

CHALLENGES AND PROSPECTS OF THE JUVENILE JUSTICE ADMINISTRATION IN SOUTH EAST NIGERIA¹

Abstract

Juvenile justice administration in Nigeria is weak and has been given very little priority, despite Nigeria being signatory to the major international instruments relevant to the administration of juvenile justice. This is attributable to the history of the penal system of Nigeria, with laws guiding juvenile justice administration having been entrenched by the British colonial master, whose philosophy in justice required a repressive legal system, aimed at deterring and punishing offenders to avoid interference with colonial interests. Reformation of such offenders even if they were juveniles, was the least of the colonial master's worries. The Children and Young Persons Act, the major piece of legislation dealing with matters affecting children and young persons in Nigeria first enacted in 1943 did not reflect the guidelines in the international conventions and standards for treatment of juvenile offenders. Children in conflict with the law were thus often tried like adults. Recent reforms have culminated in the enactment of the Child Rights Act, 2003, which has been domesticated as a State law by some South Eastern States. However, a lot is still lacking in terms of implementation. As a result of poverty and other conditions which affect particularly the South Eastern States, administration of juvenile justice still needs further reforms to meet with internationally accepted standards.

Key words: *juvenile, justice, administration, standards, reforms, South East Nigeria*

1. Introduction

Juvenile justice administration can be described as a system of justice established by the government, through statutory enactments, to take care and charge of persons defined as juveniles. It presupposes a system which is established by government to take care of persons/people within a stipulated age bracket who happen to be involved in one crime or the other. As a system, it encompasses every process involved in the arrest, interrogation, detention, prosecution, trial, conviction and "sentencing" of a juvenile. Juvenile justice administration is mainly concerned with protecting the rights of the under aged children in consonance with the provisions of the law. This concept is based mainly on the premise that the mental and intellectual, emotional, physical and psychological capacity of juveniles should not be equated with that of adults and the state has a responsibility not to expose young persons to the formal criminal process. For this reason, when a young person is arrested, he must not be kept in the company of adult criminals' a separate court and system of administration can and is always established for them. Under the Child's Rights Act, 2003,² the prosecutor and police are enjoined to dispose of cases involving young persons without resorting to formal trial by using other means of settlement of criminal disputes such as supervision, guidance, restitution and compensation of victims. These enactments are aimed at preventing the exposure of young persons to the formal criminal process with its attendant consequences. But are juveniles really not exposed to all these hazards?

This question is the main focus of this paper, with particular reference to the situation in South East Nigeria. Suffice it to say that South East Nigeria is one of the geo-political zones in Nigeria. It is comprised of the states of Abia, Anambra, Ebonyi, Enugu and Imo. Furthermore, even though some references are made to some national laws, particular references are made to specific laws enacted by the legislature in the various states within the South East geo-political zone which laws are more or less identical with similar laws of states within other geo-political zones in Nigeria.

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² (Cap C 50 Laws of the Federation of Nigeria, 2004)

2. The Juvenile and the Juvenile Justice System in Nigeria

Apart from section 2 of the Children and Young Persons Law of Anambra State [hereinafter referred to as “CYPL”],³ and other similar laws in South East Nigeria, which define “Juvenile” as including a child and a young person, the term ‘juvenile’ is not defined in any legislation in Nigeria. This notwithstanding, a juvenile can be defined as a person under the age of majority which is either seventeen or eighteen according to the jurisdiction. *Black Law Dictionary* defines juvenile as: “A person who has not reached the age (usually 18) at which one should be treated as an adult by the criminal justice system.”⁴ The CYPL in turn defines a “Child” to mean any person who has not yet attained the age of fourteen years and a “Young person” as a person who has attained the age of fourteen years but has not attained the age of seventeen years.⁵ However, both under the United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), a child is defined as a person under the age of eighteen years. And more recently, the Child’s Right Act (CRA)⁶ which has been adopted as state law in many states in Nigeria including those in the South East, has defined a child as a person who has not attained the age of eighteen years. This then means that in our jurisdiction and for the purpose of this paper, a child is a person who has not attained the age of eighteen years. The same definition is adopted for juvenile in this paper, that is to say that a juvenile is a person who has not attained the age of eighteen years.

As has been stated, the juvenile justice administration in South East Nigeria, like in other jurisdictions, is the system of justice which is applicable to juveniles only, and which is different from the justice system applicable to adults. It is a collection of institutions through which a juvenile offender goes until the charges against him have either been disposed of or the assessed punishment has been carried out. The system comprises of law enforcement (the police), juvenile courts (magistrate/judges and lawyers), and correction personnel (probation officers and social workers).⁷ Thus, juvenile justice administration includes delinquency prevention, law enforcement, adjudication and rehabilitation. However, children need not be in direct conflict with the law before they come in contact with the juvenile justice system. Sometimes, children are placed in residential facilities under the system because (a) they are physically, mentally or emotionally ill or handicapped; or (b) they have no family or have been separated from their families; or (c) they are abused, neglected, exploited or abandoned.

It needs be stated here that from the investigations carried out in the course of this paper, we did not find any such residential facility in the whole of the South East Nigeria for the rehabilitation or welfare of the juvenile. The only similar institution scattered in some of the states are motherless babies’ homes, run mostly by non-governmental organisations who depend on charity or donations from members of the public for their sustenance. Government plays little or no roles in the affairs of such homes and shows no interest whatsoever in implementing the desirable provisions of recent enactments for effective juvenile justice administration. This is not surprising given Nigeria’s colonial past.

3. The Faulty Foundation of the Juvenile Justice System

The Nigerian criminal justice system, of which the juvenile justice system is an integral part, has the police, the courts and prisons as its pillars. This is also part of Nigeria’s colonial

³ Cap 22, Revised Laws of Anambra State 1991

⁴ BA Garner, ed., *Black’s Law Dictionary*, 8th ed. (St. Paul M.N.: Thomas West Publisher, 2004), 884.

⁵s. 2, The Children and Young Persons Law of Lagos State defines a young person as a person who attained the age of fourteen years but has not attained the age of eighteen years.

⁶ Cap. C 50 LFN, 2004

⁷ BA Garner, (n. 4) p. 884

heritage. It is a truism that Nigeria inherited her judicial system from Britain which colonized her until 1960 when Nigeria regained her independence. The creation of the Nigerian criminal justice system by the British colonial government was in order mainly to promote and protect economic interests. Thus, agencies of the criminal justice system in Nigeria were created not as instruments of security and justice but as weapons of oppression⁸. If the system was not designed as a weapon of oppression, it was designed to take control of and management of the deprived and destitute natives including juveniles so that they do not constitute a threat or nuisance to the colonial order. There were therefore some fundamental defects in the philosophy and practice of juvenile justice in Nigeria as introduced by the British colonial masters. Their philosophy on justice required a repressive legal system with oppressive penal institutions whose aim was mainly to deter and punish offenders as their disobedience of the law was deemed inimical to colonial interests⁹. Therefore, reformation of offenders even if they were children, was the least of the colonial masters' worries.

Unfortunately, the successive Nigerian governments since independence including governments in South East Nigeria have towed the line of the colonial government in institutionalizing oppressive and repressive justice system. This explains why in the entire South East Nigeria today, in spite of election campaign promises, there are no known borstals or residential facilities for the reformation of juvenile offenders whose interest or welfare does not exist in the scheme of the government. This is why juvenile offenders are often detained together with adults who are in conflict with the law. Juvenile offenders are also either tried in open courts or they are remanded in prison custody indefinitely because the judicial officer is either totally ignorant of the procedure to be adopted or is confused about it. Either way, the juvenile offender suffers and this detracts from the philosophy of juvenile justice which is anchored on the recognition of the rights of the juvenile to survival, growth, protection and effective participation in the society. It destroys the guiding philosophy of correction, prevention and welfare of the juvenile. The few corrective institutions established by the Christian missionary organisations to cater for juvenile delinquents have dilapidated and no longer exist. This is not good enough.

Today, after many years of political independence and with a new democracy anchored on freedom and human rights, there is need for a radical overhaul of the juvenile justice system not only in the South East but also throughout Nigeria. This should be with a view to embarking on a pragmatic programme of action to achieve the desired changes. This cannot be achieved without a commitment on the part of government to implement the provisions of the law setting out the philosophy and aim of juvenile justice administration.

4. Laws and Practice of Juvenile Justice Administration in South East Nigeria

There are two major Nigerian legislation that make enactments concerning juvenile justice administration - The Children and Young Persons Act and the Child's Rights Act, 2004.

4.1. The Children and Young Persons Act

The Children and Young Persons Act was first enacted in 1943 by the British Colonial Government. On the introduction of the state structure after independence, states in the South East geo-political zone, as in many other states, enacted their own Children and Young Persons

⁸ EEO Alemika and IC Chukwuma, *Juvenile Justice Administration in Nigeria: Philosophy and Practice*, (Lagos: Centre for Law Enforcement Education, 2001) p.10

⁹ The National Human Rights Commission, et al., "Report of the National Conference on Juvenile Justice Administration in Nigeria," Abuja, 2-3 July 2002, 8

Law which are all similar. Reference is made to the Anambra State law for the purpose of this paper.

The purpose of the CYPL is to make provision for the welfare of the young and the treatment of young offenders as well as for the establishment of juvenile courts. Its scope thus extends to children in conflict with the law, that is to say, those who have committed one offence or the other, children in need of care and protection and children considered beyond parental control. The CYPL defines a juvenile as a person who has not attained the age of seventeen years.¹⁰ Thus under the CYPL, a child in conflict with the law in the South East States is a person under the age of seventeen years and dealt with under the juvenile justice system, while any person above seventeen is dealt with under the regular system of administration of criminal justice.

In order to ensure that only juvenile courts deal with children and young persons, section 30 of the CYPL provides that where any young person is brought to court, the court is duty bound to determine the actual age of the person either by a birth certificate or by a certified evidence of a medical officer in the service the government. But this provision which appears to be aimed at preventing anyone who has not attained the age of seventeen years from being tried by a court other than the juvenile court, is negated by the provision in Section 6 (3) which enjoins a court that is in doubt of the age of any person brought before it to nevertheless proceed with the matter notwithstanding the doubt. The CYPL provides for the juvenile as follows:

4.1.1 Bail of Juvenile Offenders

Under Section 3 of the CYPL, a juvenile offender apprehended with or without warrant and cannot be brought forthwith before a court of summary jurisdiction shall be released. Such release may be on recognizance entered by him or by his parents or guardians with or without sureties. This bail condition however does not apply to a juvenile (a) if the charge is one of homicide or other grave crime; or (b) it is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute; or (c) the officer who arrested him has reason to believe that the release of such a person would defeat the end of justice. The condition under (c) appears too vague and may be used to unnecessarily deny bail to young offenders.

4.1.2 Pre-Trial Custody or Detention

Where a young offender is not released on bail pending trial, the CYPL provides that: The police officer to whom such a person is brought shall cause him to be detained in a place of detention provided under this law until he can be brought before a court. The police officer may not detain the juvenile if he can certify that it is important not to do so; or that he is of unruly or depraved a character that he cannot be safely so detained; or that by reason of his state of health or his mental or bodily condition, it is unadvisable so to detain him.¹¹ In detaining a juvenile, it shall be the duty of the police officer to make arrangements for preventing, so far as practicable, a juvenile while in custody, from associating with an adult charged with or convicted of an offence.¹² This provision is to prevent the criminal contamination or indoctrination of young offenders by adult criminals. Such measures are also desirable for the protection of young offenders from abuse and exploitation by adult criminals. However, in practice, this provision is not always enforced. Nigerian prisons, especially those in South East Nigeria contain a large number of young offenders, and they are often not separated from adult

¹⁰ s. 2

¹¹ s. 4 (1) (a)(b)(c) and s. 423 Criminal Procedure Law Cap 37, Revised Laws of Anambra State of Nigeria, 1991

¹²s.5, CYPL

inmates on the basis of age or other relevant classifications. In Onitsha prison in Anambra State for example, there are, at the time of writing this paper, 19 juvenile inmates and even though a separate enclosure is provided for them for sleeping purposes mainly, during the day, they mingle with adult inmates of the prison. There is also no separate detention facility for juveniles in Enugu and Awka prisons. The one that exists in Owerri prison is akin to the one in Onitsha prison. The result is that the principle of reforming and protecting juveniles and shielding them from being influenced and corrupted by adult criminals is defeated. They come out, whenever they do, more hardened and more criminal-minded than they were when they went in. The reason for this is that juvenile suspects are kept for long periods in company of adult suspects without trial. The prisons are congested so juveniles are usually not separated from adult, hardened criminals, contrary to the provisions of the law. Juveniles thus face all the hazards and dehumanizing conditions of incarceration including poor feeding and clothing, exposure to disease, and the risk of physical and sexual abuse.¹³ For example, a female inmate at the Onitsha prison who is awaiting trial for murder gave birth to a baby girl eleven months after she arrived at the prison. A more startling example which grossly detracted from the fundamental philosophy of juvenile justice administration occurred in July 2001 when newspapers reported that the Police in Lagos had arrested a four-year-old boy for breaking the windscreen of a neighbor's car. The law enforcers, contrary to the provisions of the law and international best practice, not only kept the infant in the police station for two days, but also forced him to do manual labor.¹⁴

4.1.3 Determination of the Age of Juveniles

The age of the juvenile can be determined primarily by production of his birth certificate or other direct evidence as to his date of birth. In the absence of such certificate or other direct evidence, the court will resort to a certificate signed by a medical officer in the service of the government giving his opinion as to such age, or declaration as to the age of the juvenile.¹⁵ The determination of the age of the juvenile is very important for various reasons among which is that the court shall not pronounce or record a death sentence on any person who has not attained the age of seventeen years. In *Modupe v The State*,¹⁶ it was held that by virtue of section 368 (3) of the Criminal Procedure Act, if the evidence on record shows that at the time the offence was committed, an accused charged with capital offence has not attained the age of 17 years, it will be wrong of any court not only to sentence him to death, but also to even pronounce such sentence. If the trial judge felt that the accused put his age rather low, he was at liberty to adjourn the case and call a medical witness to testify to the age of the accused.

For lack of functional official birth registration in Nigeria, whenever there is controversy as to whether a suspect is an adult or a juvenile, it has not been easy for the police to determine the true age of an accused offender. In most cases, they arbitrarily put the age of such persons above 17 or 18 in order to validly deal with the person. One of our findings in the course of writing this paper was that police officers often deliberately falsify the ages of juveniles in order to pass them off in court as adults, in order to avoid adhering to the legal requirements for their treatment. The police are quick to wash their hands off these juveniles by rushing them to court so that the court can order them to be remanded in prison custody. This practice is more rampant in South East Nigeria where borstal or remand homes are not available. We also

¹³ 'NIGERIA: Focus on the Administration of Juvenile Justice' (2002) <www.irinnews.org/report/33926/nigeria-focus-...> accessed on 3 November 2012

¹⁴ E Onwubiko, "Nigeria, Govt Orders Probe of Four-Old-Boy's Detention by Police (2001) <allafrica.com/stories/200108130172.html> accessed on 29 September, 2012

¹⁵ s.30 CYPL

¹⁶ (1988) 4 NWLR (pt 130) 50

found that some children in prison custody claimed that the police never asked them about their ages while others said that they were compelled to exaggerate their ages and when they refused, the police just inserted any age above 20 years for them. In other cases, the police simply refused to accept their ages and insisted that they were above 18 years and wrote their ages as such.

4.1.4 Trial of Juveniles

In relation to the trial of juveniles, the constitution of the juvenile court is regulated by section 6 of the CYPL which states that a juvenile court for the purpose of the hearing and determination of all matters relating to juveniles shall be constituted by a magistrate sitting with such other persons as the Chief Judge shall appoint.

In most states of Nigeria including those in the South East, there are no visible structures of the juvenile justice administration on ground. Instead of a permanent juvenile court, magistrates hear cases involving juveniles outside the normal court rooms or outside normal court sessions either in the courtrooms or in their chambers. This is to comply with the provisions in section 6 (2) which states that a court when hearing charges against juveniles shall, unless the juvenile is charged jointly with any other person not being a juvenile, sit either in a different building or room from that in which the ordinary sittings of the court are held, or on different days or at different times from those at which the ordinary sittings are held. The purpose of this provision is to protect the privacy of juvenile offenders and to protect them from the effects of stigmatization that may result from public trial. Further provisions are made to this effect, thus: while being conveyed to and from court or while waiting before or after their attendance in court, provision shall be made for preventing juveniles from association with adults charged with or convicted of any offence other than an offence with which the person apparently under the age of seventeen is jointly charged or convicted.¹⁷ No person other than the members and officers of the court and the parties to the case, their legal practitioners and other persons directly concerned in the case, shall, except by leave of such court, be allowed to attend the juvenile court sessions.¹⁸ In spite of these provisions relating to the constitution of the juvenile court and privacy of the juvenile, the standard anticipated by the Standard Minimum Rules for the Administration of Juvenile Justice has not been fulfilled. Furthermore, even the basic standard required under the CYPL is not fulfilled in most South Eastern States of Nigeria. For instance, in Anambra and Enugu States as in all the states in South East Nigeria, trials of juveniles are most often conducted in open court without any regard to the requirements of privacy provided under the law.

The CYPL regulates the trial procedure of juvenile courts through the provisions in section 8 which relate to the due process rights of the juvenile offenders. The provisions, to a very large extent, satisfy the requirements of section 36 of the Constitution of the Federal Republic of Nigeria, 1999 and a lot of international rules and conventions on juvenile justice administration. However, notwithstanding the provisions, widespread derogation by the police, judges and parents have been reported.¹⁹ Of particular importance in this regard is the provision of section 8 (7) which provides that “if the juvenile admits the offence or the court is satisfied that it is proved, he shall then be asked if he desires to say anything in extenuation or mitigation of the penalty or otherwise. Before deciding how to deal with him, the court shall obtain such information as to his general conduct, home surroundings, school record and medical history

¹⁷ s. 6 (4)

¹⁸ s. 6 (5)

¹⁹ EEO Alemika & IC Chukwuma (n. 8) p. 39

as may enable it to deal with the case in the best interests of the juvenile and may put to him any question arising out of such information..." The provision fulfils the requirement in Rule 16 of the UN Minimum Rules for the Administration of Juvenile Justice requiring social enquiry report on the background and circumstances (social and family background, school, educational experience etc) of juveniles prior to their sentencing by a competent authority. In practice however, such inquiry and reports are not demanded by the courts, and where produced, they are so scanty and shallow to be of any meaningful use beyond hypocritical compliance with the law.²⁰

The major setback in this regard is the dearth of trained and qualified personnel to collect and collate the reports needed by juvenile courts. There may not be any medical or educational record for the juvenile offender and even where they are available, parents or relations of the juvenile offender are skeptical and therefore not forthcoming with any information for fear of making the juvenile's complicated matter more compounded. Furthermore, either because of lack of the requisite knowledge/experience or due to the general negative attitude of the average civil/public servant in South East Nigeria, this requirement is not complied with in practice as virtually everybody in the system including the Magistrates pay lip service to these requirements. All they do is to, "fulfill all righteousness," adopt a mechanical approach and have the juvenile either sentenced or discharged, most of the time for the wrong reasons. This is the case because there are no good precedents to act as a guide.

4.1.5 Punishment of Juveniles

By the provisions of the law, no child shall be ordered to be imprisoned, and no young person shall be ordered to be imprisoned, if in the opinion of the court, he can suitably be dealt with in any other way whether by probation, fine, corporal punishment, committal to a place of detention or to an approved institution or otherwise.²¹ A young person ordered to be imprisoned shall not be allowed to associate with adult prisoners.²² The section thus forbids imprisonment of a child as defined under the law, but permits imprisonment of young persons, however, sparingly and only when other forms of non-custodial punishment or correction orders are not feasible. Section 13 of the CYPL is to the effect that pronouncement of the sentence of death against a juvenile is prohibited. He may, however, be committed to custody at the pleasure of the governor. Although the court may not order the imprisonment of a juvenile where it is satisfied of his guilt, the court may adopt other measures such as dismiss the charge; or discharge the offender upon his entering into a recognizance; or discharge the offender and place him under the supervision of a probation officer; or commit the offender by a committal order to the care of a fit person; or commit the offender by a committal order to an approved institution; or order the offender to be whipped; or order the offender or the parent or guardian of the offender to pay a fine, damages or cost; or order the parents or guardian of the offender to give security for his good behavior;....The provisions of the CYPL are inclined more towards punishment against the rules of the Standard Minimum Rules of Juvenile Justice Administration. In this vein, it is submitted that the following aspects of the provisions are totally offensive.

- i) The continued retention of whipping in law violates international standards which classify it as degrading treatment;²³

²⁰ *Ibid.*

²¹ s. 12 (1) & (2)

²² s. 12(3)

²³ s. 14 (f)

- ii) parents and guardians are liable for the misbehaviors of their children and wards (section 14 (g)), and
- iii) a charge against a juvenile offender can be dismissed even after the court is satisfied as to his guilt.²⁴

It need not be over-emphasized that the continued retention of the punishment of whipping is not only barbaric but also runs afoul of international standards. It is akin to the recent introduction of Islamic or Shariah law in parts of Northern Nigeria. Under that system of criminal justice, some punishments prescribed are inimical to the reformation and welfare of juveniles. Evidence of this is the outcry that followed a bizarre incident which was widely reported in the media. In January 2001, a Young girl, Bariya Ibrahim Magazu whose age was variously put at between 13 and 17 years, was subjected to 100 strokes of the cane in public in Zamfara State of Nigeria, after she gave birth to a child without being married.²⁵ This is one of the worst atrocities that can ever be meted out to a juvenile. Yet, this is the way we live. We only pay lip service to the laws in the statute books without lifting a finger in implementing the provisions of the law. Again, what is the justification for holding the parents and guardians of a juvenile liable or responsible for the misbehaviors of their children and wards respectively? This practice runs contrary to the established principle of our criminal jurisprudence that one cannot be held responsible for the crime of another person. Or, how would a parent prevent the misbehavior of a juvenile if that child is beyond parental control? This is one of the deficiencies of the juvenile criminal justice administration in South East Nigeria and needs to be addressed.

4.2 The Child's Rights Act

In 2003, the National Assembly took a major step in enhancing the welfare of juveniles and passed into law, the Child's Rights Act (CRA) which incorporated some of the provisions of the CRC, ACRWC and many other international standards on juvenile justice administration. The CRA has been adopted by many states in Nigeria including all the South East states as state laws. The Act is an improvement on the pre-existing laws especially in the implementation of the obligations under other relevant international instruments including:

- a) United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 1985
- b) United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), 1990
- c) The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990
- d) United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), 1990.

The CRA as a law enacted by the National Assembly is applicable across the country and its enactment by States is just a reproduction of the original law. Thus, the law remains the same in whatever state it is re-enacted. The difference, if any, lies in the arrangement of the sections. Therefore, in order to avoid any confusion, and for purposes of this paper, reference is made to the National law that is to say, the CRA which applies with full force in the South East States of Nigeria. Under the CRA, there is a new and better orientation and philosophy for the justice system as it concerns children. In line with international instruments on juvenile justice, the Act recognizes the very fragile and vulnerable nature of the child for which reasons there is a distinct justice system for the child. It is important to note that the provisions of the CRA (in

²⁴ s.14 (a)

²⁵ T David-West, 'Sharia & Paternity Test: The Case of Bariya Magazu' (2001) <nigeriaworld.com/feature/publication/david-west/020100/html > accessed on 3 January 2012

states that have adopted it as state law) supersede the provisions of all enactments relating to children including juvenile.²⁶ What this means is that where any provision of the CRA is inconsistent with that of any other enactments relating to juveniles, the provision of the CRA shall prevail and that other provision shall, to the extent of its inconsistency, be void. The full import of that provision is that, notwithstanding the provisions of any other statute, where the CRA makes any provision relating to a juvenile and the provisions of any other statute conflicts with that of the CRA, the provisions of the CRA will prevail and the provisions of that other statute will not be applied. It is therefore important to consider the salient provisions of the CRA relating to juveniles as there is now a shift in emphasis from punishment to rehabilitation and integration of the child offender. The CRA provides for special structures and institutions as well as special training for personnel involved in the child justice administration. In this vein, section 149 provides for the establishment of the 'Family Court' for each state of the federation and the Federal Capital Territory. As one of the key institutions in the child justice administration, the family court shall in any matter relating to or affecting a child or a family and all stages of any proceedings before it-

- a) Be guided by the principle of conciliation of the parties involved or likely to be affected by the result of the proceedings, including-
 - i. the child
 - ii. the parents or guardian of the child
 - iii. any other person having parental or other responsibility for the child; and
- b) Encourage and facilitate the settlement of the matter before it in an amicable manner.²⁷

The personnel of the court shall be afforded professional education, in-service training, refresher courses and other modes of instruction to promote and enhance the necessary professional competence they require.²⁸

In relation to bail, under the CRA, on apprehension of a child, the court or police shall without delay consider the issue of release²⁹. Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.³⁰ Whenever possible, detention should be replaced by alternative measures including close supervision, care by placement with a family or in an educational setting or home.³¹

The position under the CRA differs from that of the CYPL. Unlike the CYPL where a juvenile can be detained in case of homicide or other grave crime etc,³² the CRA does not recommend detention pending trial for any offence at all and emphatically states that detention shall be 'as a measure of last resort' and 'for the shortest possible period of time'. Also, unlike the previous position, a child cannot be kept in police detention unless authorised by the court.³³ There is however no provision under the CRA for sureties or recognisance in a case of a child admitted to bail; thus the pre-CRA position will govern.

The provision on trial under the CRA and the pre-existing position is virtually the same. The only significant difference is that while under the pre-existing position, the court owes only the

²⁶ s. 274 (1) & (2) of the CRA

²⁷ s. 151 (3) CRA

²⁸ s. 154 (i) CRA

²⁹ s. 211 (1) (b) CRA

³⁰ s. 212 (1) (a) CRA

³¹ s. 212 (1) (b) CRA

³² s. 3 CYPL

³³ s. 212 (3) CRA

juvenile the duty to explain to him in a simple language the substance of the alleged offence,³⁴ such explanation under the CRA must be made not only to the child but also to his parents or guardian.³⁵

With regards to punishment of a child offender, the CRA did not have effect on the pre-existing position except that punishment like imprisonment under any condition is not provided for. Furthermore, the Act prohibits in section 221 (1) (a) a court from ordering corporal punishment on a child. Where the court does not release on bail a child who admits committing one or more offences charged against him, the court shall remand the child in a State Government accommodation.³⁶ During a child's sojourn in the State Government accommodation, it shall be lawful for any person acting on behalf of the designated state to detain him.³⁷ The court remanding a child to a State Government accommodation may after consultations with the designated State Government require that the State Government complies with security requirement that the person be kept in secure accommodation.³⁸ An order to be kept in secure accommodation shall only be made by the court in respect of a child who has attained fifteen years and if charged with or has been found to have committed a violent or sexual offence, or an offence punishable in the case of an adult with imprisonment for a term of fourteen years or more; or he has a recent history of absconding while remanded in a State Government accommodation, and is charged with or has been found to have committed an offence punishable with imprisonment while he was so remanded; and the court is of the opinion that only such a requirement would be adequate to protect the public from serious harm from the child.³⁹

The position under section 218 of the CRA differs from the pre-existing position. Under the CRA a child can only be remanded in State Government accommodation and a child's stay and the conditions of his stay are all entirely regulated by the court. Furthermore, there is no age limit for the children to be so remanded except that no child below fifteen years shall be remanded in secured accommodation.

There are certain key concepts that are central to the child justice system under the CRA whose clarification are necessary for a better appreciation of the whole scheme of the Child Justice Administration provided under the Act. They include:

- a. A child
- b. Best interest of a child
- c. Diversion
- d. Non-custodial measures

A child: - The CRA defines a child as a person under the age of eighteen years. Under the Act, there is a harmony in the age of a child. This is unlike the earlier position under the CYPL, where a child means a person under the age of fourteen years, while a young person means a person who has attained the age of fourteen years and is under the age of seventeen years. This is in line with the CRC. There is however no provision in the CRA on determining the age of the child. Thus in this regard one may conclude that the pre-CRA position subsists.

³⁴ s. 8 (1) CYPL

³⁵ s. 217 (1) CRA

³⁶ s. 218 (1) CRA

³⁷ s. 218 (3) CRA

³⁸ s. 218 (4) CRA

³⁹ s. 218 (5) (a-c) CRA

Best interest of a child: - The principle of the best interest of the child is incorporated in the CRA as the primary consideration in all actions concerning a child.⁴⁰ Under the Act, the scope of the best interest of the child comprehensively covers the child's physical, mental, spiritual, moral and social development. Under the CRC, best interest of the child is the guiding principle. The CRC relates the principle to all actions concerning children and does not limit it to official actions.⁴¹ The phrase is among other places specifically mentioned in relation to the child's involvement with the police and the justice system.⁴² Unfortunately, neither the CRC nor the ACRWC provided any detailed information on the practical meaning of the best interest of the child. The phrase may therefore be prone to subjective interpretations. However, a consideration of several occurrences of the term in the CRC, for instance, Article 9 on separation of a child from the family; Article 18 with regard to parental responsibility on the up-bringing and development of the child; and Articles 20 and 21 on adoption of the child - show that it is generally used as a standard to check practices which harm children and infringe on their well-being.

Diversion: - In relation to juvenile justice administration, diversion refers to schemes by which the child is kept away from criminal justice system. It involves dealing with the child offender in non-serious cases by using other means of settlement including supervision, guidance, restitution and compensation without resorting to formal justice.⁴³ The practice of diversion is believed to promote more humanitarian and less stigmatizing responses to child offenders than punitive sentences. In Nigeria, the use of strategies to divert children out of the formal justice system seems to be a novel practice. Although there were some provisions in the CYPL that could be used as diversion, the attitude of the courts was more punitive, and custodial sentences were the norm. Generally, the CYPL did not reflect the guidelines in the international conventions and standards for the treatment of juvenile offenders, especially in employing diversion options. The Beijing Rules for instance provides that the police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.⁴⁴ The CRC also provides that the state parties shall seek to promote measures for dealing with children accused of, or recognized as having infringed the penal law without resorting to judicial proceedings, whenever appropriate and desirable.⁴⁵ The CRA has as one of its central objectives particularly in part XX "Child Justice Administration" the need to increase the number of cases diverted away from the formal court procedures. Thus, in section 206-209, there are a number of new procedures to facilitate referral of children into suitable diversion options in a consistent and just manner. Section 209 empowers the police, prosecutor or any other person dealing with a case involving a child offender to dispose of cases without resorting to formal trial by using other means of settlement including supervision, guidance, restitution and compensation of victims. They are also to encourage the parties involved in the case to settle amicably. They can use these means if the case is for an offence of a non-serious nature and there is need for reconciliation; or if the family, school or others involved have reacted in an appropriate or constructive manner; or if they think it appropriate in the interest of the child offender and parties involved. The police, prosecutor, Magistrates, and Judges are to operate a model of justice that is restorative, rehabilitative and in the least retributive.

⁴⁰ s. 1 CRA

⁴¹ Article 3 (1) CRC, see also Article 4 of the ACRWC

⁴² Article 27 & 40 CRC

⁴³ J Munice, *Youth and Crime: A Critical Introduction*, (London: Sage, 1999) p.305

⁴⁴ Rule 11 (2) Beijing Rules

⁴⁵ Article 40 (3) (b) CRC

Non-Custodial Measures: - This term generally refers to alternatives to custodial sentences. They are alternatives to imprisonment. In line with the requirement of the Tokyo Rules⁴⁶ the CRA adopts the use of non-custodial measures. Thus, in section 223, Judges are empowered to dispose of cases where they are satisfied that an offence has been committed, with alternatives to custodial or institutional placement.

As the CRA was enacted at the National level, the States were expected to formally adopt and adapt it for domestication at the States Houses of Assembly as state law. This is because issues of child rights protection are residual matters in the Nigerian Constitution, giving states exclusive responsibility and jurisdiction to make laws relevant to their specific situations. State laws inimical to the rights of the child are also to be amended or annulled as may be required to conform with the CRA and other relevant conventions. Today, the CRA has been passed in many states in Nigeria including the South East states of Abia, Anambra, Ebonyi, Enugu and Imo. However, despite the adoption of the CRA as state law in these states, the implementation of the novel provisions of the CRA is still far-fetched in most of the states such that the problems which the Act aimed at solving are still very much in place. The position is still as it were under the CYPL.

5. Conclusion

As has been seen in this paper, juvenile justice administration in Nigeria especially in the South East suffers from several inadequacies: legal, policy planning, implementation, education and research. There are no well-established and adequately equipped institutions and coherent programs for dealing with juvenile offenders and preventing juvenile delinquency in the country. Prior to the promulgation of the Child's Right Act, the legal and institutional framework were those inherited from the colonial government. The law predated the evolution of contemporary international standards and as a result, many of the laws on the treatment of juvenile offenders did not conform to those international standards. They therefore did not provide adequately for the rights of the child or young person brought within the criminal justice system; denied the child the benefits of humane treatment, and relevant educational, vocational and social opportunities for self-actualization. There was therefore an urgent need for a critical evaluation of the laws, policies, programs and institutions dealing with juvenile offenders in Nigeria to bring the country in line with the principles and rights that conform to international standards. This led to the promulgation of the Child's Right Act in 2003, a comprehensive piece of legislation encompassing all aspects relating to the welfare and care, as well as child justice. Prior to the promulgation of the CRA, Nigerian Children in conflict with the law were often tried like adults, especially for crimes like murder, robbery with aggravating circumstances, rape or similar serious offences. Some children were sentenced to jail and incarcerated with adults instead of going to juvenile institutions or being given more reform-oriented, non-custodial sentence. Juvenile cases were heard in regular court buildings due to lack of juvenile courts. The CRA brought an innovative legal framework to entrench the rights of children including those in conflict with the law. There are clear provisions for creating a satisfactory child justice administration. For states that have adopted the CRA as their state law, the provisions of the CRA supersede all other legislation that have a bearing on the rights of the child. It is therefore surprising that despite adoption of the CRA in the South East states of Nigeria, the state of the juvenile justice administration is still virtually the same as it was prior to the enactment of the CRA. This is attributed to government inaction and insincerity in implementing the provisions of the CRA relating to juvenile justice administration. The general apathy of the society with regard to the rights and welfare of the

⁴⁶ Rule 1.5 Tokyo Rules

juvenile is also another factor militating against the actualization of the philosophy and principles of the juvenile justice system. These problems are not small by any means and must be tackled head-on for any meaningful way forward to be achieved.

6. The Way Forward

In the light of our findings in this paper on the state of juvenile justice administration in South East Nigeria, and considering the inadequacies unraveled by our analysis, the following measures are recommended as the way forward in juvenile justice administration in South East Nigeria:

Implementation of the Law: -It is found in this paper that the promulgation of the CRA in 2003 by the National Assembly has enhanced the position of the child in juvenile justice administration by incorporating most of the laudable provisions of the CRC as well as the ACRWC. The CRA has, to a large extent, cured most of the deficiencies in juvenile justice administration not only in the South East but also in Nigeria as a whole. What remains now is to achieve optimum effect by faithfully enforcing or implementing the provisions of the law. Government of states in South East Nigeria should therefore take a positive step in implementing the law in order to realize the purpose/aim of enacting the law, which is to create a better philosophy of juvenile justice administration for the good and welfare of the child. Akin to this recommendation is the need for reform and to make amendments in areas where the law is still deficient. The CYPL in many respects still violate several international conventions, charters, rules and guidelines on the rights and welfare of the juvenile. Government should move the legislature in amending those aspects of the law in order to bring them up to the required standard. The philosophy of juvenile justice should be explicitly stated to conform to relevant international standards and the provision for flogging or whipping should be expunged as it constitutes a cruel punishment and degrading treatment of the child.

Preventing Juveniles from Coming into Conflict with the Law: -The existing philosophy of juvenile justice in South East Nigeria views juvenile offenders as objects of control and punishment. More significantly, it lacks a focus on prevention of juvenile delinquency. As a result, juvenile justice is not incorporated into social (especially family, child welfare, health and education) and economic (employment, vocational training and skill acquisition) planning in South East Nigeria. For a friendly and more effective juvenile justice administration, it is recommended that the philosophy of juvenile justice should be anchored on the provisions for social and economic welfare of the child and the prevention of juvenile delinquency. Prevention is better than cure.

Training and Capacity Building: -It was observed that agencies in the juvenile justice system in South East Nigeria lack adequate and qualified personnel that are able to meet the needs, concerns and aspirations of juvenile offenders. The CRA and other laws have made bold provisions for the training of all personnel involved in juvenile justice administration. It is therefore recommended that all juvenile justice system personnel – the police, social/probation workers, child development workers, lawyers, court workers, prison staff, magistrates and judges should receive rigorous training in human rights and child rights as well as in the management of the welfare of the juvenile. Trainings, workshops/conferences should be organized to sensitize the police, prosecutors, magistrates, judges, child welfare and ministry officials as well as the general public including parents and guardians. In this regard, government, civil societies, philanthropists and the general public should partner for the provision of facilities and services/training for the development and welfare of juveniles. All should also be active in monitoring the conditions in juvenile justice institution, advocacy for

progressive, correctional, rehabilitation and non-custodial programs for the treatment of juvenile offenders in South East Nigeria.

Funding: - The effective realization of an acceptable juvenile justice system in terms as discussed in this paper and which accords with international standards, depends to a large extent on the availability of funds. For various reasons, it appears that government alone cannot provide the required funding. Therefore, it is recommended that the private sector, civil society and all stakeholders should join forces with government to improve the current situation. There is also a need for the formation of a working group with leaders of civil society which will assist government with developing a strategy for adequate funding of the juvenile justice system.

The Media: -It is recommended that partnership must be developed with the media to promote advocacy messages regarding child's rights, restorative justice and the importance of prevention, diversion and alternatives to detention of juvenile offenders, to report any derogation of the rights of the child, to publicize positive outcomes with young offenders, and to encourage community level support for vulnerable children and young people. This is because the importance of the media information dissemination cannot be over-emphasized.

It is believed that if these recommendations are effectively implemented, there will be created an effective juvenile justice administration environment in which children and young persons can grow and blossom.