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## **Juvenile Justice: Evaluation, Policies, And Programmes**

**Bamanga Magaji Tijjani<sup>1</sup>**

### **INTRODUCTION**

The prevention and control of juvenile offending is best understood as a process consisting of different levels of intervention, including education and prevention at the community level, as well as criminal sanctions and interventions to rehabilitate juvenile offenders and reintegrate them into the community. Articles 37, 39 and 40 of the Convention on the Rights of the Child pertain to children's rights with respect to the juvenile justice system and, more generally, the criminal justice system as a whole. Other articles of the Convention (arts. 2, 3, 6 and 12) set out the general principles that must be taken into account in addressing the situation of children in conflict with the law.

Evaluation is a key component in the process of program development and management. Evaluation can be a useful tool for juvenile justice program managers to identify what results they are trying to produce and how the activities their staff members are engaged in are geared toward producing those results. The purpose of this briefing is to provide an overview of the program evaluation process as it might be implemented by a local juvenile justice program manager. Juvenile justice program managers need information about what their programs are trying to accomplish, how their programs are functioning, and what results they are producing. We propose a seven-step process that juvenile justice program managers and others can use to analyze and assess the functioning of programs.

"The juvenile justice system shall emphasis the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offense"<sup>2</sup> This rule states what the aim of a system of juvenile justice administration should be. It envisages an admixture of both the "justice" and the "welfare" model for a proper-functioning of the juvenile justice system. This is because neither model is satisfactory by itself alone: An exclusive operation of the welfare model may lead to violation of the rights of the child and also, to lack of compliance with due process requirements; whilst exclusive operation of the justice model may lead to the ignoring of the child's welfare. Hence, the deliberate admixture of the two models in the formulation of the Beijing Rules by its Founding Fathers<sup>3</sup>. Thus again, Rule 14.2 provides, in relation to juvenile justice proceedings before the competent authority, as follows:-

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<sup>1</sup> Senior Lecturer, Department of Public Law, Faculty of Law, Bayero University, Kano – Nigeria,

<sup>2</sup> Rule 5.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile justice, otherwise known as the Beijing Rules. adopted by the United Nations General Assembly on November 29, 1985, by means of its Resolution 40/33 which was unanimously adopted on that day. The aims stated in this Rule are comparable to those stated in the Preamble to the old Children and Young Persons Act, Cap. 32, of the 1958 Laws of the Federation of Nigeria which states that the Act was "to make provision for the welfare of the young and the treatment of young offenders and for the establishment of juvenile courts". Those words have been re-enacted in the Lagos State Children and Young Persons Law, Cap. 26. of the 1970 Laws of Lagos State.

<sup>3</sup> The present Author was privileged to be one of them: Firstly, He was the Rapporteur of Committee II of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Caracas in September, 1980, when that Congress decided in its Resolution 4, on the need for the elaboration of such rules ~ for the Seventh Congress. He was the Rapporteur of the international Meeting of Experts which produced the very first Draft of the Rules for the United Nations, in Tokyo, in November 1983. He was the Representative of the United Nations Committee on Crime Prevention and Control at the international Preparatory Meeting for the Seventh United Nations Congress for the Prevention of Crime and the Treatment of Offenders, which finalized its Draft for the Committee on Crime Prevention and Control, in Beijing China, in April, 1984. He was also a member of the United Nations Committee on Crime Prevention and Control which approved the Final Draft that was submitted to the Seventh Congress. Finally, he was the Leader of the Nigerian Delegation to. and he participated in the unanimous adoption of the Rules by the Seventh Congress, in Milan, Italy, in September, 1985.

*"The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding which shall allow the juvenile to participate therein to express herself or himself freely."*<sup>3</sup>

## 1. Clarification of Concepts

A juvenile, under Nigerian law, is a person under the age of seventeen or eighteen years.<sup>4</sup> The juvenile is sub-divided into a child, that is, "a person under the age of fourteen years"<sup>5</sup>, and a 'young person', that is, "a person who has attained the age of fourteen years and is under the age of seventeen years."<sup>6</sup>

In view of the fact that an 'offence' is defined as an act or omission which renders the person doing the act or making the omission liable to punishment under the Criminal Code or any other enactment a 'juvenile offender,' therefore, is a person, below the age of seventeen years (be he a child or a young person) who is liable to punishment under an enactment for an act or omission.<sup>8</sup>

The term 'juvenile justice' goes beyond dealing with juvenile offences, as it may encompass cases of 'juveniles in need of care and protection'<sup>9</sup>, and cases of Possession and custody of Young Persons'<sup>10</sup> In fact, the stated purposes of all the Children and Young Persons legislation, namely, that they are "to make provision for the welfare of the young and the treatment of young offenders and for the establishment of juvenile courts" tend to support the wider view of the concept of 'juvenile justice.'

Finally, the term treatment of juvenile offenders' includes not only the disposition methods as enumerated in Section 14 and restricted in sections 11 and 12, but also procedures for handling juveniles such are contained in Part 2 of the Act.<sup>11</sup>

We can now turn to the constitutional protection afforded a juvenile in Nigeria.

- PART II, Sections 2 and 3 of the Children and Young Persons Act. Cap. 32, op, cit., of the 1958 Laws of the Federation of Nigeria. Similar provisions are contained in the respective Children and Young Persons Laws of the various states of Nigeria e.g. Cap. 26 at Lagos State Laws, op. cit, sections and sections 2 and 3 of the Children and Young Persons Law. Cap. 21 or Kano State
- Ibid., Cap. 32, Vol. 1, Pad I, Section 2, see a 26 and cap. 26, op. sit. section 2; and Cap. 21, section 2, op cit.
- Section 2, Cap 32, Cap. 26. and Cap 21. ibid.
- Criminal Code, Cap. 77 of the 1990 Laws of Nigeria, section 2. See however, the more restrictive definition in section 28 of the Penal Code, Cap. 89 of the 1963 Laws of Northern Nigeria. which defines an offence as including "an offence under any law for the time being in force."
- Pad 2 of Cap. 32 relates to such juveniles, although its disposition methods, such as are outlined in section 14. go beyond the punitive type, at least, in respect of one order, namely, committal to the care of a relative or fit person - section 12(d). See also similar provision in Cap. 26. ibid., and Cap. 21, ibid.
- Ibid., Part 5, sections 26 and 27, including being an orphan, or, being deserted, neglected or ill-treated. Caps. 26 and 21, ibid., also contain similar provisions.
- Ibid., Part 8. section 30, Cap 32 Cap. 26, and Cap. 21, bid.
- Sections 3 -16 of Cap. 32, ibid., Cap. 26. ibid. and Cap. 21 bid.

## II. CONSTITUTIONAL PROTECTION OF JUVENILES IN NIGERIA

The present Constitution of Nigeria,<sup>12</sup> in its Chapter IV, has enshrined the 'Fundamental Rights' of Nigerian citizens, such as the rights to life,<sup>13</sup> to dignity of human person,<sup>14</sup> to personal liberty,<sup>15</sup> to fair hearing,<sup>16</sup> to private life,<sup>17</sup> to freedom of thought, conscience and religion,<sup>18</sup> freedom of expression,<sup>19</sup> to peaceful assembly and association,<sup>20</sup> to freedom of movement,<sup>21</sup> and to freedom from discrimination.<sup>22</sup> These provisions enshrine the rights for all Nigerians, young and old.

<sup>4</sup> Rule 14.1 had earlier provided that the competent authority shall deal with the juvenile 'according to principles of a fair and just trial which, according to the Commenter:: to that Rule, Includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defences, the right to remain silent, the right to have the last word in a hearing, the right to appeal, etc. (see also rule 7.1)

Whilst it can be said that the Constitutional provision outlawing the generally known discriminatory consequences of bastardy<sup>23</sup> can be said to conduce to the prohibition and avoidance of legally encouraged parental rejection, thereby leading to the child's feeling of social rejection, stigma and ostracism, its enforceability seems most likely to be relevant at the adult stage of life, in particular in relation to succession rights. It is noteworthy that section 34(1) (d) derogates from the right to personal liberty of a person who has not attained the age of 18 years, for the purpose of his education and welfare. This seemingly derogatory provision can be seen as a form of positively providing for the education of children and young persons, particularly in view of section 19 (3) (a) —(c) which enjoins efforts at providing free, compulsory and universal primary education, free secondary education and free university education; whilst section 15 (2) (h) declares that 'the security and welfare of the people shall be the primary purpose of government.'<sup>24</sup>

### III PROTECTION OF JUVENILES UNDER THE CRIMINAL LAW

The spirit of the above-stated rights of the juvenile, guaranteed by the Constitution, have been further specifically operationalised by certain specific provisions of our Criminal Law, in relation to the protection of children and young persons. Examples are those provisions which seek to impose and enforce the duty of head of family to provide the necessaries of life" for a child under -The age of fourteen years and who is a member of his household ;<sup>25</sup> whilst a similar duty is imposed on masters or mistresses in respect of food, clothing and/or lodging for the protection of servants or apprentices below the age of sixteen years.<sup>26</sup> These two duties are enforceable and punishable under section 339; whilst section 341 specifically punishes abandonment or exposure of children under the age of seven years:<sup>27</sup> whilst section 340 punishes the endangering of life or health of apprentices or servants. Other provisions relate to the offences of infanticide,<sup>28</sup> killing an unborn child," concealing the birth of children.<sup>30</sup> Yet other provisions relate to abduction of girls under sixteen years<sup>31</sup> child stealing ,<sup>32</sup>

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- The Constitution of the Federal Republic of Nigeria, 1989.
  - Ibid., section 32.
  - Section 33. *ibid.*
  - Section 34, *ibid.*
  - Section 35, *ibid.*
  - Section 36, *ibid.*
  - Section 37, *ibid.*
  - Section 38. *ibid.*
  - Section 39, *ibid.*
  - Section 40, *ibid.*
  - Section 41, *ibid.*
  - Ibid., section 41(2) *ibid.* provides: "No citizen of Nigeria shall be subjected to any disability or deprivation merely by Circumstances of his birth.'
  - Chapter IL Fundamental Objectives and Directive Principles of State Policy-sections 14. •24, *op. cit.*
  - Criminal code, Cap. 77 of the 1990 laws of Nigeria, section 301. The Penal Code does not have such specific equivalent provisions.
  - Criminal code. *ibid.*, section 302.
  - Section 237 of the Penal Code, Cap. 89, 01 the 1963 Laws of Northern Nigeria. makcis similar provision, but the upper age limit is 12 years.
  - Criminal code, *ibid.*, section 327A
  - Criminal code, *ibid.*, section 328. Compare section 236, as well as section 235 of the Penal code, Cap. 89, *op. cit.*
  - Criminal code, *ibid.*, section 329. Compare section 239 of the Penal code, *ibid.* 31. Criminal code. *ibid.* section 362. Compare sections 275, 276 and 278 of Penal code, *ibid.* dissertation of children,<sup>33</sup> defilement,<sup>34</sup> as well as indecent treatment of boys under fourteen years," and, Inter atia, precuration of a female below the age of 18 years to have unlawful carnal connection with any person or persons,<sup>36</sup>etc. Further provisions relate to rape<sup>37</sup> and abortion.<sup>38</sup> The list is endless, particularly when regard is had to other enactments.

Whilst these prohibitive enactments have sought to protect children and young persons, nonetheless, it appears that some real problems can arise in formulating positive beneficence - that is, conducive enactments for promoting the happiness and emotional security of children and young persons.

#### IV THE AGE(S) OF CRIMINAL RESPONSIBILITY

The evolution of the concept of the age(s) of criminal responsibility has been motivated, out of humanitarian consideration, by the desire "to avoid the application of the criminal process to a child, with all the rigours of its consequences." To this end, Nigerian criminal laws presently has a three-pronged approach to the criminal responsibility of children and young person's:

1. Children below the age of seven (7) years are absolutely not responsible for any criminal offence;<sup>40</sup>
  2. Children who have attained the age of seven (7) years but are below twelve (12) years are not criminally responsible unless it is established that, at the time of committing the offence, they had the capacity (or sufficient maturity of understanding) to know that they ought not to do the act or make the omission (or to judge the nature and consequences of such act)" and
  3. Children from twelve (12) years upwards are fully criminally responsible for their crimes.<sup>42</sup>
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- Criminal code, *ibid.*, section 371.
  - Criminal Code, *ibid.*, section 372. Compare section 238 of the Penal Code, *ibid* on cruelty to children generally,
  - Criminal Code, *ibid.*, section 218; see section 221, as well.
  - Criminal Code, *ibid.*, section 216. Compare section 275 of the Penal Code, *ibid.*
  - Criminal Code, *ibid.*, section 223. Compare section 275 of the Penal code, *ibid.*
  - Criminal Code, *ibid.*, section 357 and 358. See sections 282 and 283 of the Penal Code, Cap. 89. *ibid.*
  - Criminal Code, *ibid.*, sections 228. 229 and 230. See sections 232 and 234 of the Penal Code, Cap. 89, *ibid.*
  - A.A. Adeyemi, "Re-Assessing the Age of Criminal Responsibility in Nigeria", chapter 15 of *Women and Children Under Nigerian Law, 1990*, Awa Katy and Yemi Osinbajo, Editors, pages 200-210, at pg 202
  - Criminal Code, Cap. 77. *bid.*, section 30, first paragraph. See also, the Penal Code, *bid.*, section 50(a).
  - The second paragraph of section 30 of the Criminal Coda, Cap. 77, *ibid.*; and section 50(b) of the Penal Code, *bid.*, the provisions of which are those summarised in the parentheses.
  - The third paragraph of section 30of the Criminal Code (which has no equivalence in the Penal Code), intact, totally absolves male children under the age of twelve (12) years from criminal responsibility for offences involving carnal knowledge, by legally presuming them to be Incapable of having carnal knowledge. This has no valid basis, and should be repealed.
  - This is the implication of the provisions, since the demarcation of ages 7 and 12 years, as the age limits for absolving children from criminal responsibility.

Notwithstanding the good intention of the Law Makers to protect and remove children from the harsh consequences of the criminal law implies in the first two of these approaches the manner of establishing the relevant principles are definitely wrong: In the first instance, the choice of the chronological ages of seven (7) and twelve (12) years are not only arbitrary and irrational,<sup>43</sup> but are also scientifically unsupportable<sup>44</sup> and socially,<sup>45</sup> educationally,<sup>46</sup> economically.", politically" and legally<sup>49</sup> unjustifiable.<sup>50</sup> Secondly, it is unjust "to hold infants, who are legally subject to the disabilities enumerated above, fully legally liable to punishments for their acts and omissions, as adults who have all the benefits of the law socially, educationally, economically, politically, and legally:<sup>51</sup> Thirdly, "discretionary lack of criminal responsibility ... suffers from (the) defect ... that it is applicable only in cases requiring mens rea, and cannot apply in cases involving strict liability offences. Thus, it must lack universal application..."<sup>52</sup> Fourthly, even at the lower age limit level, it is clear from psychological evidence relating to moral realism and sense of justice that even children between ages 4 to 8 years are definitely capable of foreseeing consequences of their actions and acting with the desire that the consequences should occur. Also, they definitely are aware of the likelihood of primitive reaction by their parents or some other authority, should their envisaged act or omission be found out, before embarking upon the act or omission."<sup>53</sup> Fifthly, the so-called age(s) of criminal responsibility's protection has been rendered ineffectual and is, in' practice, a nullity because of the operation of the various Children and Young Persons legislations, which have now precluded the application, in normal circumstances, of criminal law and process to children and young persons, who are now ordinary subject to the operation of those legislations<sup>54</sup> Hence, the need for the continued retention of the age(e) of criminal responsibility, for purposes of saving juveniles from the harsh consequences of the criminal law and process, is no longer justifiable.

Accordingly, it has been, and is again being, suggested that the age(s) of criminal responsibility should be abolished from our criminal law and process.<sup>55</sup> Rather, we should simply have an age, below which juveniles will be subject to the operation of the juvenile justice system, and above which the offender will be handled by the adult criminal justice system.

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- A. Adeyemi, op. cit., at pages 202 and 204.
  - See, for example. Jean Piaget, *The Moral Judgment of the Child*, Floutledgo & Kagan Paul Ltd., Longon, Fifth Impression, 1968 (First Published, 1932), Chapters I & III. See also, L. Kohlioarg and E. Ziegler, 'The Impact of Cognitive Maturity Upon the Development of Sex Role Attitudes in the Years Feu ( to Eight' IdepogracKaes.Child Peveloornent) 1963
  - The marriageable age(s) and the age-grade promotions to the sotto-politically active levels normally do not fan below twelve (12) years.
  - Age qualification for entry into tertiary institutions is sixteen (16) years; whilst under the 6-3.3-4 Educational System, that for entry into secondary institutions is twelve (12) years. 47. No one below the age of twelve (12) years can legally engage in any gainful occupation in Nigeria.
  - The Voting Qualification age is eighteen (18) years.
  - Anyone below the age of twenty-one (21) years is an infant, and is incapable of entering into legally binding contracts, except for necessities; although such contracts are voidable only at the option of the infant.
  - A. A. Adeyemi, *ibid*, at pages 204-205.
  - A. A. Adeyemi, at pages 204-205, *ibid*.
  - A. A. Adeyemi, *ibid*, at page 205.
  - A. A. Adeyemi, *ibid*., at page 201. See also the references in footnote 44, ante.
  - See Part 2 (or II, as the case may be), of those legislations, e.g. Cap. 32 *ibid*.; Cap. 26, *iloid*.; and Cap. 21, *ibid*
  - A. A. Adeyemi, *ibid*, at page 205.

That age has been variously suggested to be seventeen (17) years,<sup>56</sup> and eighteen (18) years.<sup>57</sup> It seems that the latter age will definitely accord more with the general limits of majority, and the general assignment of responsibilities to young people in Nigeria. Accordingly, the adoption of eighteen (18) years, as the demarcation age between the juvenile justice system and the ordinary criminal justice system, is seriously urged.

The adoption of such an approach, coupled with the abolition of the age(s) of criminal responsibility, will not necessarily leave the society without appropriate remedy against a dangerous or depraved child or young person, as the juvenile courts have the power to order a juvenile to suffer any sanction it may deem appropriate in the circumstances, including imprisonment<sup>68</sup> The only exception to this is the death penalty, which no court whether it be a juvenile,<sup>59</sup> or an adults<sup>60</sup> criminal court can impose on a juvenile below the age of seventeen (17) years. However, in order to harmonize this aspect of the law with the suggestion of eighteen (18) years being made the appropriate demarcation age, it is suggested that that age (that is, eighteen years) should also be made the demarcation age for the application of the death penalty to Nigerian citizens.<sup>61</sup> We can now turn to the examination of the system of juvenile justice administration in Nigeria.

## V. JUVENILE JUSTICE ADMINISTRATION IN NIGERIA

This will be examined from the perspectives of the nature of juvenile crime and delinquency in Nigeria, the juvenile court, its constitution functions and procedures, juvenile justice disposition measures, both non-institutional and institutional.

### 1. Nature of Juvenile Crime and Delinquency In Nigeria

By and large, the juvenile share of total criminality in Nigeria has remained at below (6%). .. their offences have been mainly stealing, (which) is roughly 57% to 82% over the years."<sup>62</sup>The other offences, in descending order of quantum, are hawking, assault, unlawful possession, breach of peace, affray, etc.<sup>63</sup>

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- Adeyemi, *ibid*., at page 206.
  - See Proposal H.1, at page 3 off E.I. Nwogugu, UNICEF Sponsored ANPPCAN Publication of Proposal and Draft legislation emanating from the 1988 Workshop on taws Relating to Children in Nigeria-. And in section 4 of the Draft Children and Young Persons Decree/Edict, the Age of Majority has been fixed at 18 years,

In fact, the Kano State Juvenile Courts Edict of 1987, defined a 'juvenile,' for purposes of the jurisdiction of the juvenile courts established the remedy, as any person below the age of eighteen years."

- See section 14 of Cap. 32, *ibid.*, and its equivalent provisions in the other state laws, as in section 14 of Cap. 26, *ibid.*, and S.14 of Cap. 21, *ibid.*, respectively.
  - See section 12 of the three legislations cited in footnote 58. *ante.* 60. Section 319(2) of the Criminal Code, Cap. 77, *ibid.*, section 368(3) of the Criminal Procedure Act. Cap. 80, *ibid.*; and the Criminal Procedure Code, Cap. 30, *ibid.*, sections 270 and 272(1).
  - The present Author, based on empirical evidence that the death penalty has no deterrent effect which is usually claimed for purposes of its retention, has urged its abolition in Nigeria - See A.A. Adeyemi, 'Death Penalty: Criminological Perspectives - The Nigerian Situation', in *Revue Internationale de Droil Penal*, Vol. 58, 1988, pages 452-502. See also, the larger study, 'Death Penalty in Nigeria: CRIMINOLOGICAL PERSPECTIVES', Chapter 16(b) of *Narcotics: Law and Policy in Nigeria*. 1990, Awa Kalu and Yemi Osinbajo, Editors. pages 288-314.
- 'Heavy terms of imprisonment' have been suggested in replacement of the death penalty - see page 305 of the latter publication.
- Adeyemi, \*Re.Assessing the Age of Criminal Responsibility in Nigerian', *ibid.* at page 205.

Mostly, the offences were male dominated, ranging from 55.7% to 89.1% although hawking was predominantly a female offence.<sup>64</sup>

In relation to juvenile delinquency in Nigeria the main category had been that of °Beyond Parental Control,"<sup>65</sup> which is made up of truancy at home and at school, running away from home, insubordination to parents and guardians, intemperate drinking and smoking habits, promiscuity, including prostitution, etc. Except for promiscuity and prostitution, which were essentially female habits, the delinquency here had again been male dominated, at the level of the 70.6% and 84.0%.<sup>te</sup>

The other civil cases dealt with by the juvenile courts, in the descending order of quantum, were the care and Protection cases, and the Found or Abandoned cases.<sup>67</sup>

## 2. Pre-Trial Juvenile Justice

This stage of the process is a most important stage, as it is the stage of the juvenile's initial contact with the juvenile justice system. This stage should properly concern itself with how to handle the juvenile in a manner which will not result in any harm to her or him. According to Rule 10.3 of the Beijing Rules,

"Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case."<sup>68</sup>

This rule requires the observance of the rights guaranteed to the juvenile by the Constitution<sup>69</sup> However, the respective Children and Young Persons legislations do not contain any specific provision of similar beverage. It will, therefore, be necessary for our own domestic legislations, in the spirit of the Beijing Rules specifically to include the pertinent provisions for this stage in their coverage. Consequently, there will be need to include provisions guaranteeing respect for the juvenile's fundamental rights, including the right to fair hearing and the observance of due process<sup>70</sup> the right to the notification and presence of parents or guardians<sup>71</sup> and the right to privacy<sup>72</sup> among others.

- Extracted from Tables 1 to 8, at pages 14 to 21, of AA. Adeyemi's -Administration of Juvenile Justice And the Treatment of Juvenile Offenders in Nigeria-, delivered at the International Seminar on Administration of Juvenile Justice and Treatment of Offenders, held under the auspices of the United Nations, at the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, (UNAF EI), Fuohu, Tokyo. Japan. November 14-19, 1993.?
- Extracted from Tables 1.8, at pages 14-21, of the Tokyo Paper, *ibid.*
- See Table 9 of 1983 Tokyo Paper; *ibid.*, at page 23,

- See Table 9, at page 23, *ibid.*
- See again, Table 9, *ibid.*
- *Ibid.*, in Part Two. See their discussion in section II of this paper, *ante.*
- Chapter IV, *ibid.* See also, Rules 7.1, and 8 of the BeSsamsdi
- Rules 7.1 and 8, *ibid.*
- Rules 7.1. and 10., *ibid.*
- Rule 8. *ibid.*

In addition, the legislation(s) should contain specific provisions empowering and encouraging reliance on the invocation of the non-formal system of juvenile justice management, often evolving family/community settlement procedure, otherwise known as Diversion., which are so characteristic of our society.<sup>73</sup>

Similarly, specific provisions should be made about the need to discourage pre-trial detention, in a much better way than the rather innocuous provisions presently contained in sections 3 to 5 of our existing laws<sup>74</sup> Thus, the complete adopt: on of Rule 13 of the Beijing Rifles will be necessary.

This Rule discourages pre-trial detention, which should be used only as a measure of last resort, and even then, for the shortest possible period of time.<sup>75</sup> It also encourages the use of alternative measures to detention, such as close supervision, intensive care, or placement with a family or in an educational setting or home.<sup>76</sup> Where they are detained, they shall be entitled to all rights guaranteed under the United Nations Standard Minimum Rules for the Treatment of Prisoner,<sup>77</sup>:24 kept separate from adults<sup>78</sup> and shall receive care, protection and all necessary individual assistance.<sup>79</sup>

Finally, we should legislatively formalize the present practice of specialization of Special Police Units, known as the "Juvenile Welfare Units", which normally deal with juvenile cases °0 Members of such units should be "specially instructed and trained" for their primary assignments of preventing crimes by juveniles, with whom flay shall be dealing frequently or exclusively.<sup>81</sup>

#### 4. Constitution of the Juvenile Court

By law, the juvenile court is constituted by a Magistrate sitting either alone, or with such other persons as may be designated by laws.<sup>82</sup> Such persons are usually referred to as "assessors". Some of the States are more specific as to who shall be designated as assessors. For example, the Kano State juvenile Courts Edict of 1987 provides that a juvenile court shall consist of

- (a) a chairman who shall be a serving magistrate not below the rank of magistrate grade I
- (b) a retired police officer not below the rank of Assistant Superintendent of Police.
- (c) a retired social welfare officer not below the rank of a senior social welfare officer.
- (d) a person learned in Islamic law; and
- (e) an elderly woman.<sup>83</sup>

- See item I (K) of Topic IV of International Co-operation in Crime Prevention and Criminal Justice for the Twenty-First Century: The Nigerian Perspective, the Nigerian National Paper for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Havana, Cuba, August 27-September 7, 1990, at page 37.
- Of, e.g. Cap. 32. *ibid.*, Cap. 26 *ibid.*, and Cap. 21, *bid.*
- Rules 13.1, *bid.*,
- Rules 13.2, *bid.*,
- 1955, as amended in 1984.
- Rules 13.4, *ibid.* See also, section 5 of the respective Children and Young Persons legislations - Caps 32, 26, and 21, *ibid.*
- Rule 13.5 *ibid.* This is not provided for in Caps 32, 26, and 21, *ibid.*
- See the 1990 Nigerian National Paper, *op. cit.*. Topic IV, item (e). These units are largely made up of female police officers.
- Rule 12.1, *ibid.*

- Section 6 of Cap. 32, 26, and 21. respectively.
- Section 4, op. cit. Its Section 5 provides: Members of the Juvenile Courts shall be appointed by the State Judicial Service Committee."

In Lagos State, on the other hand, the appointing authority for the appointment of such 'other persons' Is the Chief Judge of Lagos State."

With respect, paragraph (d) above is objectionable in the sense that it tends to discriminate in favour of the Islamic religion, to the exclusion of all other religions, as if moslem juveniles are the only children and young persons who are being, and will be brought before the Kano State juvenile courts. In as much as juvenile belonging to some other religion may be, and are being, brought before these juvenile courts, and such juveniles are subjected to the jurisdiction of Islamic scholars, the conclusion is irresistible that the paragraph is void, as being contrary to the constitutional provisions relating to the right to freedom of thought, conscience and religion," and the right to freedom from discrimination on the ground of religion Bs Similarly, the paragraph is also at variance with Rule 22.2 of the Beijing Rules, which provides:

"Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juveniles justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies:" It will, therefore, be necessary to substitute for paragraph (d) of Section 4 of the Kano Edict or any other such laws, the following paragraph:

"(d) a scholar learned in the principles of the religion of the juvenile brought before the court'

Such an amendment will still preserve the idea of an Islamic scholar for moslem juveniles; whilst it will at the same time ensure a Christian scholar for christian juveniles. This approach will assure to the juvenile court the necessary capacity to respond fully to the 'circumstances and the needs' of the juvenile<sup>87</sup> among other things.

It becomes pertinent also to point out that there is no requirement in any of the Children and Young Persons Legislations that the presiding magistrate need be legally qualified. However, most States invariably appoint legally trained magistrates to preside over their juvenile courts. Even though this may be a good starting point, there is a need for such a magistrate to be well-trained in all the disciplines necessary to enable him to discharge his duties with competence and efficiency. This will enable our system to comply with Rule 22.1,<sup>88</sup>by which

"Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases."<sup>89</sup>

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- M. Section 37, *ibid*.
  - Section 41(1) (a) and (b) of the Constitution, Lid; provides:
    - (1) A citizen of Nigeria of a particular community, ethnic group. place of origin, circumstance of birth, sex, region or political opinion shall not, by reason orgy that he is such a person -
      - "(a) be subject either expressly by. or in the practical application of, any law in force In Nigeria or any executive or administrative action of the government to disabilities or restrictions to which citizens of Nigeria or other communities, ethnic groups, places of origin, circumstances of birth, sox, religious or political opinions are not made subject; or
      - "(b) be accorded either expressly by. or in the practical application of, any law in force in Nigeria or any such executive or administrative action any privilege or advantage that is not accorded to citizens, of Nigeria of other communities, ethnic group. places of origin, circumstances of birth, sex, religious or political opinions.'
  - *Ibid*. Christians and citrons of other faiths may well constitute minorities in Kano Slate; but it does not mean that their constitutional rights should be ignored.
  - Rule 17.1(a) of the Beijing Rules, *ibid*
  - *Ibid*. Sea also the views in A. A. Adeyemi, "The Importance of Criminology to Legal Training, 'Ws BarJournal, 1972, Vol. X, at pages 94 -105.
  - Compare Rule 12.1, *ibid*., In relation to specialization within the police.

#### **4 Functions and procedure of the Juvenile Court**

The juvenile court is established principally "to make provision for the welfare of the young and the treatment of young offenders"<sup>90</sup> This accords with the provision that-

The well-being of the juvenile shall be the guiding factor in the consideration of her or his case".<sup>91</sup> Accordingly, the "welfare" model of juvenile justice is very well entrenched here.

Similarly, the "justice" model is equally well entrenched in Section 8 of the Children and Young Persons Legislations.<sup>92</sup> At the same time, however, the admixture of the rules is effected in Section 14.<sup>93</sup> Consequently, the juvenile court is expected to perform its functions from the tripartite perspective of balancing the interest and welfare of the juvenile, with those of justice, and with those of the community.<sup>94</sup> Procedurally, the juvenile court is enjoined to avoid unnecessary delay, and ensure speedy proceedings.<sup>95</sup>

Also, the juvenile court is enjoined to Endeavour to avoid the used of detention.<sup>96</sup> We need, however, to re-order our own provision well to underline the need for this avoidance, which seem blurred by the combined effects of Section 7 upon Section 3.<sup>97</sup>

The rule as to confidential treatment of the proceedings, and the records of a juvenile are well articulated in Section 6(5) and (6);<sup>98</sup> but it seems that they need to be strengthened to specifying the need for confidentiality of the records.<sup>99</sup>

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- The Pre-amble to the Children and Young Persons Legislations, e.g. Cap. 32, *ibid*, and Cap. 21. *ibid*.
  - Rule 17.1 (d) of the Beijing Rules,
  - *Ibid.*, Caps 32, 26, and 21
  - *Ibid.*, Caps 32, 26, and 21. See also, the tripartite approach in Rule 17 of the Beijing Rules, *Ibid*.
  - Rule 17.1 of the Beijing Rules, *Ibid*.
  - This has not been specifically provided for in the existing children and Young Persons legislation. But it is specifically provided for in Rule 20.1 of the Beijing Rules
  - See Sections 3 and 7 of the Children and Young Persons Legislation, *ibid.*, Caps 32 and 21, respectively.
  - *Ibid.*, Caps. 32, 26, and 21. See, however, the wording of Rules 19.1 *Ibid*.
  - See Rule 21 of the Beijing Rules, *ibid*.
  - As in Rule 21, *ibid*.

The juvenile court is empowered to compel attendance of parents or guardian at the juvenile court;<sup>100</sup> and may even order a parent or guardian to pay fine, damages or costs, or to give security for future good behaviour of his child.<sup>101</sup> Our legislations seem to provide for these duties. However, it is more positive to view them as the rights of the juvenile offender, and the rights of the parents, to attend.<sup>102</sup> The formulation of these rights in the Beijing Rules also extends to the right to counsel, and the right to legal aid.<sup>103</sup>

Further, the court is enjoined to ensure compliance with due process and fair hearing.<sup>105</sup>

Finally, the juvenile court is enjoined to avoid stigmatizing the juvenile, and to avoid using the words "conviction" and "sentence. It is simply to try the facts of the case, and it is just to find the allegations proved or not proved, in order to emphasize the non-invocation of the criminal process.<sup>106</sup>

## 5. Disposition Measures Available to the Juvenile Court

The juvenile court may deal with a juvenile against whom it finds the facts of the allegations proved in any of the following ways:-

- a) by dismissing the charge; or
  - b) by discharging the offender on his entering into a recognizance; or
  - c) by so discharging the offender and placing him under the supervision of a probation officer; or
  - d) by committing the offender by means of a corrective order to the care of a relative or other person;
- or
- e) by sending the offender by means of a corrective order to an approved institution; or
  - f) by ordering the offender to be caned; or

- g) by ordering the offender to pay a fine, damages, or costs; or  
 h) by ordering the parent or guardian of the offender to pay a fine, damages, or costs; or

- See Section 9 of Caps 32, 26, and 21, respectively, and Rule 7(1) of the Juvenile Court Rules.
- Section 10 of Caps 32, 26, and 21, *ibid*.
- See Rule 15.2, *ibid*.
- Rules 15.1 *ibid*., Compare Section 19 of the Kano State Juvenile Courts Edict, *ibid*. in relation to right to Counsel. See also, in the same vein, Juvenile Court Rules 6(1), which presumes the right of the child to legal representation. This, of course, is consonant with the right to counsel guaranteed in Section 35 of the Constitution, *ibid*. However, these provisions fall short of the Beijing Rules in that they do not enjoin the availability of legal aid for the juvenile.
- Section 8(7) of the Children and Young Persons Legislations Caps 32, 26, and 21, *ibid*.  
See on these, Rule 16.1 of the Delano Ruin
- Section 8 of Caps 32, 26 and 21 *bid* See also Rules 142, 15.1 and 15.2 of the Beijing Rules, *ibid*.
- Section 16 of Caps 32, 26, and 21, *ibid*.  
 (i) by ordering the parent or guardian of the offender to give security for his good behaviour; or  
 (j) by committing the offender to custody in a place of detention provided under this Law; or  
 (h) where the offender is a young person, by ordering him to be imprisoned; or  
 (l) by dealing with the case in any other manner in which it may be legally dealt with.<sup>108</sup>

The juvenile court deals, not only with cases involving commission of crimes, but also deals with cases of children who are beyond parental control, or with cases of juveniles who are in need of care and protection." However, excepting for fines, caning, and compensation/restitution, which are used exclusively for criminal cases only, the juvenile court uses all the disposition measures for the civil cases -such as probation, repatriation, release to parents, approved school, and borstal, which are also available for criminal cases. In addition, it employs the fit persons order, and an order of commitment to Motherless Home.

In so far as criminal cases are concerned, in order to minimize harm to the juvenile, certain restrictions are placed on the application of punishments to juveniles:

Firstly no juvenile below the age of fourteen (14) years shall be ordered to be imprisoned; whilst a juvenile, aged between fourteen (14) years and below seventeen (17) years shall not be imprisoned unless the juvenile court finds that he cannot be suitably dealt with by probation, fine, corporal punishment, committal to an approved school or Remand Home.<sup>109</sup>

Secondly, the application of capital punishment to a juvenile is forbidden to the juvenile court,<sup>110</sup> just in the same way as it is forbidden to any other court to impose capital punishment on a juvenile.<sup>111</sup>

- Section 16 of Caps 32, 26, and 21, *ibid*.
- Section 14 of Caps, 32, 26, and 21, respectively. *ibid*. Compare Rule 18.1 of the Beijing Rules.
- Section 26, *ibid*.
- Section 11(1) and (2) of Caps 32, 26, and 21, respectively, *bid*. Compare Rule 17.1 of the Beijing Rules. However, detention of juveniles shall be ordered in certain cases of serious offences committed by them. Subsection (3) of Section 11 provides.  
"A young person ordered to be imprisoned shall not be allowed to associate with adult prisoners".
- Section 12, *ibid*.; and Rule 17.2. *ibid*.
- See Section 319(2) of the Criminal Code. *ibid*; compare Rule 17.1(c), *ibid*. Section 368(3) of the Criminal Procedure Code; and Sections 270 and 272(1) of the Criminal Procedure Code: *ibid*.

We can now turn to the degree of frequency of use of the various disposition measures by the juvenile courts. These have been as follows: probation, repatriation, release to parents, approved school, fine, corporal punishment (caning), fit persons order, borstal, compensation/restitution, motherless home order, and imprisonment.

However, it is necessary to specify by law that juveniles should not "be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary."<sup>112</sup> Also, it should be stressed by law that the "placement of a juvenile in an institution shall always be a disposition of the last resort and for the minimum necessary period."<sup>113</sup>

It is essential that our laws should be amended to include such new range of disposition measures as community service orders,<sup>114</sup> intermediate treatment and other treatment orders,<sup>115</sup> orders to participate in group counseling and similar activities,<sup>116</sup> orders concerning living communities or other educational settings,<sup>117</sup> and other relevant orders<sup>118</sup>

Furthermore, we should provide for frequent and early recourse to conditional release of institutionalized juveniles;<sup>119</sup> as well as provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society<sup>120</sup>

Complementarily, volunteers and other community services and resources should be fully mobilized to enable them contribute to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.<sup>121</sup>

The implementation of these proposals should be complemented with "necessary assistance such as lodging, education, or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process."<sup>122</sup>

## 5. Conclusive Summation

Our policies and programmes in the area of juvenile justice administration have been critically evaluated. Broadly and fundamentally, Nigeria has been along the same path of admixture IS policies and programmes, through which we have produced "welfare" policies, 'justice policies, and "social protection" policies. Our various programmes have amply reflected these three policies in varying degrees of admixture. But we did not go far enough in some respects; whilst we omitted to spell out important details in some other respects. Proposals have been advanced above for bridging these gaps in our programme.

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- Rule 18.2 of the Beijing Rules bid.
  - Rule 19.1 *ibid.* To complement this, Rule 26 works out the modalities for institutional treatment. See also Sections 11(3) and 15(3) of Caps 32, 26. and 21, *bid.*, as well as Rule 29 of the Remand Home Rules, and Rules 10, 11 and 14 of the Approved Institutions Rules, which contain most of what Beijing Rule 26 contains.
  - Rule 18.1 (e), *bid.*
  - Rule 18.1 (e), *bid.*
  - Rule 18.1 (f), *bid.*
  - Rule 18.1 (g), *ibid.*
  - Rule 18.1 (h), *ibid.*
  - As provided for in Beijing Rule 28.
  - As in Rule 29.1, *bid.*
  - Rule 25.1 of the Beijing Rules, *bid.* See the "Spectrum for Community-based Services for Youth in Trouble', in the 1990 Nigerian National Paper, *ibid.*, at page 38.
  - Rule 24.1 *bid.*

However, there is an important aspect where Nigeria should refuse to accept the Wing Rules, namely, the prohibition of the application of corporal punishment to juveniles.<sup>123</sup> African countries have made it clear that they will prefer a juvenile to be caned and handed back to the parents to take him home, than to prohibit his caning in the name of human rights and. :n consequence, end up locking that child up in an institution for one or two years<sup>124</sup>. That very much indicates that our modernization of our juvenile justice system must be in accordance our own cultural aspirations. It is only in such a way that our reforms will function properly.

This now takes us to the Non-judicial/Community Intervention.

## VI. NON-JUDICIAL/COMMUNITY JUVENILE CRIME AND DELINQUENCY

### PREVENTION

The principles of corrective and preventive measures that have been adopted in national approach to delinquency prevention in the country are meant to ensure that juveniles would be useful citizens and active participants in the economic, social, political, and cultural development of the country through the (National Youth Exchange Programmes; Workshops for Prefects of Schools; School Social Works; Cultural Competitions; School Debates; Drug-Free Clubs; Literary and Debating Societies; Workshops, Seminars, and Symposia; Children and Youth Holiday Programmes; National Youth Clubs; National Directorate of Employment; School to Land Programmes; and Youth on Employment (Waste to Health) Programme.<sup>125</sup>

Officially, a lot is being done to encourage and develop Group Work Service which are designed to influence, for good, the transformation of youths from adolescence to maturity. These services aim at the social progress of the society and of the individual by the encouragement of personal initiative and self-help, stimulated by loyalty to the community. Many training courses in, inter alia, citizenship and leadership, and national youth training have been introduced with a view to developing an all-round personality of the individual. Also, sporting and other recreational activities and facilities are also provided and encouraged through the media of various Youth Clubs and Councils.<sup>123</sup>

Also, family welfare services are available to help sustain the domestic he, I" of the family, which Nigerians believe, have the primary responsibility for socialization of children and young persons. Also, school education complements these services, and virtually all children and young persons are entitled to education, both in the academic and vocational training senses. Government intrusion into primary and secondary education in order to provide free education, has led to a sudden secularization of education — Nigeria being a multi-religious society. This has had the effect of pushing into relative un-importance of religion, which we all knot contains those tenets characteristic of most widely accepted cultural norms. Concomitantly with this situation, the teaching of civics was also dropped for some time. However, attention had been seriously called to the implications of these lapses periodically; and all the authorities hay.: made score efforts to take measures or steps to remedy the situation. This development will e salutary in applying some breaks to the effects of rapid industrialization, urbanization and technological and other forms of development.

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- Rule 17.3 of the Beijing Rules *ibid*.
  - See the Report of the Regional Seminar for Heads of Penitentiary Institutions of English Speaking African Countries hold in Harare. Zimbabwe, February 29 to March 5, 1988, at page 8, among others.
  - The Nigerian National Paper, 1990, *ibid*; at pages 37 — 38.

Despite the eroding and sometimes pervading impact of our experience of colonization, aided by the massive intrusion into our cultural life of foreign cultural values through the importation of technology and technological know-how, and the aggressive drive of the international mass media, we in Nigeria, are still trying to retain our cultural identity, with a view to avoiding the Impact of culture conflict factor on a micro basis.

In addition, there has been a nationally coordinated planned programmes, for over sixteen (16) years, to create "facilities for the recreation, rehabilitation and training of youths, as measures against the rising trend in juvenile delinquency<sup>126</sup> And the plan for a youth corps for this programme is consistently under constant revision in the successive National Development Plans.

Efforts are constantly being made in the overall national planning to provide for social development. However, it is felt that a general programme of social development, on both national and state bases, cannot be as beneficial as the specific incorporation of the social development component into specific development projects.

### CONCLUSION

However, despite the existence of the system of handing juvenile delinquents above, Nigerians, like other Africans, seriously believe that family based juvenile welfare is the best. Stanger element intervention, involved in judicial and administrative interventions can only have detrimental effects.

Thus, for instance, even where a court orders probation, it will be best for the probation officers not to assume direct supervision of the probationers; but to be only in an expel advisory relationship with the parent/relative, who should directly be in charge of supervision. This has been done with considerable success in the area of after-care of adult discharged prisoners. There is no reason why its application should not be much more successful in relation to juvenile offenders. Therefore, we should reduce our reliance on the formal judicial interventionist machinery and strengthen recourse to the family machinery, bolstered up by both unofficial and official communal machinery.

It is, therefore, suggested that all the suggestions made in this paper be embodied in one single law on Children and Young Persons, which will adopt eighteen (18) years as its age of demarcation for purposes of the operation of that law. In this respect, the comprehensive approach of the UNICEF sponsored ANPPCAN Project on Laws Relating to Children In Nigeria, and its resultant all - embracing Draft Children and Young Persons Decree/Edict,<sup>127</sup> is Very much welcome as a necessary step in the right direction.

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- Second National Development Plan, page 34.
  - E.I. Nwogugu, pr000sals and Draft I sislation op. cit., at pages 6-51.