

An Examination of Child Justice Administration under the Child's Rights Act, 2003

Kabo, S.E. *

Abstract

Juvenile justice administration in Nigeria was hitherto regulated by Children and Young Persons' Act (CYPA). The CYPA only regulates the life of the child in relation to criminal offences. The Child's Rights Act (CRA) on the other hand regulates both the criminal and civil aspects of the rights of the child, hence the need to examine the child justice administration under the CRA in order to note the improvement or difference under the new regime. This research employed doctrinal method and it is discovered that the civil aspects of the rights and protection of the child like rights to education, health services, prohibition of child abuse and exploitation of the child not provided under the CYPA are protected by the CRA. The enactment of the CRA in 2003 provides for the protection of both the criminal and civil aspects of the rights of the child in a single statute for the first time in Nigeria. This article examines child justice administration under the CRA and discovered new innovations in child's rights administration. However, it is found that borstal institutions in Nigeria are still grossly inadequate. It is recommended that State Governments should establish state-owned borstal institutions instead of relying on the Federal Government.

Key Terms: Administration, Borstal Institution, Child and Justice.

* Ph.D, LL.M, LL.B BL Department of Public Law, Faculty of Law Kogi State University Anyigba (08034132330, 08052989127 ibnkabo@gmail.com, kabo.se@ksu.edu.ng

Introduction

The child by reason of his physical and mental immaturity is most vulnerable, thus having special need for legal protection as distinct from the adult member of the society. The welfare of the child has been of paramount importance to Nigeria as far back as the colonial period. It began with the Children and Young Persons Ordinance introduced into Nigeria by the British Colonial Government. The Ordinance was later re-enacted as the Children and Young Persons Act (CYPA).² The focus of the CYPA is the regulation of the rights of the child in relation to criminal matters only. It provides for how children are to be treated whenever they come in conflict with the law by placing restriction on the punishment to be meted on the child. As such, where a child is ordered to be imprisoned, he shall not be allowed to associate with adult prisoners.³ However, in practice, it is rare to find prisons across the country which provide for children or young persons' cell or custody different from those of the adult inmates. For instance, in the case of prison custody, there are only three Borstal Institutions in Nigeria located at Kaduna, Ilorin and Abeokuta with limited capacities.⁴ Children are usually locked up with adult in-mates under inhuman and deplorable conditions without nursery facilities to cater for them; some of these children are in prison with their mothers.⁵ In worst scenario, even in civil relation, children are held in police cells and other detention agencies like adult members of the society without facilities to administer justice to the child as belonging to a special class of human society. With the enactment of the CRA,⁶ there seems to be a way out with the provision for various classes of borstal/correctional institutions.

² (Cap 31) Laws of Nigeria 1948, later known as Cap 32 Laws of the Federation and Lagos (Hereinafter LFN) 1958, and now Cap C25 Laws of Lagos, 2004.

³ Children and Young Persons Law Cap C25 Laws of Lagos State 2004, s12.

⁴ VV Tarhule, *Corrections Under Nigerian Law* (Innovative Communications, 2014) 182-234

⁵ 'National Prison Audit 2012' (A Publication of National Human Rights Commission 2014) 19.

⁶ Child's Rights Act Cap C50 LFN 2004 (CRA)

Conceptual Clarifications

Administration

Administration is the activities put in place in order to plan, organize and run institutions. It is the process or act of organizing the way that something is done; for example the administration of justice.⁷ Administration involves the management or performance of the executive duties of government, institution or business; it includes all actions that are involved in managing the work of an organization.⁸

Borstal

A borstal is a type of prison for young criminals.⁹ A borstal is an institution to which young offenders (aged 15 to 20 inclusive) could be sent instead of prison.¹⁰ Young offenders who commit a sufficient serious offence are subjected to a detention and training order for their rehabilitation. A juvenile offender cannot be sentenced to imprisonment; instead he may be sentenced to a detention and training order for a specified period of time.¹¹ It could be a facility run either by the prison service or a private sector contractor to which such persons of young age may be sent under a detention and training order.

Child Defined

The word 'child' is defined as an un-emancipated person under the age of majority.¹² The age of majority is the status of one who has attained the age (usually 18) at which one is entitled to full civic rights and considered legally capable of handling one's own

⁷ AS Hornby, *Oxford Advanced Learners' Dictionary of Current English* (9th edn Oxford University Press, 2015) 19

⁸ BA Garner, *Black's Law Dictionary* (10th edn Thomson Reuters; 2014) p 52

⁹ AS Hornby, (n7) p 168

¹⁰ EA Martin and Jonathan Law, (eds) *A Dictionary of Law* (6th edn Oxford University Press, 2006) 61

¹¹ *Ibid* 61 and 302.

¹² BA Garner, *Black's Law Dictionary* (n8) p 290

affairs.¹³ At common law a person who has not attained the age of 14 years whether a boy or girl is said to be a child.¹⁴ A child is a young human being or person who is not yet an adult in order to take responsibility. Children are distinguished from adults who are fully grown persons, who are legally responsible for their actions.¹⁵

There are two principal factors, the age limit usually reconciles with the time of birth and the maturity factor at which a person can be said to be capable of handling his affairs and take responsibility for his actions and inactions. However, various legislations in Nigeria define a child in different ways for particular purposes:

The Criminal Procedure Act provides that a child 'means any person who has not attained the age of fourteen years.'¹⁶ The Penal Code on the other hand did not define explicitly the word 'child' but provides for the age limit of criminal responsibility. It provides; 'No act is an offence which is done by a child under seven years of age but less than twelve years of age who has not attained sufficient maturity of understanding to judge the nature and consequences of such act.'¹⁷ For the purpose of the law, a person of seven years is a child who lacks the capacity of distinguishing what is right from that which is wrong and cannot be said to have the capacity to commit crime.

The Children and Young Persons Law¹⁸ states that a 'child means a person under the age of fourteen years.' It went further to define a 'young person' to mean a person who has attained the age of fourteen years but less than eighteen years.¹⁹

¹³ *Ibid* 1098 see: CRA (n6) s277

¹⁴ *Ibid* 290

¹⁵ Sally Wehmeier, (ed) *Oxford Advanced Learner's Dictionary* (Special Price edn Oxford University Press, 2001) 16

¹⁶ Cap C41 LFN 2004 s2(1)

¹⁷ Penal Code (Federal Provision) Act Cap P3 LFN 2004 s50. Also, Criminal Code Act Cap C 38 LFN 2004 s30.

¹⁸ Cap C10 Laws of Lagos State, 2014 s2

¹⁹ *Ibid*

The Trafficking in Persons (Prohibition) Enforcement and Administration Act,²⁰ provides that a ‘child means a person under the age of 18 years.’ Also, the Administration of Criminal Justice Act²¹ states that a ‘child means a person who has not attained the age of eighteen years.’ The CRA²² defines the word child to mean ‘a person under the age of eighteen years.’ Many states of the Federation of Nigeria in their own Child’s Right Laws,²³ also adopted the age limit of eighteen years as provided by the Child’s Rights Act (CRA). However, *Akwa-Ibom State Child’s Rights Law* differ, defines a child to be a person below the age of sixteen.²⁴

Other judicial definitions, like the decision in the case of *John Okoye v State*²⁵ held that ‘a boy or girl of the age of 13 years must be considered a child.’ While in the case of *Okon v State*,²⁶ the court held that a child means anyone who has not attained the age of fourteen years. This position was followed in the later cases of *Mbele v State*,²⁷ *Ogunsi v State*,²⁸ *Onyeagbu v State*²⁹ and *Solala & Anor v State*.³⁰ In the recent decision of *Gyumi v Attorney General*,³¹ the court while construing the Child Act of Tanzania³² held that, ‘a child is a person below the age of eighteen years.’ The above definition is in line with the Convention on the Rights of the Child³³ (CRC) as a universal standard.

²⁰ No 4 LFN 2015, s82

²¹ LFN 2015, s494(1)

²² CRA (n6) s277

²³ Kogi State Child Rights Law, 2009 s273, Benue State Child Rights’ Law 2008, s2

²⁴ Akwa-Ibom Child’s Rights Law, 2008 s277

²⁵ (1972) ANLR 938 at 941

²⁶ (1988) NSCC 157 at 172

²⁷ [1990] 4 NWLR (pt 145) 484

²⁸ [1994] 1 NWLR (pt 322) 10

²⁹ [1995] 4 NWLR (pt 391) 510

³⁰ (2005) 30 WRN 89 at 114

³¹ [2016] All FWLR (pt 864) p 1967 at 1996 para. D-E

³² Child Act, No.21, 2010, Laws of the Republic of Tanzania s4

³³ The Convention was adopted by the General Assembly Resolution 44/25 Annex to the Resolution UN Doc A/44/ (1989). The Convention was adopted on 21st Nov.1989 and came into force on 2nd Sept. 1990, one month after the twentieth state ratified it. Art. 1

A lot of judicial definitions of a child cannot be generalized, because it is restrictive to the practices and procedures in the administration of criminal justice under the Criminal Procedure Act and the Penal Code respectively.³⁴ While under the Evidence Act, it relates to the competence of a child-witness to testify whether or not on oath.³⁵

From the foregoing it seems that the word 'child' is usually defined depending upon the purpose and circumstances of each case, these differences obviously conflicts with the definition of a child under the CRA. It is obvious that there is a major inconsistency in the definition of the age of a child under the various laws in Nigeria. The inconsistencies in the definition of a child in Nigeria should be harmonized into a single definition in compliance with the CRA in order to forestall the possibilities of divergent opinion on the same subject matter.

Justice

Justice means to treat or represent somebody or something fairly, especially in a way that shows how good, attractive they are; or to deal with somebody or something correctly and completely.³⁶ It is the quality of being fair or reasonable. The term justice may refer to a system or machinery put in place by the legal system to punish persons who have committed crime or to provide remedy to those wronged in one way or the other. It is the fair and proper administration of law.³⁷ In *Caribbean Trading & Fidelity Corporation v NNPC*,³⁸ the Court of Appeal defines justice as follows; justice is justice if only it attains the basic tenets of the litigation before the court. Justice is aimed at ensuring that the parties in the litigation are fairly treated or receives fair deal from the court

³⁴ Cap C38 LFN 2004 and Cap P3 (n17)

³⁵ Evidence Act 2011 ss175, 208 and 209

³⁶ AS Hornby, (n7) 851

³⁷ BA Garner, *Black's Law Dictionary* (n8) 995

³⁸ [1992] 7NWLR (Pt252) 161 at 182-183 para H-A per Niki Tobi (JCA as he then was).

without any element of bias. ‘...justice is what the courts are all about. Without justice being done and being seen to have been done, the courts would have failed woefully in its primary duty, which is to do justice to all men without fear or favour, good will or ill will.’³⁹ In criminal cases ‘the concept of justice is a triplet of justice for the victim whose life was cut short in a brutal manner and whose innocence and wasted blood cries to high heavens for vengeance: the perpetrator who cannot be denied the benefit of the procedure ordained by God in the Garden of Eden and the society whose membership has been depleted by one by desecration of its values’⁴⁰

Components of child Justice Administration.

The components of child justice system comprises of the several parts that make up the administration of child justice system in Nigeria. Before the enactment of the Child’s Rights Act (CRA), what obtained in Nigeria was the ‘Juvenile Justice Administration’ as provided under the Children and Young Persons Act,⁴¹ which is restricted to criminal matters only in relation to the child. With the enactment of CRA, the Child Justice Administration provided under the CRA now replaced the areas of weaknesses of the hitherto Juvenile Justice Administration under the CYPA.⁴² The Child Justice Administration provided under the CRA now regulates both the criminal and civil aspects of the rights of the child as a single unified law on the rights of the child.⁴³ In order to achieve a better child’s rights system, the following components of child justice administration are provided under the CRA.

Court

³⁹ *NBTC Ltd v Court* [2010] 8 NWLR (pt 1196) 238 at 258 Para E-G

⁴⁰ *Ganiyu v State* [2013] 10 NWLR (Pt 1361) 29 at 43-44 Para G-A

⁴¹ Cap 32 Vol. 1 Laws of the Federation and Lagos, 1958 (Hereinafter CYPA) and other Children and Young Persons Laws of the various States of Nigeria.

⁴² CRA (n6) s204.

⁴³ *Ibid* Part XX, ss 20-238

The Constitution of the Federal Republic of Nigeria vests all judicial powers in the courts both at the Federal and States levels.⁴⁴ The National Assembly and the State Houses of Assembly have inherent powers to create special courts or confer special jurisdiction on a particular court in Nigeria.⁴⁵ The court has inherent powers in relation to exercise of jurisdiction on matters with respect to which the National Assembly or the State Houses of Assembly may make laws; even where such courts are not expressly named in the Constitution.

With respect to the child, the CRA provides for the establishment of the 'Family Court'⁴⁶ specifically assigned the duties and responsibilities of ensuring the enforcement of the rights of the child in line with the provisions of the CRA. The court operates at two levels; (a) the Family Court as a Division of the High Court, at the High Court level; and (b) the Family Court at the Magistrates' Court level.⁴⁷ In the exercise of its jurisdiction, subject to the provisions of the CRA and in addition to such other jurisdiction as may be conferred on it by any other law, the Family Court has unlimited jurisdiction to hear and determine, any civil proceeding 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 any criminal proceedings 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 a child.⁴⁸

The family court at the high court level shall be duly constituted where it consists of a judge of the High Court and two Assessors, who shall be officers not below the rank of Chief Child Development Officers as shall enable the court to effectively perform

⁴⁴ CFRN 1999 (as amended) s6

⁴⁵ *Ibid* s 6 (5) (j) and (k).

⁴⁶ CRA (n6) s149.

⁴⁷ *Ibid* s150

⁴⁸ *Ibid* s151

its functions under the CRA.⁴⁹ The jurisdiction of the Family Court at the High Court level is to the effect that it shall have powers to deal with all matters relating to the enforcement of the rights of the child as set out in the CRA upon the application for redress by a child who alleges that his right has been, is being, or is likely to be infringed. It has powers to deal with all offences punishable with death or a term of imprisonment (up to ten years and above), claim for an amount of money from N50, 000 and above, divorce and custody of the child and to hear appeals from the Family Court at the Magistrates' Court level.⁵⁰

On the other hand, the Family Court at the Magistrates' court level shall be duly constituted if it consists of a Magistrate, and two assessors, one of whom shall be a woman and the other person shall be a person who has attribute in dealings with matters relating to the child, preferably in the area of child psychology education.⁵¹ The Family Court at the Magistrate's court level has power to try offences and deal with all matters not specifically assigned to the court at the High Court Level under section 152 of the CRA. Appeal shall lie from the Magistrates' Court level to the High court level of the Family Court.⁵²

From the above, each state of the Federation is expected to enact their own child rights law providing for the establishment of the Family Court as above. However, today only about 26 states⁵³ in Nigeria have enacted the Child Rights Law and out of the 26 states, only about twelve (12) states⁵⁴ including the Federal Capital Territory Abuja have established the Family Court. However, most of these states only established the Family Court as a ceremonial

⁴⁹ CRA (n6) s152(3).

⁵⁰ *Ibid* s152(4).

⁵¹ *Ibid* s153(3)

⁵² *Ibid* s153 (4) and (5).

⁵³ The states are; Abia, Akwa Ibom, Anambara, Bayelsa, Benue, Cross-River, Delta, Edo, Ebonyi, Ekiti, Enugu, Imo, Jigawa, Kwara, Osun, Oyo, Plateau, Rivers and Taraba State including the Federal Capital Territory Abuja.

⁵⁴ They are; Akwa-Ibom, Benue, Cross-River, Ebonyi, Edo, Kogi, Kwara, Lagos, Ondo, Osun, Oyo and Rivers.

achievement without its practical operation as desired by law. For example in Kogi State, the Child's Right Law was enacted in 2009, it provides for the establishment of the Family Court. The Chief Judge of the State in 2013 in line with the law established the 'Family Court' at the Magistrates court level spread sparingly across the geo-political Districts of Kogi State (ie Kogi East, Kogi West and Kogi Central); by designating specific Magistrates to oversee and sit in those courts to hear and determine cases relating to the child as the need arises.

The courts are not manned by Magistrates or personnel saddled with the responsibility of resuming duties daily in that court but only come to sit occasionally. In such situation, the full impact of the court is not felt. In fact, people hardly notice its existence.

Police

The police force is the government department charged with the responsibility of the preservation of public order, the promotion of public safety, the prevention and detection of crime.⁵⁵ It is also described as a body of civil officers, especially in a city, organized under authority to maintain order and enforce law, to prevent, detect or deal with crime.⁵⁶ In Nigeria, the police is statutorily created and empowered by the Police Act,⁵⁷ it states:

There shall be established for Nigeria a police force to be known as the Nigeria Police Force. 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 and the due enforcement of all laws and regulations with which they are directly charge, and shall perform such military duties

⁵⁵ BA Garner, *Black's Law Dictionary* (n8) 1344.

⁵⁶ *Webster's Comprehensive Dictionary* (Deluxe Encyclopedic edn, Typhoon Media Corporation 2010) 977.

⁵⁷ Cap P19 LFN 2004.

within or without Nigeria as may be required by them, by or under the authority of this or any other Act.⁵⁸

It is obvious that apart from the primary functions of the police as stated above, the police may perform other function as may be permissible by any other law in Nigeria.

Judicially, the function of the police was defined or described in the case of *Fawehinmi v Inspector General of Police*⁵⁹ as follows;

Police power is the exercise of sovereign right of a government to promote order; safety health, morals and general welfare within constitutional limits and it is an essential attribute of government. Indeed, the police are the outward civil authority of the power and right of a civilized country. The generality of the public is potentially affected in one way or the other by their action or inaction.

In the exercise of the powers of the police, any police officer may conduct in person all prosecutions before any court whether or not the information or complaint is laid in his name.⁶⁰ Generally, the police are the main institution that provides contact with the public in relation to crime, an attribute that makes it unique among the other components of the criminal justice system.

However, the CRA creates a distinct child justice system and procedure for the child, to the effect that the child shall not be subjected to the criminal justice process or to criminal sanction, but that a child who is alleged to have committed an act which would have constituted a criminal offence if he were an adult shall be

⁵⁸ *Ibid* s3 and s4

⁵⁹ [2006] NWLR (Pt 767) 606 at 673

⁶⁰ Police Act. (n57) s23.

subjected only to the child justice system and procedures set out under the CRA.⁶¹ In order to achieve a special child justice system for the child, the CRA equally provides for the establishment in the Nigeria Police Force, a specialized unit of the force, to be known as the 'Specialized Children Police Unit.'⁶² The specialized children police unit is charged with the responsibility of preventing and controlling child offences; apprehending child offender, investigating child offences and such other functions as may be referred to the unit under the CRA or any other law.⁶³

The police prosecutor or any other person dealing with any case involving a child shall have the power to dispose of the case without resorting to formal trial, by using other available means of settlement, including supervision, guidance, restitution and compensation of victims.⁶⁴ The police shall encourage settlement of cases involving the child where necessary so that police investigation and adjudication before the court shall be used only as measures of last resort.⁶⁵ The provision for the child justice administration under the CRA is more relaxed and lenient towards child offenders as a result of the enormous discretion permitted to be exercised by the specialized children police unit of the force.

Apart from the child justice system, in carrying out its functions, the policeman exercises tremendous amount of discretion.⁶⁶ In general, discretion refers to the exercise of choice by those charged with the responsibility and authority to carry out various tasks assigned to them. It is, according to Lord Scarman, the art of suiting action to particular circumstances and it is the policeman's daily task.⁶⁷ Justifying the above, the CRA provides

⁶¹ CRA (n6) s204.

⁶² *Ibid* s207.

⁶³ *Ibid* s 207 (1) and (2).

⁶⁴ *Ibid* s209(1).

⁶⁵ *Ibid* s209(20) and (3).

⁶⁶ Abdulrahman B Dambazau, *Criminology and Criminal Justice* (2nd edn Spectrum Books Limited, 2007) 179

⁶⁷ Lord Scarman. 'The Brixton Disorders,' Report Cmnd 8427, Para 458 as cited by Abdulrahman B Dambazau, *Ibid*.

that; in view of the varying and special needs of children and the variety of measures available, a person who takes decision on child offenders shall exercise such discretion as he deems most appropriate in each case at all stages of the proceedings and at different levels of child justice administration including investigation, prosecution, adjudication and the follow-up of dispositions.⁶⁸

Borstal/Correctional Centres

The prison is a building or complex where people are kept in long-term confinement as punishment for a crime, or in short-term detention while awaiting to go to court as criminal defendants; specifically, a state or federal facility of confinement for convicted criminals.⁶⁹ Correctional centres on the other hand, are places of punishment and treatment of criminal offenders through a programme of imprisonment, parole and probation.⁷⁰ With respect to children and young persons in relation to correction centre, the Borstal Institutions and Remand Centre's Act⁷¹ provides for;

- (1) **Remand centre**, as a place or house prepared for the detention of persons not less than 16 but less than 21 years, who are committed to custody for trial,⁷² and
- (2) **Borstal Training Centre**, as places prepared for offenders who are above 16 or less than 21 years of age on the day of their conviction or may be detained and given training and instruction as will conduce to their reformation and prevent further crime.⁷³

From the above, while prisons are made for the confinement of adult offenders, the borstal institutions or correctional centres are made for juvenile or child offenders for the purpose of their

⁶⁸ CRA (n6) s208.

⁶⁹ BA Garner (n8) p 1387

⁷⁰ *Ibid* 396

⁷¹ Cap B 11 LFN 2004

⁷² *Ibid* s3 (a)

⁷³ *Ibid* s3 (b)

reformation and rehabilitation.⁷⁴ The philosophy behind borstal institutions and remand centres is to separate the confinement of juvenile from adult and hardened criminals where confinement becomes necessary in other not to corrupt the moral of the juvenile (who needs only corrective instructions) and to prevent them from associating with adult criminals.

By the Prison Audit Report 2012,⁷⁵ 173 prisons were visited in the six geo-political zones⁷⁶ of Nigeria; the prisons visited are to accommodate a total inmate capacity of 46, 024 in all, but, at the time of the audit exercise, the total inmates or lock-up in the prisons was 50, 645 inmates. Some of the prisons have no space for any form of recreation.⁷⁷ It is also found that with the rising menace of crime rate among juveniles and children in Nigeria, the three borstal institutions in Nigeria are grossly inadequate for the accommodation of young or child offenders. Thus, children are incarcerated in regular prisons with adults. The resultant effect of this is that children and minors may be influenced by adult criminals and consequently, they become hardened criminals.⁷⁸ Looking at the conditions of minors in adult prison from the Prison's Report, for example; there were 3 minors in prisons in the North-East zones, 12 in the South-East, while in the South-West there were 12 children or minors in prisons. Similarly, there were 12 children in prison in the South-South zone. In the North-West, there were 7 children in prison. In all these prisons, there were no nursery facilities to hold

⁷⁴ International Covenant on Civil and Political Rights (ICCPR), provides that death sentence shall not be met to persons less than 18 at the time of commission of the crime, Art. 6(5). The court shall adopt procedure that accord with the status of the child and that which will ensure their reformation and rehabilitation, (ICCPR) Art. 14(4).

⁷⁵ *National Prison Audit* (n5) p.3

⁷⁶ South-West 23 prisons, South-South 26 prisons, South-East 14, North-West 36, North-East 37 and North-Central 37. *Ibid* 19

⁷⁷ *National Prison Audit* (n5) *Ibid*

⁷⁸ Benedicta Daudu, 'Promoting Borstal Institutions Rehabilitation Ideals in Nigeria: a Case of Promoting Juvenile Offenders' [2012] (3) *Human Rights Review Ahmadu Bello University Zaria* 447

the minors; some of them were in prisons with their mothers.⁷⁹ The state of the Borstal Training Institute in Abeokuta is specifically of serious concern because the facilities in the training institute are overstretched due to congestion, the sanitation is very deplorable.⁸⁰

Furthermore, the regular courts are not helping matters, as a result of the inadequacy or unavailability of borstal institutions or correctional centres, children and young persons are usually detained in police cells or sent to prisons with adults. In most cases the judge/magistrate who is to take cognizance of the special status of the young person brought before him in order to adopt a more lenient procedure to arrive at a reformatory and rehabilitative end as required by law in sentencing young persons, often pronounces harsh and difficult sentence on the child. In the case of *Oyeneye v Commissioner of Police*,⁸¹ the appellant was charged with stealing a vehicle valued at ten thousand naira (N10, 000). Although, before sentencing the accused, it was told the court that the accused was a young person and also a first-offender. However, taking into account the prevalence of vehicle theft, the Chief Magistrate sentenced him to four years imprisonment. While reducing the sentence to two years on appeal, Kunfoji J. (as he then was) held as follows;

This court is of the view that the Chief Magistrate did not give these matter due consideration as required by the relevant authorities and that a four year jail sentence for a young offender is more likely to harden than reform indeed, it will make reform and rehabilitation difficult, if not impossible and it is therefore against public interest. Thus, short term while enabling the appellant to realize the gravity of the offence and

⁷⁹ *National Prison Audit* (n5) p.19

⁸⁰ *Ibid* 98

⁸¹ (1983) 1 NCR 245

the reaction of the society to this serious and prevalent crime will also help to reform him.

As a result of the inadequacies of the hitherto existing laws and the procedures on the child justice administration with respect to custodial orders, the CRA attempts to find solutions to the problems by establishing various correctional institutions to cater for the child justice administration as follows;

- (1) **Children's Centre**⁸² This is the place where children who are ordered to be remanded pending their trial are kept. It is to be used exclusively for remand or detention of children awaiting trials.⁸³
- (2) **Children's Residential Centre**⁸⁴ It is a place designed for child offenders who are detained for the purpose of giving them regular school education and other training for the purpose of reforming, rehabilitating and re-socialization. It should be noted that in 'Children's Residential Centre', children who are already tried and found guilty are kept here for the purpose of their regular education and other training.
- (3) **Children's Correctional Centre**⁸⁵ It is a place where child offenders may be detained and given such training or instruction as will be conducive for their reformation and re-socialization. The difference between the 'Children Correctional Centre' and the 'Children Residential Centre' lies in the fact that in the former, there is no provision for regular school education, while in the later the child offenders are provided with both regular school education as well as such other training or instruction conducive for their reformation.

⁸² CRA (n6) s250 (2)

⁸³ VV Tarhule, *Corrections Under Nigerian Law* (n4) 234

⁸⁴ CRA (n6) s250 (3)

⁸⁵ CRA *Ibid* s250 (4)

- (4) **Emergency Protection Centre**⁸⁶ It should be noted that under CRA, the Family Court has powers to make order upon an application to it for the removal of any child who is likely to suffer significant harm, from anyone having custody of the child and to be housed in the Emergency Protection Centre or any other approved suitable accommodation for the safety of the child.⁸⁷ The child so removed from lawful custody and ordered to be kept in Emergency Protection Centre ordinarily may not have committed or been accused of any crime, but for his/her own protection (protective custody) against any likely harm to his person.
- (5) **Special Children’s Correctional Centre**⁸⁸ it is a place to which children who are found to be incorrigible or found to be exercising bad influence on other inmates already detained in the ‘Children’s Correctional Centre.’ It is not uncommon to see some children exhibiting incurable bad influence which if not curtailed, would corrupt other children.⁸⁹ As a result of this and with a view to stop the inculcation of the bad character or bad influence of peers, the CRA designed the Special Children’s Correctional Centre for the custody of such children.
- (6) **Special Mothers Centre**⁹⁰ It is a place in which expectant and nursing mothers are held for the purposes of remand, re-socialization and rehabilitation in the society in an atmosphere devoid of the regime of institutional confinement which may be damaging to the proper development of their children.

⁸⁶ *Ibid* s250 (5)

⁸⁷ *Ibid* s44

⁸⁸ *Ibid* s 250 (6)

⁸⁹ VV Tarhule, (n4) p 236

⁹⁰ CRA (n6) s250 (7)

As the name imply, the Special Mothers Centre is to cater for the needs of expectant or nursing mothers who might have infringed the law or convicted. It may also house special mothers like the girl-child or child-mothers who are victims of trafficking found pregnant as well as girls who are victims of baby factories operations for the purpose of giving birth to babies for sale as finished products of baby factories in Nigeria.⁹¹

On the whole, it is hoped that if the above discourse is properly and efficiently operated, the problems associated with the child justice administration in Nigeria will be greatly improved upon.

Problems of Child Justice Administration in Nigeria

In spite of the laudable provisions of law on the rights of the child, there still exists injurious gap between the laws and the practical application and enforcement of the laws on the rights of the child in Nigeria. One of the major problems associated with child justice administration as contemplated under the CRA is the non-existence of the various components of the child justice administration in Nigeria today. It is observed that after about fifteen years of the enactment of the CRA, none of the borstal/correctional institutions discussed above are in operation anywhere let alone their efficiency and effectiveness. Even the 'Family Court'⁹² and the 'Specialized Children Police Unit' of the Police Force all of which are the major components of child justice administration are yet to be established in practical term.

⁹¹ Baby Factories-Growing Lawlessness' *Vanguard News*, (Sept. 12 2013). <www.Vanguardngr.com/2013/09/baby-factories-growing-lawlessness>.

Accessed on 6th/10/2018. 'Baby Factory' phenomenon is the perverse commercialization of new-born in the manner of economic animals such as chickens, pigs, goats and cows etc. this is done by the use of deceit, coercion or obtaining consent by fraud or undue influence, by keeping young pregnant girls or by abducting or kidnapping young girls and to have them impregnated while being held hostage by the abductors. The new-born are usually taken from the girls and sold to persons who need them for whatever reasons.

⁹² Although the Chief Judge of Kogi State inaugurated the Family Court in 2013, it is doubtful if people are aware of its existence, let alone its exercise of jurisdiction in Kogi State.

Illiteracy and ignorance in many instances are responsible for the violation of the rights of the people, while the majority of people are not educated or ignorant, on the other hand, many are unable to form and express intelligent opinion on matters generally⁹³ including those affecting them. With respect to the rights of the child, there is the lack of understanding of the nature of those rights articulated in favour of the child which the law seeks to protect. The rights of the child are never seen or believed to exist or available; that is why it seems that those who ought to protect and ensure the enforcement of the rights of the child are usually the same persons who perpetuate and encourage the violation of the rights of the child.⁹⁴

There is no doubt, that the economic status of an individual impacts on his ability to access and enforce rights due to him. It therefore means that the poverty and economic vulnerability of an individual determines his ability to enforce his or her rights. With respect to the rights of the child, poverty and economic vulnerability also affect the enforceability or otherwise of their rights. In Nigeria, two-thirds of families live in abject poverty and this circumstance forced many families into adopting adverse coping strategies, to which their children are at the receiving end in the form of child labour, trafficking, sex-work, prostitution and so on.⁹⁵ In such challenging circumstances, it is impossible for parents or guardians to galvanize the child justice machineries in a bid to enforce the rights of their wards.

⁹³ JD Ojo, 'Development of the Executive under the Nigerian Constitution 1960-1981' (Ibadan University Press, 1986) 159. As cited in AO Obilade, *et al* (eds) *Text for Human Rights Teaching in Schools* (Constitutional Right Project 1999) 1

⁹⁴ Emily I Alemika 'Legal Frameworks for the Child Rights in Nigeria' [2010] (2) *Journal of Public Law and Constitutional Practices* 10

⁹⁵ Nicola Jones, 'Strengthening Linkages between Child Protection and Social Protection Systems in Nigeria' [2011] (62) *Overseas Development Institute* (Odi) Project Briefing No. 62 (Sponsored by UNICEF Nigeria). <www.unicefnigeria.org> on 16th Nov, 2015

Conclusion and Recommendations

This article is able to examine child justice administration under the CRA as opposed to the juvenile justice administration hitherto obtainable under the CYPA. It is found that the juvenile justice administration under the CYPA is a single-phased legislation and approach to the administration of child justice system before now. The article concludes that there are adequate machineries put in place under the CRA for the administration of child justice, such as the provision for the family courts, the specialized children police unit as well as various borstal institution and correctional centres and so on. It is found that beautiful as the provision appears to be, the problem lies in the good political will to translate the provisions of the law into effective/efficient reality for the benefit of the child.

It is found that the problems of child justice administration do not lie with the operation of the laws alone, other factors like illiteracy/ignorance and the understanding of what constitute child's right are militating factors, economic factors or poverty and so on are some of the major problems militating against child justice administration.

On the whole, it is one thing to have legal frameworks properly laid out by the legislature and yet a different ball-game to have the laws executed for the benefit of the society. It is therefore recommended that the Family Courts, the Specialized Children Police Unit of the Police Force and the various Child's Rights Committees for the federal, state and local governments provided under the CRA should be established in states that are yet to do so, in order to speed up the enforcement of the rights of the child. This can be achieved without delay by putting in place adequate legislative and administrative machineries that will ensure that even state governments are empowered to establish or build their own correctional homes and borstal institutions to solve the problems of inadequate borstal homes and correctional institutions in Nigeria.