to the care of a creative or other fit person; or
5. by sending the offender by means of corrective order to an approved institution; or
6. by ordering the offender to be whipped; or
7. by ordering the offender to pay a fine, damages, or cost; or
8. by ordering the parents or guardian of the offender to pay a fine, damages or costs; or

¹⁹¹ Section 14 of the CYPA and Section 9 of the CYPL

¹⁹² Section 223 of the CRA.

9. by ordering the parent or guardian of the offender to give security for his good behaviour; or
10. by committing the offender to custody in a place of detention under the law; or
11. where the offender is a young person, by ordering him to be imprisoned; or
12. by ordering the child to "(i) participate in group counselling and similar activities... (ii) ...undertake community service under supervision..."¹⁹³.

It is observed that the depositions provided for in the law defer in a variety of ways from the provisions in rules 18 and 26 of Beijing Rules on Juvenile Justice Administration. It is evident that the provision of the CYPA are inclined more towards punishment". Pointedly, the provisions of the CYPA/CYPL relating to whipping of a Child Offender violates international stand which classify it as a degrading treatment. It is interesting to note that the CRA expunged the provision of whipping a child offender.

¹⁹³ Section 223 (i) (d) (d) (i) and (iii) of the CRA.

6.3 Rehabilitation and Reintegration as Object of Juvenile Justice System

The provisions of the Beijing Rules emphasized on two most important objectives of Juvenile Justice System. The first is the promotion of the wellbeing of the child and the second objective, is the principle of proportionality. The latter principle is aimed at avoiding punitive sanctions mostly expressed in terms of just deserts based on the gravity of the offence.

Similarly, the Beijing Rules provide that the objective of institutional treatment of Juveniles is to provide care, protection, education and vocational skills with a view to assisting them assume socially constructive and productive roles in society¹⁹⁴. Equally, the Beijing Rules provides that Juvenile institutions should also receive all the necessary assistance they require, social, educational, vocational, psychological, medical and physical in the interest of wholesome development¹⁹⁵.

Contrary to international standard, Nigerian legislation, particularly the CYPA or CYPL placed heavy emphasis on punishment and on remand in custody. In the list of disposal methods under the CYPA and CYPL, when the guilt of the Juvenile offender is established the Court among others

¹⁹⁴ Rules 26:1 opportunities the Beijing Rules

¹⁹⁵ Rules 26:2 of the Beijing Rules.

has a discretion under section 14 of the CYPA and section 9 of the CYPL to decide among others “ordering the offender to be whipped” or “by committing the offender to custody in a place of detention...”. Further section II (2) of the CYPA and CYPL which prohibits imprisonment of a young person permits” ...corporal punishment, committal to place of detention or to an approved institutions...”.

However, the Beijing Rule’s provide that the placement of a Juvenile in an institution should always be a disposition of the last resort and for the minimum necessary period¹⁹⁶.

The pertinent issue to be addressed in the face of these penal provisions is the determination of rehabilitation and reintegration of the Juvenile offenders. May it be stressed that exposure of children to formal criminal justice processes may have an adverse effect on subsequent attempts at their rehabilitation and re-integration into the society. This explains the provisions in our laws, suggesting alternative measures to punishment and detention.¹⁹⁷ However, it is yet to be seen how often these measures are resorted to and how effective it has been. Both the provisions of the CYPA/CYPL and the CRA are principally based on the philosophy of care

¹⁹⁶ Rule 19 Beijing Rules.

¹⁹⁷ Section 14 of the CYPA and Section 9 of the CYPL recognized discharging the offender and placing him under the supervision of the probation officer, committing the offender by means of corrective order to the care of a relative or other fit person ordering the parents or guardian of the offender to give security for his behaviour.

concern, reformation, rehabilitation and reintegration of Juvenile offenders.

It is noteworthy that the CYPA or CYPL established remand homes or approved institution as detention centres for Juvenile offenders. These institutions are intended to be rehabilitation centres, reformations or observatories. Fundamentally, these institutions' basic objectives are correction, rehabilitation and reformation of young offenders. It was however found that these institutions are bereaved of the basic facilities to enable them meet their statutory functions.

The very essence of the establishment of these institutions was captured in Borstal institutions and Remand Centre Act, Cap.B11 LTN 2004, which is to "bring to bear upon inmates every good influence which may establish in them the will to lead a good and useful life on release, and to fit him to do so by fullest development of his character capabilities and sense of personal responsibilities". In line with the provisions of the law, remand homes, approved institutions and Borstals institutions are required to provide vocational and educational training and the reformation of the juvenile offenders.

Generally, Juvenile custodial institutions are “homes built to correct, reform and rehabilitate juvenile offenders”¹⁹⁸. To this end, the institutions are meant to bear upon the inmates, every good influence which may establish in them the will to lead a good and useful life when they are released from custody. The institutions are expected to provide vocational training in tailoring, photography, welding, building (masonry bricklaying), electrical installation etc as well as formal institutional education up to the level of General Certificate of Education¹⁹⁹.

The objective of custodial institutions to rehabilitate and prepare juvenile offenders for reintegration into the society is contained in section 236 (1) and (2) of the CRA. The Act states:

(1) The objective of training and treatment of a child offender placed in an institution shall be to provide care, protection, education and vocational skill with a view to assisting the child to assume socially constructive and productive roles in the society”. (2) A child offender in an institution shall be given care, protection and all necessary assistance, including social, educational vocational, psychological, medical and physical assistance, that he may require having regard to his age, sex, personality and in the interest of his development.

The failures, the challenges and the inability of these institutions to meet its objectives is captured thus:

¹⁹⁸ Ijaya H. Op. Cit pp. 578

¹⁹⁹ Ibid.

the goals of such institutions are not realized in Nigeria due to lack of proper policy, legal and institutional framework for correction of juvenile offender and the prevention of juvenile delinquency. The objectives of the institution are also compromised by lack of proper planning and implementation, gross under-funding, inadequate staff and lack of necessary training facilities²⁰⁰.

We are in complete agreement with the above statement. It confirms our findings as it relates to problems of juvenile custodial institutions. The overall effect of these constraints is that, it undermines the attainment of the goals which juvenile custodial institution are set to achieve.

6.4 Diversion Schemes

Diversion is defined as “the use of voluntary alternative measures to the criminal justice system”²⁰¹. Diversion is usually premised on the acknowledgement of responsibility for the offence and an agreement to make amends for the crime²⁰². Generally, diversion occurs in two stages. The first stage is the pre-trial stage or pre-charge stage and the second stage is during trial. During the pre-trial stage, the police is involved and it involves the employment of programmes and practices through which young people who has initial contact with the police are diverted from

²⁰⁰ Ibid.

²⁰¹ UNICEF, Juvenile Justice Administration in Nigeria Pp.52

²⁰² UNICEF, Profile of existing diversion programmes in Nigeria, UNICEF 2006 PP.17.

the traditional juvenile justice processes before adjudication²⁰³. Majorly, it means diverting the young offender from arrest and/or detention²⁰⁴ or prosecution. The CRA provides for this stage. In section 209, the Police, Prosecutor or any other person dealing with a case involving a child offender to dispose of the cases without resorting to formal trial by using other means of settlement, including supervision, guidance, restitution and compensation of victims or encourage the parties involved in the case to settle amicably.

The second stage occurs in court when the Prosecutor decides to withdraw the charges or in Court when the Magistrate decides to impose an order, other than imprisonment or to convert the trial into a child in need of care and protection proceedings²⁰⁵. This stage is recognized in section 223 of the CRA. The Act listed options. At this stage, the Prosecutor, Magistrates or Judges are empowered to dispose of cases by resorting to alternatives to custodial or institutional punishment.

Importantly, diversion can occur at any stage of the criminal justice process but the sooner it occurs the greater the chance to intervene positively in the young person's life. Note that diversion is not

²⁰³ Pothier J. Best practices in diversion programmes UNICEF Nigeria (2004) Pp.3/

²⁰⁴ Ibid

²⁰⁵ Ibid

appropriate when there is no reasonable proof against the accused and when the offender is not willing to admit his or her responsibility.

Three levels of diversion has been identified²⁰⁶. Level one option is the least onerous and includes oral apologies, formal cautions and a variety all the orders. Level two which also includes all the orders in level one are options such as family group conferences, victim offender mediation and other restorative justice process. Level three include options or orders for matters involving serious or repeat offending and include possibilities of residential elements²⁰⁷.

The concept of diversion is rooted in restorative justice, the chief objective of which is not to punish or re-educate the offender but to repair the harm caused by the offence.

Having considered diversion schemes in general, specifically, community service, victim offender mediation, life skill programmes and other alternative measures prescribed in the CRA as diversion schemes in Nigeria are discussed below.

²⁰⁶ UNICEF Profile of existing diversion programmes Op. Cit. Pp 17 and Potheir J. Op. Cit. Pp. 168

²⁰⁷ Ibid

6.4.1 Community Service

Community service is work performed by an offender for the benefit of the community as a formal or informal sanction. Community service is “a way in which the offender serves the community as reparation for their crime”²⁰⁸.

The need for community service as a diversion option is predicated on the conception that “just as neighbourhoods and communities are harmed by criminal and delinquent activities, they can be restored by meaningful service that contribute to their improvement”²⁰⁹.

In community service, the offender is required to work a certain number of hours during his or her free time, in a non-profit organization for no payment. The CRA in section 223(i) (d) (iii) recognized community service as alternative measure available to a court when satisfied with the guilt of a juvenile offender. It would appear from the provisions of the CRA that this option is only available at the second stage, i.e. during trial. Notably, the provision of CYPA and CYPL has no provision on community service²¹⁰. Nevertheless, the courts may exploit this option

²⁰⁸ UNICEF Juvenile Justice Administration in Nigeria (a course manual) Op. Cit. Pp. 57.

²⁰⁹ Pothier J. Op. Cit. pp.

²¹⁰ Section 15 of CYPA and Section 9 of CYPL containing the list orders at the discretion the magistrate does not provide for community service.

under the general omnibus clause, i.e. that the court may “deal with the matter in other manner in which it may legally be dealt with”²¹¹.

Where community service is used as a pre-trial diversionary option, the charges are withdrawn on condition that the service is completed within a given time. Similarly, when community service is used as alternative sentencing option, the community service is made in conjunction with a conditional discharge. In either cases, non compliance would render the server liable to have the charge restored and/or returned to court to be appropriately sentenced.

It is observed that CRA does not suggest suitable placement agencies for the order of community service. In any case the following are examples of potential placement options:

- i. Homes or Hospitals for physically and mentally challenged, handicapped, public/general hospitals
- ii. Libraries.
- iii. Local Government Councils.
- iv. Police Station, and
- v. Non-governmental Organization²¹².

²¹¹ Ibid

²¹² UNICEF, *Juvenile Justice Administration in Nigeria* Op. Cit. Pp. 57.

The underlying consideration for the order of community service is that community service is done during the offender's free time and at a non-profit organization for no payment. The number of hours to be served by the offender for community service, largely depends on the seriousness of the offence alleged.

The benefits of community service are numerous. Some of the benefits are:-

- i. the offender remains in society and does not have to face the problem of reintegration into the society.
- ii. the offender maintains his or her employment or education.
- iii. the offender is protected from the negative effects of imprisonment and overcrowding in prisons reduced.
- iv. the community is provided human resource that can improve the quality of life in public environments and cost to tax payers to maintain such public institutions are minimized.

In view of the importance of this option to the offender and the community, the provisions of the law on community service as a diversion option should be strengthened.

6.4.2 Victim Offender Mediation (VOM)

The victim offender mediation process offers victims an opportunity to meet offenders in a safe, structured setting and engage in a mediated discussion of the crime²¹³. The aim of victim offender mediation is to facilitate communication between the victim and the offender after a crime has been committed. The objective of such a communication is to work out an agreement with the offender with the aid of a mediator²¹⁴.

The victim offender mediation envisage a trained mediator. It is through the Mediator's assistance that the offender would be able to explain to his victim, the circumstances of the crime, the physical and emotional impact and receive answers to lingering questions about the crime and the offender; and directly involved in developing a restitution plan for the offender. In victim offender mediation, the victim is given a participatory role in resolving the conflict resulting from the offence.

This process radically differentiates criminal justice process where the victim is merely a witness and has no role or a say in the determination of the outcome of the process. In the traditional criminal justice process, the victim will not directly benefit, to restore him to his position when the

²¹³ Pothier J. Op. Cit

²¹⁴ UNICEF, *Juvenile Justice Administration in Nigeria* Op. Cit. Pp.60.

offence was not yet committed. In this process, the victim and the offender could reach an agreement, which may consist of an apology, monetary compensation and/or indirect compensation for losses suffered by the victim.

The victim offender mediation benefits the victim of a crime, the offender as well as the community. As for the victim, essentially he has the opportunity of active participation in the criminal justice process. In addition to the fact that the victim will have the opportunity to confront the offender with his or her feeling, he will receive restitutions.

On the part of the offender, when confronted by the victim, the offender will appreciate more the impact of the crime. It also gives the offender the opportunity of repentance by undoing the damage in as much as this is possible. The victim offender mediation option gives the offender the chance to play a role in determining his or her own future instead of only responding to decisions made by other people who are not directly involved in the conflict. The community benefits from the process as it is cheaper than imprisonment and the offender is given the option to perform useful functions within the community.

The criminal justice system equally benefits from the victim offender mediation.

VOM offers the criminal justice system an alternative to imprisonment and other sentences. VOM process is less expensive than any other forms of sentencing. It provides a useful mechanism for handling first offenders in property crime such as theft..... VOM creates a mechanism for restitution outside the court which decreases the burden on the formal criminal justice system²¹⁵.

However, apart from the general disposal discretion in the law allowing the court "dealing with the case in any other manner in which it may legally dealt with under the Act"²¹⁶, there are no specific provisions in our laws dealing with Victim Offender Mediation.

It is found that the beauty of the VOM process is restorative justice as it allow victim and the offender to meet face to face and a plan is made about how the offender will put the wrong right"²¹⁷. This process which has succeeded in so many jurisdictions in the world can only better function where there are trained and skilled mediators. However, informally this process sometimes occurs in our system without a trained mediator, as a there are instances when some men of honour and repute intervenes to prevent conflict from going to the police or court. This

²¹⁵ Ibid

²¹⁶ This option is also available both under the CYPA and CRA where with proper training and re-orientations the Magistrates exploit the omnibus order.

²¹⁷ *Profile of existing diversion programme in Nigeria*, Op. Cit. Pp. 17.

option could properly be resorted either during a pre-trial stage or in court during trial.

6.4.3 Life Skill Programmes

The life skill programmes can be used as a condition for pre-trial diversion or as a post-trial alternative to imprisonment. A life skill is defined as "...the skills that we all need and use to cope with the demand and pressures of daily living"²¹⁸. The life skill programme as a diversion option "offers vocational skills training, such as computer training, arts and crafts, hair dressing, motor mechanics, catering, bookkeeping etc"²¹⁹.

In Nigeria, this option has no statutory backing and is seldom resorted. The implication of this option is that it may have the tendency of underscoring formal training options such as schools as the juvenile offender may be disposed to a short term vocational skills which will easily provide him or her daily income. However, it must be mentioned that the life skill programmes offer crucial benefits to offenders, families, society and the criminal justice system.

This process allows the offender a second chance, avails the offender the opportunity of a skill, which at leisure may divert the juvenile from

²¹⁸ UNICEF, *Juvenile Justice Administration in Nigeria*, Op. Cit. Pp.64,

²¹⁹ Pothier J. Op. Cit.

committing a crime as well as saving the offender from a prison sentence and its negative consequences. When young people have responsibility for their actions and reparations are made by the offender, the crime in the society decreases and courts are no longer bothered with petty offenders who are refined through the process. Where this option must be resorted, the life skill programmes should be for a short term and where necessary it should be aimed at "youths between the ages of 12 and 18 and it is not limited to first offenders"²²⁰.

6.4.4 Other Alternative Measures

The CYPA, CYPL and the CRA²²¹ recognized other alternatives measures to custodial sentencing or institutionalization. Some of the measures are as follows;

- i. discharging the child offender on his entering into a recognizance.
- ii. placing the child offender under care order, guidance order and suspension order. This includes a situation where the child offender is "discharged and placed under the supervision of a Supervision Officer or a probation officer.
- iii. where the child offender is committed by means of a corrective order to the care of a guardian and supervision of a relative or any other fit person or

²²⁰ Ibid.

²²¹ Section 15 CYPA, see also Section 9 CYPL and Section 233 (i) CRA.

- iv. sending the child offender by means of corrective order to an approved accommodation and approved institutions.
- v. Other alternative measures prescribed by the law are ordering the child offender to:
 - i. participate in group counseling and similar activities
 - ii. pay fine, damages, compensation or cost
 - iii. ordering the parent or guardian of the child to pay a fine, damages, compensation or cost or give security of aid behavior.

Note however that, most these alternative measures have no concrete expression in the juvenile justice system in Nigeria. This may be as a result of systemic defect in the general criminal justice system or owing to ineffectiveness of the role played in the diversion options or schemes under the law.

6.5 Conclusion

Diversion schemes in most countries of the world, where it is practiced, has greatly prevented juvenile delinquency and ensured a system of restorative justice as against retributive justice. The general effect of diversion options is the betterment of the entire system and an enhanced juvenile justice system. Rehabilitation and reintegration as cardinal goals of juvenile justice administration takes root through utilization of

diversion options. However, in Nigeria most of the diversion options are hardly resorted to. Consequently, detention or placement of children in detention and prison facilities is the in thing. This has also resulted in detention centres occasioning health hazards to inmates. In addition, undue delay in hearing of children cases is on the increase, while juvenile delinquency is on the rise.

CHAPTER SEVEN

SUMMARY, OBSERVATIONS, RECOMMENDATIONS AND CONCLUSION

7.1 Introduction

In this chapter, a summary of all the preceding chapters as well as the research observations and findings are considered. Further, this chapter offers recommendations and suggestions that will reposition juvenile justice system in Nigeria for optimal realisation of its goals and objectives.

7.2 Summary

Firstly, chapter one sets the tone for the discussion of the research topic, highlighting the fact that juvenile justice administration in Nigeria is a product of colonial legislation and enforced by oppressive penal institutions that are of colonial origin in structure and operations. The chapter traced the genesis of Nigeria's commitment to issues affecting the rights and welfare of the child to the enactment of the Children and Young Persons Acts in 1943 and its subsequent enactment in other regions and states in Nigeria. In view of the problems and challenges undermining the attainment of main goals of juvenile justice administration, occasioned by some provision of the Children and Young Persons Act vis-à-vis the inability of the colonial law to measure up to the

standard set by international and continental instruments on the issue of the child, the Child Rights Act was passed in 2003.

As it were, the chapter finds that in practice, Nigerian children in conflict with the law are treated in such a manner that hardly promote their sense of dignity and work and that the juvenile justice institutions or machinery in Nigeria are not well equipped in terms of infrastructure, personnel and training to handle child offenders in line with the provisions of the law. The absence of the forgoing will undoubtedly defeats the objectives of reintegrating the child offender into the society. In so doing the child will assume constructive roles in the emergence of a modern society in line with international parameters.

The legal and institutional weakness, coupled with the need to effect reforms in juvenile justice systems makes the aptness of the research objectives imperative. Some of the aims and objectives of the research includes and examination of child specific legislation, particularly, its provisions on juvenile justice administration and a critical assessment of agencies and institution responsible for juvenile justice administration in Kogi State in particular and Nigeria in general.

Secondly, chapter two focused on conceptual clarifications including definition of terms such as, who is a juvenile, the concept of juvenile justice administration, the concept of the age of criminal responsibility and extensively discussed the three stages of juvenile justice administration in Nigeria. It was found that in all stages of juvenile administration ranging from pre-trial stage, the trial stage and the post-trial stage, generally encapsulated in the arrest bail trial and detention of children, the responsible institution, such as the police, the court and custodial institutions are least prepared.

The chapter highlighted the inefficacy and impotence of the provisions of the Children and Young Persons Act as well as the Child Rights Act in the face of legion problems associated with juvenile justice administration in Nigeria. Some of the problems includes; physical abuse of juveniles during arrest and detention by the police, inadequate number of police personnel and lack of requisite training for police, judicial officials, welfare workers and prison officials. Others include; lack of facilities for detention of child offenders, non establishment of family court as well as lack of legal representation and inadequate funding

Thirdly chapter three underscores the fact that the effectiveness and efficiency of juvenile justice system in Nigeria depends on the laws in

place and the institutions saddled with the responsibility of giving full effects to the provisions of the law.

The chapter considered a regime of laws, such as the Children and Young Persons Law, (the Act of 1948 and the law for northern Nigeria in 1958). The Child Rights Act, 2003 and the Child Rights Law of Kogi State. The chapter found that, though the Children and Young Persons Law was deficient in some of its provisions, on juvenile justice administration, the Child Rights Act cured the obvious defects and placed on child legislation in Nigeria on a pedestal comparable to international instruments on the subject discussed in chapter four. This conclusion is predicated on the fact that the provision of the Child Rights Act on child justice administration is in pari-materia with the provisions of United Nations Convention on the Rights of the Child (UNCRC), African Union Charter on the Rights and Welfare of the Child (AUCRWC), United Nations Standard Minimum Rules for the administration of Juvenile Justice (Beijing Rules) and other global instruments arrived at a separate and humane treatment for juveniles in conflict with the law.

Notably, chapter three took a swipe at the police, the courts, the prisons and other institutions as the bane of juvenile justice administration in Nigeria. It was found that these institutions needed to be strengthened,

re-structured, reformed and properly funded to meet modern trends and best practices in the administration of juvenile justices in Nigeria in general and Kogi State in particular.

Chapter five of the thesis appraised the machinery of juvenile justice administration in Kogi State within the context of child specific laws and institutions. The chapter suggested the fact that Kogi State Government is ahead of several other states in the northern region of the country, having adopted the Child Rights Act as a state law. The provisions of this law it was held, satisfy international standard and best practices on the issue of children.

The chapter however lamented that none of the institutions, apart from the non functional the Child Rights Implementation Committee has been established in the state in compliance with the Child Rights Law of Kogi State. The non existence of these key institutions such as, a specialised unit of the Nigerian police or a functional state Juvenile Justice Centre of Police, Family Courts, Remand Homes or/and Approved Institutions or Borstals are fatal to the full realisation of the objectives of juvenile justice administration in the state.

It was further concluded that these institutions should be established while the existing Child Rights Implementation Committee, Social Welfare department of Ministry of Women Affairs and Directorate of Citizens Rights in the Ministry of Justice be activated and strengthened as they remained the engine room for the achievement of the goals of juvenile justice administration in Kogi State.

In chapter six, the research identified some diversion options or schemes as alternative to restrictive criminal justice. The chapter castigated some penal provisions in the Children and Young Persons Law, applicable in Kogi State and held that it defeats the very objective of Child Justice Administration which was as its ultimate goal the rehabilitation and re-integration of a child offender.

The chapter suggested recourse to diversion schemes or alternatives to punishment in all the stages of juvenile administration in both the Children and Young Persons Law and Child Rights Law of Kogi State with view to promote and protect the rights of children in conflict with the law.

In a nutshell, the chapter extensively discussed the following diversion options, viz; community service, victim offender mediation, and life social programmes as viable alternatives to punishment provisions in the laws.

7.3 Observations and Findings

In the foregoing chapters and in the course of the research, the following observations and findings of far reaching significance were noted;

- i. Notwithstanding, the existence for several decades, of the Children and Young Persons Act, 1948 the Children and Young Persons Law, 1958, applicable in Kogi State and of late, the Child Rights Act, 2003 as child-specific laws in Nigeria vis-à-vis their provisions on juvenile justice administration, the child offender in Nigeria is yet to be guaranteed the full benefits of 'unique and humane treatment by juvenile justice handlers. This is evidenced in the way and manner child offenders are treated during arrest, bail considerations, trial, detention and post-detention. In all these stages, child offenders are being abused and exposed to all forms of cruel, inhuman and degrading treatments contrary to the provisions of the law.
- ii. In comparison to the provisions of international instrument on the rights and welfare of the child, such as United Nations Convention on the Rights of the Child (UNCRC) African Union Charter on the Rights and Welfare of the Child (AUCRWC), United Nations Standard Minimum Rules on the Administration of Juvenile Justice (Beijing Rules) among others, the provisions of the Child Rights

Act, 2003 has all that it takes in satisfaction of global standard and best practices.

However, we observed that only 25 states of the federation, including Kogi State have adopted the Act as a State Law. In states where the Child Rights Law were enacted, inclusive of the Federal Capital Territory Abuja (FCT) structures necessary for its full implementation, such the Child Rights Implementation Committee, the specialised unit of the Nigerian Police, Family Courts at both Magistrate and High Court levels, Remand Homes and Approved Institutions are hardly established.

- iii. An assessment of the Nigeria Police, the Courts (Juvenile Courts/Family Courts), Prisons (Remand Homes, Approved Institution and Borstal) disclosed structural and operational quagmire facing these institutions in the performance of their statutory functions. Importantly, these institutions are lacking in basic facilities and requisite knowledge or training to enable them effectively enforce the provisions of the law, seeking to protect the rights of the child in conflict with the law.
- iv. As vital as the roles of the family unit, Social Welfare Department of Ministry of Women Affairs as key agencies in child justice administration, government did not accord them their rightful

recognition and the necessary enablement. Perhaps, this may be as a result of misunderstanding of how central the roles of these institutions are to juvenile justice administration.

- v. In very many of the States of the federation, inclusive of Kogi State, there are no remand homes, approved institutions resulting in the detention child offenders in police cells and prisons along with adult criminals in contravention of the law and conventions.
- vi. Aside, the creation of the appropriate legal framework i.e. the enactment of the Child Rights Law in Kogi State, in 2009, which comprehensively provided for child justice administration in line with international standards, the institutions involved in juveniles justice administration in the state are faced with a lot of challenges incapacitating their effectiveness, where they exist.
- vii. Some key institutions in the Implementation of Child Rights Law are, the child Rights Implementation Committee, it has been inaugurated at the State level, but not yet established at the Local Government level, Family Courts are yet to be established either at the Magistrate or High Court levels, there are no Remand Homes or Approved Institution in the State, the State Juvenile Welfare Centre of the Nigerian Police, as it were only exist in name as it lacks basic facilities and manpower.

7.4 Suggestions and Recommendations

Generally, it is critically important to mention that juvenile justice system in Nigeria is in dire need of intervention and reforms. The reforms are very necessary in the areas of the general philosophy of juvenile justice administration, legislative and legal as well as institutional and framework.

The followings are suggested recommendations:

1. Perception and philosophy change

Notably, the existing perception and philosophy of juvenile justice in Nigeria views juvenile offenders as object of control and punishment through institutionalization of remand homes, approved institutions and borstals. In other instances, there is the general neglect and tendency to treat juvenile issues as merely a matter for social welfare.

Government of Nigeria particularly Kogi State government should strive to see that the philosophy of juvenile justice is anchored on the provisions for social and economic welfare of the child and the prevention of juvenile delinquency instead of the present emphasis on the punishment and institutionalization of juvenile delinquents. This can be achieved through awareness creation, and public enlightenment

packaged in such a manner as it would change the perception and attitude of stakeholders.

2. Legislative Initiatives and Legal Reforms

- i. Importantly, all state of the federation should endeavour to pass the Child Right Act into law. By international standard, the provisions of the Child Rights Act complied with the parameters set by the UNCRC, AUCRWC, Beijing Rules and Riyadh Guidelines on juvenile justice administration.
- ii. In States where the CRA are facing challenges of adoption, the CYPL provisions, which is punishment-oriented, should be replaced by child-friendly treatment. This can be done by incorporating the provisions of CRA on Child Justice Administration into the CYPL.
- iii. There is the need for amendment of the provisions of the CYPA/CYPL on flogging and whipping of children. This type of punishment constitutes cruel punishment and degrading treatment which violate international standard and the provisions of Nigeria constitution.
- iv. The provision of CYPA/CYPL should be amended to prohibit the detention of young offenders in remand homes for long periods.
- v. The amendment of the provisions of the CYPA and CYPL should be effected to provide for the establishment of well equipped and

properly trained-staffed remand homes and approved institutions to provide educational and vocational training, properly feed and clothe inmates as well as the provision of adequate health care and sanitation.

- vi. Kogi state government having successfully domesticated the Child Rights Act should show commitment by putting in place all machineries required by law to facilitate implementation the Child Rights Law.

In summary, the need for the amendment of some provisions of the CYPA and CYPL is sacrosanct, as the laws in very many respects violate several international legal instruments on the treatment of juvenile offenders.

3. Institutional Reforms and Capacity Building

In the course of this research, it was glaring that Nigeria juvenile justice agencies, viz Police, Courts, Remand Homes, Approved Schools, Borstal and Prisons lack adequate and qualified workers that are able to meet the needs, concern and aspirations of juvenile offenders. In very many cases the institutions does not even exist.

On more concrete terms;

- i. The government of Nigeria and Kogi state government most especially, in appropriate cases should initiate and effect fundamental reforms in these institutions to reposition them to adopt and practice international best practices on juvenile justice administration.
- ii. The members of the police need orientation change in their general attitude to be able to make a distinction between juvenile offenders and adults in the criminal justice processes.
- iii. In line with the provisions of the CRA/CRL, the specialized unit of the Nigeria Police should be established and the officers and men of the unit should be specially trained to provide them with intellectual ability and capacity to be properly focused on investigation and prosecution of young offenders. Kogi state government is expected to key into this process by corroborating with the Commissioner of police in charge of the command to assist in building the capacity of officers and men of the specialist unit. It is only with this training that the provisions of the law and international instruments on juvenile justice administration will make a lot of meaning in Nigeria.
- iv. In Kogi State like other states of the federation where the Child Rights Law is in force, concerted effort should be geared toward the establishment of Family Courts in compliance with the

provisions of the laws. Government should adequately provide the courts with necessary facilities and manpower. The officers of the Courts are to be specially trained, in juvenile matters. General knowledge of law is not sufficient in juvenile justice administration.

- a. In a state where the CYPL are still force, Juvenile Courts should be established and constituted in such a manner to guarantee to the child offender, his rights as enshrined in the law and respect for his status as a child.
- b. Fundamentally, government should ensure that juvenile courts functions in a separate structure other than magistrate courts and ensure that magistrates no longer exercise dual capacity – as a judge of juvenile court and a magistrate over other criminal matters.
- c. Magistrate appointed as judges of Juvenile Courts should be specially trained in juvenile justice matters.
- v. a. Deliberate effort and commitment in the way of policy should be initiated by government to ensure that juvenile custodial institutions; remand homes, approved institutions, borstals and prisons are well equipped and staffed with men of requisite training to meet modern demands and dynamics in the treatment of child offenders.

b. Detention centres should be adequately funded and provided with facilities to cater for nutritional needs, health care, recreation, sanitation as well as educational and vocational training for juvenile inmates.

c. As a matter of urgency, all children detained with adult inmates in Nigeria prisons should be separated and incarcerated in centres recognized by law and are child-friendly.

d. In CRA states, the provisions of the law on establishment of approved institutions, responsibilities for approved institutions, the rules and regulations guiding the institutions as well as the release and post release requirements of juvenile offenders should be implemented.

e. Kogi State that does not have remand homes or approved institutions should established them and provide them with necessary facilities and trained personnel.

On the whole, it is strongly recommended that government should organize in-service educational programmes for the police, courts, remand homes, approved institutions, borstals and prisons in order to acquaint them with relevant knowledge of the law and international standards on the treatment of juvenile offenders in Nigeria.

4. Other Recommendations

- i. There should be a continuous effort on the part of government for public enlightenment activities on the provisions of the CRA/CRL on the rights of the child as well as the child justice administration provision of the law and continuous dissemination of the CRC, CRA and other international instruments on juvenile justice administration.
- ii. Nigeria legislation on children evidently neglected or over-sighted the role of the family in the prevention of juvenile delinquency, rehabilitation and re-orientation of juvenile offenders into the society, government should put in place policies and programmes that will enable families to realize their roles and responsibilities to the child and the society.
- iii. There is the need for Kogi State government to effectively collaborate and partner with specialized international organizations and other indigenous NGOs on children, in order to exploit the opportunities offered by such organizations in the monitoring and the implementation of a comprehensive system of juvenile justice in Nigeria.
- iv. Government of Nigeria and Kogi State in particular should put on its priority the need to resort to diversion schemes provided for in the law and de-emphasize on institutionalization.

7.5 Conclusion

The research work has extensively considered, in general, the criminal justice system in Nigeria as well as the functions, roles and responsibilities of the institutions and agencies that are involved in the juvenile justice machinery. These institutions were discussed against the backdrop of their enabling statutes and the regime of laws that regulate the criminal justice system in Nigeria.

The research revealed that by extension, these institutions are the principal agencies in juvenile justice administration in Nigeria. In our discussion of the background to juvenile justice administration, child-friendly legislation in Nigeria were highlighted and its provisions relating to juvenile justice administration appraised. The assessment of these institutions and relevant legislation were analyzed against the standards set by international framework or institutions on child justice administration. Having done the assessment and juxtapose its working with international instruments on the subject matter, it was found that there were army of problems militating against child justice administration in Nigeria.

The thesis critically analyzed the legal and institutional framework involved in juvenile justice administration in Nigeria. The research found

that the police, the courts, prisons and other agencies has not been able to articulate their roles in ensuring an effective and efficient child justice administration. The justifications for their shortcomings were attributed to inadequacy of funding, facilities and equipments as well as training and welfare packages for the key role players or the human elements of these institutions.

The research embarked on a particular study of the machinery of juvenile justice administration in Kogi State of Nigeria. The research articulately assessed the institutions and their performance. It was found that child justice administration in Kogi State lacks, in every respect, all that is needed to promote and protect the rights of the child as provided by CYPL, CRL and international conventions, charters and protocols on child justice administration. The only aspect of juvenile justice system in place of in Kogi State is the legal framework.

The defects with the regime of laws involved in juvenile justice administration were x-rayed against the backdrop of international treaties and protocols on child justice administration. The research observed that there is the need for all states in Nigeria to pass the CRA into law. The CRA provisions were found to be in line with the UNCRC, AUCRWC, Beijing Rules and Riyadh guidelines.

A consideration of penal provisions in the child friendly laws in Nigeria were reviewed and the research found that the system of laws on juvenile justice in Nigeria is punishment inclined, with little emphasis on rehabilitation and re-integration of juvenile offenders into the society. The research discussed diversion schemes, such as community service, victim offender mediation, life skills programmes etc and concluded that the diversion schemes and programme are hardly resorted to in Nigeria.

The research concluded that there is need for a change of attitude in terms of the philosophy of juvenile justice administration, interventions and fundamental reforms relating to legal and legislative initiatives, institutional reforms and capacity building are imperative in order to ensure the full realization of juvenile justice administration in Nigeria.

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