

Historical Ideas on Juvenile Justice System in Nigeria

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Abstract

This paper discusses ideas on the juvenile justice system in Nigeria. In Nigerian society, children are highly valued, and it is ensured that they are catered for adequately. In traditional society, they were socialized to internalize norms such as respect, obedience, helpfulness, solicitousness, and reciprocity, which facilitated interpersonal relationships (UNICEF, n/d). Children belonged not only to their biological parents but to all adults. Extended family played a significant role in the correction and disciplining of depraved children. Offending children were brought before the elders of the family or community for counseling and disciplinary action, within the family, correction or punishment was mainly beating. Excessive beating was regulated, as children who were being corrected by beating could run to any elder of the family and the beating would automatically stop. All these proved to be quite effective in ensuring that children conformed to the traditional norms and values of the community. Hardly would children be seen idly roaming about the town or village. Crime rates were relatively low as incidents of theft or robbery were few, while social vices like alcoholism, drug abuse, and prostitution among young people were virtually unknown.

Keywords: Crime rates, ideas, justice system in Nigeria, juvenile, social vices

INTRODUCTION

With westernization, urbanization, and industrialization, people started migrating to cities including young people and children who migrated to escape the harsh parental and extended family discipline and control. New social problems developed including overpopulation and the increasing neglect of the welfare of many children. The Second World War exacerbated this. By 1945, a large number of the children of soldiers serving with the British forces in the war started moving out of their villages to the main urban centers of Lagos, Ibadan, Enugu, and Kano not only in the search for economic betterment but also to search for their fathers who had joined the army. This resulted in an unprecedented influx of idle youths into the urban centers. Many of them had no means of livelihood and were uncared for. Expectedly, many resorted to crimes and delinquency. Other problems such as destitution, slums, diseases, and unemployment were foreign to us and therefore could not be dealt-with traditionally. The western way of dealing with such anti-social problems was adopted by introducing social welfare

services. The creation of approved schools and remand homes was aimed at rehabilitating and reforming juvenile offenders. To give legal backing to these provisions for juvenile reform and rehabilitation, the Children and Young Persons Act (CYPA) came into being in 1943. The CYPA guides the administration of the juvenile justice system which in turn constitutes one of the pillars of the Nigerian criminal justice system.

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Adewoye O. (1977) [1] said that the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and

Welfare of the Child (i.e. African Charter), define a child as a human being under the age of 18 years. The UN Convention includes a provision allowing for the definition of a child to be adapted to the laws of individual countries, which may establish an earlier age for reaching maturity or adulthood. The Beijing Rules, part of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also take into account the various economic, social, political, cultural, and legal differences among member states when defining the age range for juveniles. These concepts are designed to serve a specific function.

Ahire PT (1991) [2] wrote that the evolution of the country's legal system under this dispensation was born out of the colonial masters' desire to take control of "deprived and destitute" natives, including children, so that they did not constitute a threat or nuisance to the colonial order. Unfortunately, it is disheartening to acknowledge that since the end of colonialism, the various administrations in the country have either neglected or been unsuccessful in bringing about significant transformations in the nation's criminal justice system that would enable it to function as a tool for advancing security and justice, as well as safeguarding the human dignity and rights of citizens. The failure of these past governments to effect changes in the colonial forms of repressive legal and penal powers since independence has been adduced to the nature of the post-colonial character of the country. The view has been pressed that what took place on October 1, 1960 was not an end to colonial rule and the beginning of a new era of national independence in thoughts and deeds rather the event has been seen to mean a change of personnel from white colonialists to indigenous opportunists transmitting from colonialism to neo-colonialism. Wearing off the toga of colonial appellation, the new rulers in donning a new robe of native oppressors, their concerns had been to preserve the status ante in the new dispensation as it concerned public service culture and this could only be facilitated by calling to use the arsenals of repressive power, institutions, and privileges so transferred from the foreign interlopers. His book is useful to the researcher.

Ajomo MA and Okagbue IE (eds.), (1991) [3] explained that colonialism and neo-colonialism evolved as a political and economic order where the indigenous rulers continued to maintain and nourish colonial institutions and practices that were favourable to the former overlords to the detriment of their own people. This brings to the fore the need for progressive minded individuals and organisations to investigate all such vestiges in order to sensitize the public and effectively mobilize the society towards the restructuring and re-orientation of what it sees as moribund institutions and practices; in this case, the nation's work is further ventilated by global trends and changes that are making such initiatives imperative. Here comes into play the philosophy that guides the ideals of juvenile justice administration. When viewed against the background such ideals must have informed United Nations formulations on Human Rights as they borders on the rights of the child, further articulated in the provisions of the UNCRC Articles 37 and 40. I agreed to their opinion.

Akerele ME (1972) explained that there are many policies and legislation protecting children in Nigeria but the Children and Young Persons Act, which is now enacted in the states as the Children and Young Persons Law, is the major legislation on the administration of juvenile justice in the country. The enactment of the Children and Young Persons Act and the application of special codes (Penal Code and Criminal Code) and procedures in matters involving juveniles are meant to protect the child from the highly technical, cumbersome, and harsh nature of procedures applied in ordinary courts. Recently, Sharia law was extended to criminal matters in some states of the federation and this has implications for the administration of the juvenile justice system. His idea is useful and relevant [4].

Alemika EEO (1994) [5] discussed that the root of modern day treatment of juvenile offenders has been traced to the period of the industrial revolution and the religious and moral revival of the early 19th century. Until that period, both adults and children were subjected to the same laws and penalties that included harsh treatment such as flogging, imprisonment, and hanging. This was notwithstanding the fact that a presumed concession was granted to child offenders under the common law denoting that children below a certain age were presumed 'doli incapax' or incapable of committing crimes. This

realization was not however reflected in any general benevolence or concession towards children, but was rooted in the common law notion of ‘mens rea’ or a ‘guilty mind’ that was prerequisite to criminal culpability. It was in the given sense that the first part of the 19th century heralded movements for the reform of adult offenders and the crusade against slavery. By the middle of the 19th century, public conscience had been greatly galvanized and directed towards a ameliorative treatment of juvenile offenders.

Alemika EEO (2000) [6] said that “the aim of juvenile justice should be an emphasis on the wellbeing of the juvenile and to ensure that “any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offender and the offence. In its Rule 17, it further posits that the disposition of juvenile cases should be guided by consideration of “the needs of the juvenile as well as the needs of the society”.

Preceding the mentioned declarations, the preamble to the declaration of the rights of the child adopted by the General Assembly of the United Nations on 20 November, 1959, succinctly stated the reasons that informed the international body’s position. According to the declaration, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”. In the same vein, Article 19 of the UNCRC stipulates that: “State parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child” [7–13].

Alemika EEO and Chukwuma IC (2001) wrote that the contents of Articles 37 and 40 of the UNCRC deal directly with the treatment of juvenile offenders by the government and its juvenile justice agencies [14, 15].

These provisions serve as the heuristic for the handling of juvenile offenders by member nations of the United Nations. Other instructive international standards on juvenile justice include the United Nations Rules for the Protection of Juveniles deprived of their liberty, adopted by the U.N General Assembly in 1990 which is also premised on the belief that “the juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles”.

Other formal international conventions which are binding on the ratifying states and which also contain provisions on the administration of juvenile justice include the African Charter on the Rights and Welfare of the Child. The charter provides in Articles XVII (I) that “every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child’s sense of dignity and worth, and which reinforces the child’s respect for human rights and fundamental freedoms”.

Bartollas CB (1990) [16] opined that an assessment of the feasibility of the observance provisions in the trial and treatment of juveniles accused of violating the penal laws brings to the fore certain fundamental issues. For instance, even though, relative to the Nigerian setting, it has been noted that there are provisions for their observance in the Nigerian Constitution, several structural bottlenecks have also been noted to impede their enforcement. For instance, the prolonged military interregnum in the governance of the nation connoted the suspension of all constitutional provisions and rights or their violations by law enforcement and security agents with impunity.

It is also worth noting that the country inherited repressive criminal laws, law enforcement agencies, and penal practices. Thus, in spite of constitutional provisions, adult and juvenile offenders are also subjected to torture, inhumane and degrading treatment by the police and the prisons (Alemika and Alemika, 1994; Ayua and Okagbue, 1996; Alemika and Chukwuma, 2001: 33). In addition, the law enforcement and judicial bodies in the country are perceived to be severely under-resourced and ill-

prepared, leading to insufficient infrastructure, protracted trials, overpopulation, unsanitary and degrading conditions in police stations and correctional facilities, and other related issues. Alemika and Chukwuma (2001: 33) further add that these conditions are worsened by the reluctance and corruption that characterize bail practices by police and judges. As a result, several thousand people accused of minor offences are detained for months or years.

But, the more fundamental charge is that the juvenile justice legislation and administration in Nigeria have not been reviewed and coordinated to take into account the recommendations in the international standards and standards for the treatment of juvenile offenders. The children and young people are seen in this light [17–20].

Beccaria C (1963) commended the fact that the need to ensure that today's delinquents do not become tomorrow's criminals has led to the establishment of separate court systems, trial procedures, and treatment programmes for juvenile delinquents [21]. These arrangements are required to conform to the relevant United Nations rules and guidelines on treatment of offenders as well as the Charter and Conventions on Human Rights. The CYPA is Nigeria's efforts at meeting such international standard regulations.

The CYPA has its root to an ordinance of 1943, which has been subjected to several changes over the years such as Ordinances 44 of 1945; 27 of 1947; 16 of 1950 as well as the laws of Nigeria 131 of 1954; and 47 of 1955 included also is the Order-in-Council 22 of 1946. The afore-stated ordinances and orders were intended to be incorporated as a National Law, i.e., Cap 32 Law of the Federation of Nigeria and Lagos, 1958; thus provisions were made for their adoption as regional laws and later as state laws [22–27]. In due course, the law was extended to the eastern and western regions of Nigeria in 1946 by Order-in-Council no. 22 of 1946. The law was enacted for the northern region in 1958, and subsequently constituted the Children and Young Persons Law, Cap 21 of the Laws of Northern Nigeria (1963). Lagos State adopted the law in 1970 viz Children and Young Persons Law (Cap 26 of the laws of Lagos State). The Children and Young Persons Act (CYPA) deriving from the foregoing historical root thus remains the most important legislation in the country pertaining to the treatment of juvenile offenders and all discussions appertaining to children and juvenile matters in Nigeria so far are effluxes of the Children and Young Persons Act dating from 1958 [28–33]. In the remaining part of this section, we shall do a synopsis of the CYPA in respect of its provisions on the court systems, trial procedures, and treatment programmes for juvenile delinquents and assess the level of its conformity with the United Nations Standard as contained in CRC Articles 37 and 40.

Becker SH (1963) [34] emphasized that the neo-classical school of penology formed the background upon which separate treatment for juvenile offenders is premised. The juvenile court was then seen as a child of necessity. This was the recognition of the fact that the juvenile offender was a child of circumstance in need of care, education, and protection from the adult world. Thus, apart from insisting on the separation of juvenile delinquents from adult criminals to avoid contamination and stigmatization that would militate against their re-integration, re-orientation, and rehabilitation, criminal court terminology was expunged from juvenile court proceedings. The word "criminal" was replaced with the child or juvenile; arrest by custody; charge by petition; sentence or imprisonment by commitment.

Becker HS (1974) [35] The first children's court identified in the US was created by law on 1st July, 1899 in Chicago following the pressure mounted by the Chicago Women's Club and the Catholic Visitation and Aid Society. A second juvenile court was established in Colorado (Denver) in 1903 and as of 1908 juvenile courts were established in England, Canada, and Hungary.

Judges in juvenile courts are generally men and women experienced in family matters as well as child welfare problems. They are usually assisted by counsellors or social workers. In addition to judicial functions, juvenile courts also engage in ministerial or administrative functions relating to custody or

guardianship, adoption of minors, termination of parental rights, marriage of children, treatment or commitment of mentally defective children, etc. In Nigeria, many of these functions are handled by social welfare departments at the federal, state, and local government levels [36–41].

A point to note is that juvenile courts do not have jurisdiction over criminal offences such as armed robberies, committed by juveniles. Such cases are usually referred to adult criminal courts that has jurisdiction over them. However the age factor constitutes a big dilemma for the judges when confronted with such a case.

Bentham J. (1780) [42] argued that it is pertinent to note here that in Nigeria, there are no separate courts known as juvenile courts. Rather every magistrate court can be used as a juvenile court if and when the need arises as allowed by the chief judge of the state. Usually, when a juvenile case arise for hearing, the juvenile court constituted by the magistrate and two others known as assessors (one of whom must be a woman) sits in camera in a separate court room in the magistrate court or in the chambers of the magistrate. The proceedings of the court are not made public in a deliberate attempt to protect the identity of juvenile who appear before it, but the fact that the proceedings take place in regular court buildings traumatizes the juvenile and makes the objective impossible and therefore there are no legal or institutional arrangements for them. The impact of imprisonment of a parent on the children left at home was assessed. Most of the discussants reported that they could not describe the state of their children while some opined that the children were in the custody of their relatives.

CONCLUSION AND RECOMMENDATIONS

A review and analysis of the legislation, policies, and practice of the juvenile justice system in Nigeria will be presented. They point to a number of shortcomings in the philosophy, legal framework, administration, and facilities for the treatment of juvenile offenders.

The guiding philosophy for the juvenile justice system holds that children are immature and therefore should be treated humanely. In practice, the juvenile justice administration is more of punitive than reformatory and rehabilitative. The only law guiding the juvenile justice system is the CYPA, which was inherited from the repressive penal system of the colonial administration. Some of the provisions were found not to be compatible with the Articles 37 and 40 of UNCRC [43–46]. For example, Section 4 of the act empowers police officers to detain juvenile arbitrarily to indeterminate periods. Also the CYPA uses institutionalization as a major instrument for treating children in conflict with the law while UNCRC holds that it should be used as a last resort and for the shortest period of time.

The findings of the empirical data and focus group discussions indicate a high level of violations and abuse of the children's rights and gross inadequacies of the facilities and the services. The major findings are presented here:

- Children younger than 7 years were detained in police cells, remand homes, and prisons. Falsification of ages of children was perpetrated by both the police and parents in order to detain them in prisons and borstal respectively.
- Indeterminate and prolonged detention was instituted against juveniles who were mainly first offenders. Some of them were still detained even after discharge.
- Juveniles were detained in prisons due to inadequate provision of remand homes, approved schools and borstals. Those who were in prisons were not separated from adult criminals on the basis of age. They reported being indoctrinated by adult criminals who taught them how to steal and become armed robbers.
- It was observed that there were no juvenile courts in some of the states.
- Majority of the juveniles were handed over for arrest by their parents for being beyond parental control or truant. Only a small percentage of them were arrested for serious crimes.
- A significant proportion of them were awaiting trial persons (ATPs) due to violations of prompt trials of juvenile offenders and non-representation of the juveniles during court proceedings.

- Parents, guardians, and other relatives were not promptly informed when their wards were arrested.
- Gross violations of children's rights to care, protection, education, and vocational training while in detention were observed. There were gross inadequacies of educational and vocational programmes and personnel. Children complained of being compelled to confess to guilt, abused and tortured. Horse whipping and frog jumping were used as measures of corporal punishment.
- Poor feeding and bedding both in terms of quantity and quality.
- Poor and inadequate facilities dilapidated structures.
- Six babies were found to be in prison with their mothers. There were no legal or institutional arrangements for these children. The mothers reported that there were no special provisions for their health and nutritional needs.
- Statistics obtained on the annual returns of juvenile delinquency from 1994 to 1998 (except 1995) were found incomplete, as some states did not have any figures. However, 1996 recorded the highest number of arrests (556), and the number declined to 237 in 1998 [47–53].
- The majority of the children who had been discharged from custodial institutions were reported to have been alienated by the members of their communities.

Recommendations

In view of the present findings, the following measures will therefore be recommended:

Legislative and Legal Reforms

Many provisions of the CYPA were found to violate Articles 37 and 40 of the UNCRC and therefore they require amendments:

- The age of criminal responsibility should be raised from the current one, i.e., 7 years to about 10 or 12 years. Once a child is arrested, the police should conduct an investigation to ascertain the age of the child if in doubt. Parents, police officers, judges and prison officers should be discouraged from falsifying the ages of their children.
- Community-based preventive measures should be emphasized to take care of children at risk including those who are beyond parental control. A national crime prevention plan should be designed to emphasize social measures to prevent crime among young people. Sporting and recreational activities are to be encouraged among young children. Some NGOs are already involved in these activities with children but they are not adequate therefore more NGOs are being called upon to be involved in crime prevention of juveniles. Beyond parental control, truancy should be de-criminalized. Those who are in need of care and protection should be kept separately from those who commit crimes.
- Pre-trial diversion programmes that include pre-trial community service, vocational or life-skills training programmes, victim-offender mediation or family group conferences, etc. should be emphasized. Nigerian juvenile justice system should de-emphasize the use of involvement of police and prison custody. Detention should be as a last resort and for the shortest period of about 48 hours.
- Children in conflict with the law should be well represented during court proceedings and no evidence should be taken from a child in the absence of a parent, guardian, or social worker. All children particularly those who committed criminal offences should receive legal aids so that their rights will be well protected.
- On the arrest of a child, it should be the duty of the police to inform the parent or guardian.
- Juvenile offenders should not be detained in the same cells with the adult criminals as widely practiced despite the law and regulations against such practices. Monitoring groups should be established to monitor the activities of the juvenile justice agencies and ensure compliance.
- Institutionalization and detention should be avoided.

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