

## AN APPRAISAL OF THE RIGHTS OF A CHILD UNDER THE NIGERIAN CRIMINAL JUSTICE SYSTEM\*

### Abstract

*The rights of a child in Nigeria has for some time been overlooked by many aspects of our legislation. Indeed, most of the juvenile provisions in our enactments seem to have been eroded by time. It was not until the enactment of the Child's Rights Act and the Administration of Criminal Justice Act that more efforts were made to comply with the Rights of a child. This work therefore considers the child offender under the Nigeria Criminal Justice System. Who is a child? Who is a child offender? What are the limits of his or her right in a criminal trial? Are there special provisions for his/her trial? These questions and more are what this paper seeks to answer.*

**Keywords:** Child, Child's Rights, Nigeria, Child Offender, Criminal Justice System.

### 1. Introduction

Onyemachi states that in many societies, children generally are poorly treated with little or no warmth, affection, and compassion, while little recognition and least tolerance is accorded and extended to them in homes and at public places.<sup>1</sup> That is why children are vulnerable to all forms of inhuman and reckless abuses. Also, they are inexplicably denied of their basic and fundamental rights, perhaps, due to their status as minors. However, a small minority that gets the attention of the criminal justice system is so fortunate to form a fraction of the legitimized target. Such ones are lucky enough to escape all the harshest and most destructive impulses that are inadvertently directed against their peers and contemporaries as a whole. A close look at the role of policy makers and those that shape the direction of children reveals that they have constantly failed to allow children to express their views or participate in making decisions that really affect them. In many societies, children's views are seldom considered, tolerated or taken seriously by their parents, guardians or committee of friends. Thus, there is always a general apathy that children are only to be seen and not to be heard. In Nigeria, Africa and of course, in most world societies, children's views or ideas are considered *non compos mentis* when compared with their mental capacity and the reasoning and intelligent thinking of adults as rational human beings. Every criminal trial in Nigeria starts with an arraignment. In *Josiah v State*<sup>2</sup>, it was stated that 'at the commencement of a criminal trial there must be strict compliance with the provisions of section 215 of the Criminal Procedure. That is to say: (a) the accused person must be placed before the court unfettered unless the court otherwise directs, e.g. he may be fettered if the judge is satisfied that the accused shows signs of being violent. (b) the charge must be read over and explained to the accused person in the language he understands by the Registrar of court or other officer of the court. (c) the accused person must be called upon to plead to the charge. The above requirements are mandatory and must be strictly followed. If the charge is amended during trial the procedure must again be complied with. The procedure under section 215 of the Criminal Procedure Act guarantees of fair trial of the accused person. Failure to satisfy any of the above (a) to (c) would render the trial no matter how well conducted defective and declared a nullity by an appeal court.' This is indeed what arraignment entails. Such trials are guided by the Constitutional provisions particularly the provisions under Section 36 of the 1999 Constitution as amended. It is pertinent to state that arraignment in most cases is preceded by an arrest and in most cases it ends with a term of imprisonment or in some very serious cases with the death penalty. The crux of this work is whether the law regards the child offender as an adult who is capable to be tried under the conventional provisions for the trial of a defendant. At this stage, it is pertinent to submit that a child offender is distinct from any other offender. Such an offender has a unique trial format as a result of his age. The Law as it exists in Nigeria made special provisions for such a child and it is these rights that this work has set out to appraise.

### 2. Definition of Terms

There are certain concepts that beg for clarification in this exercise. We shall therefore take them seriatim for purposes of clarity. The first concept that begs for clarification is the concept of a child.

#### Child

While defining a child for purposes of knowing if such a child understands the nature of an oath, the Supreme Court in the case of *John Okoye v The State*<sup>3</sup> held that a child is a young person in the formative period of life'.

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<sup>1</sup> Thomas Uche Onyemachi, "Children, Status and the Law in Nigeria", African Research Review Vol 4 (3a) July, 2010 PP 378-398.

<sup>2</sup> *Josiah v. State* 1985 1 NWLR Pt.1 p.125Such

<sup>3</sup> (1972) All N.L.R 938

In *Okwueze v Okwueze*<sup>4</sup>, the Supreme Court while deciding on the custody of a child made several efforts at defining a child. The Court stated that ‘the word ‘child’ has not been defined under the Customary Courts Law, Cap. 33 nor is it defined under the interpretation Law Cap. 51 of the Laws of Ondo State 1978. However, the Children and Young Persons Law Cap. 21 of the Laws of Ondo State 1978 defines ‘child’ as a person under the age of 14 years and the Infants Law, Cap. 49 of the Laws of Ondo State, 1978 defines ‘child’ as a person under the age of twenty-one; but Section 7 of the Infants Law specifically provides that its provisions on guardianship and custody of children do not apply to children who..., subject to Customary Law. The ordinary meaning of child is not also very helpful. Webster's New Twentieth Century Dictionary, Unabridged, 2nd Edition defines ‘child’ as a boy or a girl in the period before puberty. It defines ‘puberty’ as the age of 14 for male and 20 for female. This does not correspond with the definition under the Children and Young Persons Law. The Concise Oxford Dictionary, 17th Edition defines ‘child’ as a person who has not reached the age of discretion’. Agbaje JSC, went further in the same case<sup>5</sup> to state that ‘it appears therefore to me that the definition of the word ‘child’ and ‘young person’ in section 2 of the Children and Young Persons Law of Ondo State gives one a clue as to the age limit in custody proceedings notwithstanding any customary law to the contrary. In that section ‘child’ is defined thus: - ‘Child means a person under the age of fourteen years’ and ‘young person’ is defined thus: ‘young person means a person who has attained the age of fourteen years and is under the age of seventeen years’

According to Nwachukwu, ‘Childhood in common English parlance means the state or period of being a child. This definition rather than define the ‘child’ abdicated the task to be determined by another process. The definition of childhood is therefore coterminous with the definition of a child. The position however, appears to be that childhood is the early period in the development of a person, which is suggestive of immaturity, and marked by innocence, trust and ingeniousness. It is characterized principally by the ‘undeveloped’ state of mind of a person, which accounts for the readiness of the society to accept and tolerate the excesses, failures and inadequacies of the person.’<sup>6</sup> He continued by saying that the legal concept of childhood is not defined by the psychological development of the person as much as his physical development and concluded by referring to the earlier case of *Labinjoh v Abake*<sup>7</sup> where it was decided that a person ceases to be a child on the attainment puberty under Nigerian customary law. Section 494 of the Administration of Criminal Justice Act, 2015 defined a ‘child’ to mean a person who has not attained the age of 18 years. The same section of the Law also defined a ‘young person’ to mean a person who has attained the age of 14 and has not attained the age of 17 years. It is therefore clear that the concepts child and young persons may actually differ. It is noteworthy that from these two definitions, the term child incorporates the term young person. It is however correct to say that from the age of 10 down could be classified as a minor while from 12 to 14 can be taken as a child while from 14 to 17 will easily be taken as a young person. In some jurisdictions, the definition of who a child is has always come with a distinction between the boy child and the girl child. Indeed, the Haryana Children Act maintained this difference in defining ‘child as a boy who has not attained the age of 16 years and a girl who has not attained age of 18 years’<sup>8</sup>. Juvenile Justice Act, 1986<sup>9</sup> defined ‘a juvenile or child, in the case of a boy who has not completed the age of 16 years and in the case of a girl 18 years. It is to be noted that the aspect of defining a child with particular reference to sex was against international obligations hence the Government of India while discharging its international obligations revoked the JJA Act, 1986 through the 2000 Act and in the said enactment removed the distinction regarding the age between male and female juvenile. Under the new law, the age of juvenile for both male and female involved in conflict with law stands at 18 years<sup>10</sup>. A juvenile in conflict with law under the JJ (C & P) Act, 2000 is ‘a juvenile who is alleged to have committed an offence but has not completed 18 years of age on the date of commission of said offence’. It is important also to highlight the obvious conflict created in the determination of a child between the Constitution of the Federal Republic of Nigeria and the Child’s Rights Act. Section 29(1) of the Constitution<sup>11</sup> provides that any citizen of full age who wishes to renounce his Nigerian citizenship shall make a declaration in the prescribed manner for the renunciation. Subsection 4 of the said Section 29 defines full age for the purposes of the section to mean the age of 18 years and above and (b) any woman who is married shall be deemed to be of full age. Two issues arise here. One a person of full age is someone who has attained the age of 18 years and secondly a person who is married even though she may not have attained 18 years. It is correct to state that Section

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<sup>4</sup> (1989) NWLR (Pt.109) 32

<sup>5</sup> *Okwueze v Okwueze* (supra)

<sup>6</sup> M AjaNwachuku, (2016) A Legal Analysis of the Nebulous Concept of Childhood in Nigeria. *Beijing Law Review*, 7, 122-126. doi: 10.4236/blr.2016.72013. The Author, Nwachukwu, made reference to the Webster’s New Encyclopedia Dictionary (2002) , (Massachusetts: Federal Street Press, 2002) p. 310.

<sup>7</sup> (1924) 5 NLR 33

<sup>8</sup> The Haryana Children Act. 1974, Section 2 (d)

<sup>9</sup> Of India

<sup>10</sup> Juvenile Justice (C&P) Act 2000 of India.

<sup>11</sup> 1999 Constitution of the Federal Republic of Nigeria

21<sup>12</sup> prohibited marriage to a person below the age of 18 years. The said Section provides that ‘No person under the age of 18 years is capable of contracting a valid marriage, and accordingly a marriage so contracted is null and void and of no effect whatsoever’. If this is so, what then is the effect of the subsection b of Subsection 4 of Section 29 of the 1999 Constitution? Suffice it to say that Section 277<sup>13</sup> has also adopted the conventional definition of a child as, a person under the age of eighteen years. The obvious conflict here is not easy to resolve as resolving same will leave the status quo to remain. It is common knowledge that the Constitution towers over and above any other law in the land however; the retention of that provision in the Constitution will certainly defeat the obvious positive intentions of the Child’s Rights Act. It is suggested that that aspect of the Constitution be reviewed to incorporate a more positive outlook on the menace of child marriages.

### **Juvenile Offender**

It is the law that a child offender is classified as a juvenile offender. It is imperative that we understand the concept of this juvenile offender as it is to him that the rights greatly pertain. In *Doripolo v The State*<sup>14</sup>, the Court of Appeal held that ‘by virtue of the provision of section 2 of the criminal procedure Law of Lagos State, a young person is defined as- ‘A person who has attained the age of fourteen and has not attained the age of seventeen years.’ As rightly postulated by the Appellant’s learned counsel, the Appellant was a young person and a juvenile at the time the alleged offence was said to have been committed. The term juvenile (adjective juvenility), denotes a person who has not reached the age at which he [she] should be treated as an adult by the criminal justice system. In essence, he could be regarded as a juvenile delinquent or offender, youthful offender as the case may be. See BLACK’S LAW DICTIONARY, 6th Edition, 2004 at 884, defining a juvenile delinquent as a- ‘Minor who is guilty of criminal behaviour, usually punishable by special laws not pertaining to adults.’ Equally, section 2 of the Criminal Procedure Law (supra) defines a juvenile offender as - ‘An offender who has not attained the age of seventeen years.’<sup>15</sup> Section 277 of the Child’s Rights Act had defined a child as a person under 18 years. It therefore follows that any offender who is under 18 years is a child offender or in other words a juvenile offender. For purposes of investigating and trying such offender, the Administration of Justice Act of 2015 had directed as follows, ‘Where a child is alleged to have committed an offence, the provisions of the Child Rights Act shall apply’<sup>16</sup> It is further to be noted that applications for bail are not contained in the Child’s Rights Act but such applications are to be made under the ACJA.<sup>17</sup>

### **3. The Rights of the Child under the Nigerian Criminal Justice System**

It is imperative to state that the rights relating to criminal trials contained in the Constitution<sup>18</sup>, are available to every human being. This is why the draftsmen of the Constitution deliberately chose the phrase ‘every individual’. Consequently, in the course of this work, we shall therefore look at the Constitution for guidance first before delving into other enactments. The work shall also visit the Child Rights Act 2003, the Criminal Code, Administration of Criminal Justice Act 2015, Evidence Act and then the UNCRC.

### **1999 Constitution**

The child offender in Nigeria has the full complements of the rights reserved for a person undergoing criminal trial in Nigeria. In *Ibrahim Joseph v The State*<sup>19</sup>, the Court of Appeal Jos observed that, ‘By section 36(6) (a) (e) of the constitution of the Federal Republic of Nigeria 1999 as amended provisions and conditions precedent to ensure lawful and proper trial of any person charged with criminal offence have been put in place. They are all sine qua non to all criminal trials in order to further ensure that a defendant in a criminal trial is given fair hearing before a court or Tribunal in the determination of his civil rights and obligations. The provisions of the said section 36(5) (a) (e) of the 1999 Constitution aforesaid are as follows: - ‘36(6) Every person who is charged with a criminal offence shall be entitled to: - (a) be informed promptly in the language that he understands and in detail of the nature of the offence; (b) be given adequate time and facilities for the preparation of his defence; (c) defend himself in person or by legal practitioner of his own choice. (d) Examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and (e) Have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence’. The Court went further to hold that ‘the

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<sup>12</sup> Childs Rights Act 2003

<sup>13</sup> Supra

<sup>14</sup> (2012) LPELR-15415(CA)

<sup>15</sup> Per SAULAWA, J.C.A (P 35,Paras A-F)

<sup>16</sup> Section 452(1)

<sup>17</sup> Section 452(2)

<sup>18</sup> See the 1999 Constitution of the Federal Republic of Nigeria

<sup>19</sup> (2013) LPELR-21918(CA)

above provisions of the constitution are inbuilt and made part of our criminal procedure Act and criminal procedure code depending on whether the offence is/was committed in the southern or Northern part of this country. It is in the right of the above that sections 215 and 218 of the criminal procedure Act, Sections 241, and 242 of the Criminal Procedure Code provide that where any person is charged with criminal offence the charge must be concisely and precisely explained to him in the language he understands before his plea could be taken. Furthermore, he is also entitled to an interpreter who can fluently speak his language so that the interpreter can properly read and interpret the charge or the offence with which he is charged and be able to interpret the proceedings to him'. It is to be added that these relevant provisions of the constitution aforesaid and criminal procedure laws have received eloquent juridical interpretations in numerous decisions of the apex Court in the land particularly in the case of *Golden Dibia & ors v. The State*<sup>20</sup> where Katsina Alu pontificated that 'Section 215 of the Criminal Procedure Law Provides as follows:- 'The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the Registrar or other officer of the court and such person shall be called upon to plead instantly, thereto unless where the person entitled to service of a copy of the information he objects to want of such service and the court finds that he has not been duly served'. It is submitted that these rights as contained in the Constitution and as enunciated by the Courts in the above decision form part of the rights of the Child under the Nigerian Criminal Justice System.

### **Criminal Code**

The Criminal Code in Nigeria is primarily the legislation dealing with most offences in the Southern part of Nigeria. It is pertinent to highlight the fact that the Penal Code holds sway in the same area in the Northern part of Nigeria. Be that as it may, one can safely submit that the Criminal Code or Penal Code made provisions for offences and the punishment of such offenders. At the commencement of its provisions, the Criminal Code removed most children from the effects of crime. This is why in Section 30 of the Criminal Code, it made provisions for immature age. The said Section provides as follows: A person under the age of seven years is not criminally responsible for any act or omission. A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission if he had capacity to know that he ought not to do the act or make the omission. A male person under the age of twelve years is presumed to be incapable of having carnal knowledge'. It is to be submitted that this Section contains presumptions both rebuttable and irrefutable one. For the child under the age of seven years, it is an irrefutable presumption and such a child cannot be held liable for any offence. To further highlight the extent of this provision, the Criminal Code in Section 7d acknowledged the fact that a person who committed an offence using a child of seven years will be charged as if he committed the offence under Section 7a. For the Penal Code, it is provided in Section 50 as follows: 'No act is an offence which is done-

- A. by a child under seven years of age; or
- B. by a child above seven years of age but under twelve years of age who has not attained sufficient maturity of understanding to judge the nature and consequence of such act'

Clearly both Codes did not envisage children as offenders. The problem however is what is the fate of children above twelve years who commit offence? As stated earlier, the Codes do not deal with procedures and having excluded those below 12 years; all others should be punished accordingly for their offences. To find out the procedure for such punishment, the Criminal Procedure Code and Act would have stepped in but in their absence, the ACJA has taken over. For the ACJA, such offenders should be treated in accordance with the Child's Rights Act accordingly.

### **Administration of Criminal Justice Act 2015**

In as much as the ACJA has referred all matters relating to Child offenders to the Child's Rights Act, suffice it to say that the ACJA still has the bulk of procedural provisions on criminal trials. Section 6(1)<sup>21</sup>, provided that the defendant or offender has a right to be informed of the cause of his/her arrest. Such an arrested person must also have a right to silence during arrest<sup>22</sup>. Such a person shall also have the right to consult a legal practitioner of his choice and is also entitled to free legal representation from Legal Aid Council.<sup>23</sup> It is also to be noted that such a suspect shall be accorded humane treatment having regard to his right to the dignity of human persons and all other rights enshrined in Section 8(1 a and b) of the ACJA. Suffice it to say that the ACJA has full complements of rights that must be complied with in a criminal trial in Nigeria and such rights are available to a child offender.

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<sup>20</sup> (2007) 9 NWLR (PART 1038) 30 at 46 C - H

<sup>21</sup> ACJA. 2015

<sup>22</sup> S6(2) ACJA

<sup>23</sup> Sec 6(2)(b and c)ACJA

### Child's Rights Act 2003

Part 20 of the Child's Rights Act made provisions for Child Justice Administration. The said Part which started from Section 204 stated that, 'No child shall be subjected to the criminal justice process or to criminal sanctions, but a child alleged to have committed an act which would constitute a criminal offence if he were an adult shall be subjected only to the child justice system and processes set out in this Act'. It is noteworthy to highlight the fact that the CRA in its Section 1 highlighted the need for the best interests of the child to reign supreme. Hence Section 1<sup>24</sup> provided that, 'In every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration.' Section 205 of the CRA was very concerned about the privacy of the child offender. The said section provides that, '

(1) The right of the child to privacy specified in section 8 of this Act shall be respected at all stages of child justice administration in order to avoid harm being caused to the child by undue publicity or by the process of labeling.

(2) Accordingly no information that may lead to the identification of a child offender shall be published.

(3) Records of a child offender shall-

(a) be kept strictly confidential and closed to third parties;

(b) made accessible only to persons directly concerned with the disposition of the case at hand or other duly authorized persons; and

(c) not be used in adult proceedings subsequent cases involving the same child offender.

Section 209 of the CRA encourages settlement of cases involving child offenders without trial. Hence it provided that, '(1) The police, prosecutor or any other person dealing with a case involving a child offender shall-

(a) have the power to dispose of the case without resorting to formal trial by using other means of settlement, including supervision, guidance, restitution and compensation of victims; and

(b) encourage the parties involved in the case to settle the case, as provided in paragraph (a) of this section.

(2) The police, prosecutor or other person referred to in subsection (1) of this section may exercise the power conferred under that Subsection if the offence involved is of a non-serious nature and-

(a) there is need for reconciliation; or

(b) the family, the school or other institution involved has reacted or is likely to react in an appropriate or constructive manner; or

(c) where, in any other circumstance, the police, prosecutor or other person deems it necessary or appropriate in the interest of the child offender and parties involved to exercise the power.

(3) Police investigation and adjudication before the court shall be used only as measures of last resort.

By its Section 210, it reiterated the legal status and fundamental rights of the child as follows: 'The legal status and fundamental rights of the child set out in Part II of this Act, and in particular-

(a) the presumption of innocence;

(b) the right to be notified of the charges;

(c) the right to remain silent;

(d) the right to the presence of a parent or guardian;

(e) the right to legal representation and free legal aid, shall be respected in the administration of the child justice system set out in this Act.

Section 211 emphasized the pattern of initial contact with a child offender thus: '(1) On the apprehension of a child-

(a) the parents or guardian of the child shall-

(i) be immediately notified; or

(ii) where immediate notification is not possible, be notified within the shortest time possible after the apprehension, of the apprehension;

(b) the Court or police, as the case may be, shall, without delay, consider the, issue of release;

(c) contracts between the police and the child shall be managed in such a way as to-

(i) respect the legal status of the child;

(ii) promote the best interest and well-being of the child;

(iii) avoid harm to the child, having due regard to the situation of the child and the circumstances of the case.

It went further to define harm in this section to mean-'harm' includes the use of harsh language, physical violence, exposure to the environment and any consequential physical, psychological or emotional injury or hurt'.

Section 212 CRA frowns at the detention of a child. Accordingly, (1) Detention pending trial shall-

(a) be used only as a measure of last resort and for the shortest possible period of time;

(b) wherever possible, be replaced by alternative measures, including close supervision, care by and placement with a family or in an educational setting or home.

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<sup>24</sup> CRA, 2003

(2) While in detention, a child shall be given care, protection any necessary assistance including social, educational, vocational, psychological, medical and physical assistance, that he may require having regard to his age, sex and personality.

(3) Where the Court authorizes an apprehended child to be kept in police detention the Court shall unless it certifies-

(a) that, by reason of such circumstances as specified in the certificate, it is impracticable for him to do so; or

(b) in the case of an apprehended child who has attained the age of fifteen years, that no secure accommodation is available and that keeping him in some other authority's accommodation would not be adequate to protect the public from serious harm from the child, secure that the apprehended child is moved to a State Government accommodation.

(4) Classification in the place of detention pending trial shall take account of the social, educational, medical and physical characteristics and condition of the child, including his age, sex and personality. Section 213 emphasized as a matter of importance that 'the terms 'conviction' and 'sentence' shall not be used in relation to a child dealt with in the Court and any reference in any enactment or other law to a person convicted, a conviction or a sentence shall, in the case of child be construed as including a reference to a person found guilty of an offence, or to a finding of guilt or to an order made upon such a finding, as the case may be. Section 214 emphasized rights to fair hearing and compliance with due procedures. In Section 215, provided guiding principles in the adjudication of a child offender as follows: (1) Where a child offender is brought before the Court, the court shall ensure that-

(a) the proceedings is conducive to the best interests of the child and is conducted in an atmosphere of understanding which allows the child to participate therein and express himself freely;

(b) the reaction taken is always in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and needs of the child and the needs of the society;

(c) the personal liberty of the child is restricted only 'after careful consideration of the case, including the use of alternative methods of dealing with the child, and the restriction is limited to the possible minimum;

(d) the child is not deprived of his personal liberty unless he is found guilty of-

(i) a serious offence involving violence against another person; or

(ii) persistence in committing other serious offences, and there is no other appropriate response that will protect the public safety;

(e) the well-being of the child is the guiding factor in the consideration of his case.

(2) The Court has the power to discontinue any proceedings at any time if circumstances arise which make discontinuation of the proceedings the best way to dispose of the case.

(3) The Court shall handle each case brought before it expeditiously without unnecessary delay.

Section 217 provides for the Child justice procedure as follows: 'Where a child is brought before the Court, the Court shall, as soon as possible, explain to him and his parents or guardian in a language the child and the child's parent or guardian understands, the substance of the alleged offence.

(2) Subject to the provisions of section 152 (4) (b) (i) of this Act, where a child is brought before the Court for an offence, the case shall be finally disposed of in the Court, and it shall not be necessary to ask the parent or guardian of the child whether he consents that the child be dealt with in the Court.

(3) If the child does not admit the facts of an alleged offence, the Court shall proceed to hear the evidence of the witnesses in support of the facts and at the close of the evidence of each witness, the Court shall ask the child or if the Court sees fit, the parent or guardian of the child, whether he or she wishes to put any questions to the witnesses.

(4) If the child, instead of asking questions, wishes to make a statement, the child shall be allowed to do so and it shall be the duty of the Court to put to the witnesses such of the questions as appear to be necessary and the Court may put to the child such questions as may be necessary to explain anything in the statement of the child.

(5) If it appears to the Court that a prima facie case is made out against the; child, the evidence of the witnesses for the defence shall be heard, and the child shall be allowed to give evidence or to make any statement.

(6) If a child admits the offence or the Court is satisfied that the offence is proved, the Court shall then ask the child if he desires to say anything in explanation of the reason or reasons for his conduct, and, before deciding on how to deal with him, the Court -

(a) shall obtain such information as to his general conduct, home surroundings, school record, including the social inquiry reports referred to in section 224 of this Act and medical history, as may enable it deal with the case in the best interests of the child; and

(b) may put to the child any question arising out of such information.

(7) For the purposes of obtaining an information under Subsection (6) of this section or for special medical examination or observation, the Court may from time to time, remand the child on bail or to a place of detention.

(8) If a child admits the offence or the Court is satisfied that the offence is proved, and the Court decides that a remand is necessary for purposes of inquiry or observation, the Court may cause an entry to be made in the Court records that the charge is proved and that the child has been remanded for enquiry or observation.

(9) The Court before which a child who has been remanded is brought may, without further proof of the Commission of the offence, make any order in respect of the child which could have been made by the Court which remanded the child.'

Finally, the remand procedures under Section 218 was specifically made for the child offender thus, 'Where the Court does not release on bail a child who admits to committing one or more offences charged against him, the Court shall remand the child to a State Government accommodation.

(2) A Court remanding a child to a State Government accommodation shall designate the authority which is to receive him and that State Government shall-

(a) in the case of a child who is already being looked after by a State Government, be that State Government; and  
(b) in any other case, be the Government of the State within which it appears to the Court that the child resides or in which the offence or one of the offences was committed.

(3) Where a child is remanded in a State Government accommodation, it shall be lawful for any person acting on behalf of the designated State to detain him.

(4) Subject to subsection (5) of this section, the Court remanding a child to a State Government accommodation may, after consultation with the designated State Government, require that the State Government complies with a security requirement, which is that the person in question be placed and kept in secure accommodation.

(5) A Court shall not impose a security requirement except in respect of a child who has attained the age of fifteen years, and then only if-

(a) he is 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

(b) he has a recent history of absconding while remanded to 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

(c) the Court is of the opinion that only such a requirement would be adequate to protect the public from serious harm from the child.

(6) Where a Court imposes a security requirement in respect of a child, it shall

(a) state that it is of such opinion as is mentioned in subsection (5) of this section; and

(b) explain to the child in ordinary language the reason the Court is of that opinion, and the Court shall cause a reason stated by it under paragraph (b) of this subsection to be specified in the warrant of commitment and to be entered in the Court register.

(7) A Court remanding a child to a State Government accommodation without imposing a security requirement may, after consultation with the designated State Government, require that the child complies with any such conditions as could be imposed if he were being granted bail.

(8) Where a Court imposes on a child any condition as is mentioned in subsection (7) of this section it shall explain to the child in ordinary language the reason it is imposing the condition, and the Court shall cause a reason stated by it under this subsection to be specified in the warrant of commitment and to be entered in the Court register.

(9) A Court remanding a child to a State Government accommodation without imposing a security requirement may, after consultation with the designated State Government, impose on that State Government requirements-

(a) for securing compliance with any condition imposed on that person under subsection (7) of this section; or

(b) stipulating that he shall not be placed with a named person.

(10) Where a child is remanded to a State Government accommodation, the Court may-

(a) on the application of the designated State Government, impose on that child any condition as could be imposed under subsection (7) of this section, as if the Court were then remanding him to such accommodation; and

(b) impose on that State Government any requirement for securing compliance with the condition so imposed.

(11) Where a child is remanded to a State Government accommodation, the Court may, on the application of the designated State Government vary or revoke any condition or requirement imposed under Subsections (7), (9) or

(10) of this section

By Section 220, 'No child shall be ordered to be-(a) imprisoned; or (b) subjected to corporal punishment or (c) subjected to the death penalty or, have the death penalty recorded against him. Nevertheless, a child offender may be imprisoned if according to Section 222, 'Notwithstanding anything in this Act to the contrary, where a child is found to have attempted to commit treason, murder, robbery or manslaughter, or wounded another person with intent to do grievous harm, the Court may order the child to be detained for such period as may be specified in the order. (2) Where an order is made under subsection (1) of this section, the child shall, during that period, notwithstanding anything in the other provisions of this Act, be liable to be detained in such place and on such conditions as the Court may direct, and the child whilst so detained shall be deemed to be in legal custody.'

### **United Nations Convention on the Rights of the Child**

This convention has a total of 54 articles and has been ratified by almost all UN member states including Nigeria. The said Convention in Art 3 highlighted that the best interests of a child shall be a primary consideration. Under Art 6, it recognized that every child has the inherent right to life. Article 40 made elaborate provisions for a child that has infringed the penal law of the member state.<sup>25</sup> Art 37 protected the child from torture, deprivation of liberty, inhuman or degrading treatment and authorises such a child to prompt access to legal assistance among others and as well the right to challenge such before an impartial and independent authority.<sup>26</sup> In furtherance of the protection afforded a child by the UNCRC, the United Nations Guidelines for Juvenile Delinquency commonly known as the Riyadh Guidelines insisted that no child of young person should be subjected to harsh or degrading correction or punishment measures at school or in any other institution.<sup>27</sup> Emphatically, the guideline in Article 52 enjoined governments to enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons.. It further provided in Art 53 that legislations preventing the victimization, abuse, exploitation and the use of criminal activities of young persons should be enacted and enforced. Art 58 encouraged the training of law enforcement personnel to respond to the special needs of young persons' etc. It is clear therefore that the United Nation places much importance to the rights of children in criminal matters.

### **4. Challenges and Prospects to the Realisation of the Rights of the Child Offender**

This work has thus far shown that there are varied legislations concerned with the rights of children in Nigeria especially children that are in contact with the criminal justice system. The question therefore arises as to whether these rights are fully observed and or complied with. This will therefore lead us to the challenges that have bedevilled the rights of a child in the criminal justice system. These challenges include the poor implementation of laws. Poor implementation of laws in Nigeria has been the bane of most vital legislations in Nigeria. This could be caused by the bureaucratic nature of the Nigerian society. It could also be as a result of lack of political will from the policy makers. Outside the issue of poor implementation, there is the issue of corruption and poor commitment on the part of government to provide basic institutions for child justice administration. It is common knowledge that most of the states in the federation do not have family courts for the adjudication of matters involving children. Again most police formations across the country lack the special police unit charged with the welfare of children. It is not uncommon to see children detained at various police stations across Nigeria. Again the societal perception and awareness on child rights in Nigeria is a cause for concern. In Nigeria, people see children as people who are immature and who should not be considered before the taking any decision. Thus, the issue of the perception of the society about children affects the implementation of laws on children. The problem of bad governance in Nigeria has led to increase in delinquency. This increase in delinquency has overstretched the available resources for child welfare and in most circumstances this has posed a challenge to the issue of the rights of a child especially one in conflict with the criminal justice system. Matters concerning children are not in the exclusive legislative list. This has given rise to lack of adequate commitment by government with respect to matters concerning children, especially as regards funding. This should be addressed to ensure that matters concerning children get national attention. However, it is important to state that many States has adopted the CRA, which is a right step in the right direction. Though implementation is very poor, there are traces of attempts made in some States to that effect. There is therefore a serious call for the actualisation of the rights of the child offender and other categories of children in Nigeria through effective implementation of the law. Many government institutions and Non- governmental organisations are promoting this course.

### **5. Conclusion and Recommendations**

In this work, the researchers have analysed the rights of a child as it relates to the criminal justice system. It has highlighted the rights available in the Nigerian criminal justice system and how the law seeks to ensure that such rights accrue to the beneficiaries. It is really worrisome that children are not accorded these rights. Children are arrested and detained in police custody for long period of time, charged to regular courts and sometimes denied fair hearing, some children are sent to adult correctional institution thus foreclosing their right to rehabilitation and reformation and reintegration into the society due to reasons of lack or inadequate family courts, specialised police children's unit and correctional institutions for children. The child justice system is geared towards rehabilitation and rehabilitation in view of the mental and physical immaturity of the child. Adherence to the provisions protecting the rights of the child will enable the child to participate fully in his matter, have a fair trial, and ensure reformation. There is therefore a need for an imperative measure to be taken in the criminal justice system to ensure that children are saved from this clutter in order to have a better generation of Nigerians. It is recommended in this work that the provisions of the law shall be adequately implemented to the letters. This will in turn create a more balanced society where the rights of children are adequately protected.

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<sup>25</sup> See Art 40

<sup>26</sup> See Art 37

<sup>27</sup> Art 54 of the Riyadh Guidelines



This paper therefore recommends the establishment of family courts in every State to ensure that child offenders are not arraigned before the regular courts and tried under the regular criminal procedure to ensure that the purpose of child justice administration which is geared towards finding the reason for the delinquency and curing same as opposed to focusing on the offence committed and punishment is achieved. It is also recommended that specialised police units be established in police divisions to enable child suspects be properly handled and their rights respected at that very important stage of the criminal justice system to curb police excesses. It is recommended that the appropriate correctional institutions for child offenders as provided under the CRA be established in every State of the Federation to prevent the incarceration of children in regular correctional institutions and curb recidivism as well as security challenges in Nigeria generally. Government should Provide adequate funding and effective support and management for social welfare staff, assessors, and developmental officers which assist the Family Court and child correctional institutions in the adjudication of matters for child offenders and reformation of child offender One of the challenges is that these personnel are also civil servants in the ministry of women and children affairs as well as officers in court and correctional institutions. These personnel have vital roles to play in the Family Court and correctional institutions in determination of matters of child offenders and reformation and need for adequate number of these personnel and adequate funding is imperative. The legal Aid Services is also to be adequately funded by government to enable it represent the child properly. Adequate government policies and measures to address issues of juvenile delinquency in Nigeria by promoting good governance and provision of basic amenities to citizens to eradicate poverty is advocated. Advocacy and public enlightenment / awareness on the rights of the child offenders as provided under the laws should be carried out by the appropriate authorities and various child rights promotion groups and organisations. Judicial activism is advocated. The courts should always endeavour to ascertain the age of the child when in doubt of the age of the suspect standing trial before them to ensure that child offenders are not tried in regular courts. Personnel on the child justice system should undergo adequate training and restraining on child welfare and rights to ensure adequate compliance of the provisions of the CRA.