

Juvenile Justice in Nigeria: Guilty Until Proven Innocent

By

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Abstract

A legal analysis of the Nigerian child, under the Juvenile Justice System, encompasses an exposition of the legal, social and welfare requisites, from the government and the citizens, towards the best interest of the child. The statutory canopy erected with the ultimate goal of fostering and encouraging the child's happiness, security, mental health, and emotional intelligence need to be guided by the stakeholders in the administration of the system. Unfortunately, the reverse is the case in the Nigerian system. This leads to the summary conviction of the kid-offender by the society as well as the system. This paper reviews the pathetic, socio-legal predicament of the Nigerian child, with findings that espoused some legal framework which provides symbiotic synergy between the formal and informal sectors of the Juvenile Justice System. It seeks and provides the requisites for a more "child-friendly" legal regime that can offer better protection to the Nigerian child, and proposes the need for reviewing the sentencing options (called "disposition orders") by the courts.

Keywords: Administration, Borstal, Family, Juvenile, Justice, Rights.

Introduction

Juvenile justice is the branch of criminal law jurisprudence applicable to persons not old enough to be liable for criminal acts. In many common law jurisdictions,¹ laws on Juvenile Justice are applicable to persons below 18 years. The main goal of the Juvenile Justice System is rehabilitation in lieu of punishment of such offenders.

The Juvenile Justice System concerns three classes of children.

1. Children in conflict with the law.
2. Children in need of care and protection.
3. Children beyond parental control.

The system is administered through the security agencies as well as the Juvenile or Family Court. Where adults are arraigned with minors, this Court is *de-seized* of jurisdiction. The legal provisions, whether statutory or otherwise, enshrine rules by which state laws must comply with, with regard to juvenile court procedures² and penal measures. Plethora of enactments, continental, regional, federal, and state, were promulgated to address the challenges confronting the Nigerian child, from birth, through the infancy to adulthood.

The common denomination of these laws is to assist states and local communities with findings to be used in providing community-based, preventive services to children in danger of becoming delinquent, educational, and technical skill for post-custody survival. Where parental neglect is the causative factor, the Juvenile Court may seek out foster homes for the juvenile, treating the child as a ward of the court.

The Juvenile Courts exercise variety of sentencing decisions on young offenders. Classically, the disposition orders fall into custody and non-custody. While custodial sentencing confines a

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¹ The common law jurisdictions cover the continents of Africa, Europe, and Asia.

² As it will be considered later, the civil procedure is typically that of Magistrate Court Rules.

child into the Juvenile Home or Borstal Institution, the most conspicuous non-custody is probation.

It is trite that the Chief Judge of a state may make procedural rules for regulating the *modus operandi* in juvenile courts. However, this is not usually the case as rules of Magistrate Courts relating to their practice and procedure are still in use. For more than five decades since the enactment of the Children and Young Persons Laws of various states, no special rules of procedure have been made for Juvenile or Family Courts, a tragic situation mainly responsible for the formality of the court proceedings.

This paper is a review of the socio-legal predicament of the Nigerian child, and it seeks and provides the requisites for a legal regime that can offer real protection to the Nigerian child.

Methodology

This study explores three particular spheres, namely, a diagnosis of the extant laws on Juvenile Justice System, a prognosis of the current psycho-social situations of the Nigerian child and empirical findings, including recommendations, to address the *time-bomb*. Fortiori, the study scrutinizes the operational modules of the different stakeholders in the Juvenile Justice System in Nigeria, from the inputs of the security agencies, through the practice and procedure of the courts to the helplessness of the society, before proffering solutions to the challenges.

To do these, reliance is placed on primary and secondary sources of materials that include profiling personal and professional experiences with the children, their parents and rendering legal services (*pro bono*) to the young offenders in various Family or Juvenile Courts, especially in Ogun, Lagos, Oyo, and Kwara States. We also interviewed personnel in the system (the Police, Correctional Home officers and judiciary workers) and personal surveillance. It is pertinent to say that out of only three (3) Borstal Institutions in Nigeria (Kaduna, Ogun, and Kwara States), the writer accessed the three but could only extensively assessed two, Ogun and Kwara States, due to paucity of funds³.

Besides, data and resources from legal writers who have assiduously worked on relevant themes and related subjects of the research are used for purpose of reviewing the statistics and facts. Coupled with intercontinental, regional, federal and states legal instruments, the methodology employed in this study could be said to be formal and informal.

The judicial procedure or rules of juvenile court are not always adversarial⁴. It is an attempt to engage parents, social workers, and probation officers in the process to achieve pro-active results and protect the minor from participating in further crimes. However, serious crimes and repeated offences can result in committing juvenile offenders to prison, with transfer to state prison upon reaching adulthood with limited maximum sentences⁵.

In Africa, unlike in Europe, children retain an esteemed position, and adored. The disposition of parents, families and societies towards children is warm and anticipatory. In spiritual realm, they are divine gifts that should not be rejected. In Christianity, they are a "*heritage from the*

3 The writer has been privileged, since 2007, to render legal services (including counseling and rehabilitation) and coordinate professional efforts of other counsel in other states of the federation, to the young offenders charged with criminal cases (such as murder, manslaughter, armed robbery, rape, stealing, etc.) through the vehicle of Juvenile Justice Centre (JJC).

4 although the minor possesses right to legal representation by a lawyer.

5 See section 35. of the Borstal Training Institution Act, Laws of Federation of Nigeria, 2004.

lord”⁶ while Islam also illustrates them as “adornment”⁷ that should be given all requisite aid to be upright, healthy, and decent beings.

While some African ethnics position children as demi-gods or the reincarnation of deceased relatives as depicted in Yoruba names such as Babatunde (“father has returned”), Iyabo (“mother has come back”), or Malomo (“don’t go again”), others especially in some Igbo communities, twins and physically challenged kids were often killed or abandoned to die. Among the Kagovo of Zaire province for example, a psychotic child is drowned at about the age of 4 years, or sometimes later. This time lag was to determine whether the child was actually deaf, dumb, blind, or imbecile. “It was believed that if aberrations like twins were not destroyed, the society will suffer retribution from the spirit of dead ancestors, ruler and sky gods”.⁸

In recent times, child maltreatment has taken modern garb in the forms of scarification (e.g. deformative tribal marks), paedophilia, with six out of every ten children - especially girls – enduring the trauma of sexual and physical violence⁹, denial of protein-rich food like eggs (with the myth that such a child will become a thief!), gender selection¹⁰ and discrimination (in relation to education, provisions, and attention), etc.

Who is a Juvenile?

Prior to the creation of juvenile courts, children under the age of seven were never held responsible for criminal acts. They were considered incapable of nursing the necessary criminal intent. Children between the ages of 7 and 14 were generally thought to be incapable of committing a criminal act, though this position could be disproved by establishing that the child knew the act was a crime or would cause harm to another and committed it anyway. Children over the age of 14 could be charged with a crime and handled in the same manner as an adult. Today, all states set age limits that determine whether a person alleged of a crime is treated as adult or as a juvenile.

Under the Common Law, seven is the age of reason. Children under this age are presumed incapable of committing a crime as a result of their not having reasoning ability to understand that their actions violate the acceptable norms in the community. As said earlier, children between the ages of seven and fourteen are presumed incapable of committing a crime, but this presumption could be overruled by evidence, such as the child having possession of the gun immediately after the shooting. The rebuttable presumption for this age group is based on the assumption that, as a child grows older, he or she learns to distinguish right and wrong. A child over the age of fourteen is considered to be fully responsible for his or her conducts¹¹.

Working with a population of cognitively low-functioning special needs in Borstal Training Institution and Juvenile Correctional Homes in Nigeria is quite tasking and compensatory¹². The troubled society constantly reminds one that there are problems with juvenile violence in

6 Psalm 127:3-3.

7 Qur’an 18:46:1

⁸ Maru H.M, Kathuku D.M, Ndeti D.M. Psychiatry Morbidity among Children and Young Persons Appearing in the Nairobi Juvenile Court, Kenya. East Afr Med J. 2003 Jun; 80(6):281.

⁹ “Nigeria Children Suffer Sexual, Physical Violence”, The Nation, 24 September 2016, page 46.

¹⁰ in an age when a girl-child, Faizal Abubakar Sani, from the educationally disadvantaged North of Nigeria (Kano), got A1 in all her science-related subjects of West African Senior School Certificate Examination (WASSCE).

¹¹ On ascertaining the age of young offender, see the cases of *Guobadia v The State* (2004) 6 NWLR (part 869) page 360; *Modupe v The State* (1088) NWLR (part 87) page 130, also reported in (1988) 9 SCNJ page 1; *Okara v The State* (1990) 3 NWLR (part 140) page 536.

¹² Employing the NGO, Juvenile Justice Centre (JJC), more than forty juvenile criminal cases, including capital offences, are retained annually.

Nigeria¹³. Increasing rate of juvenile violence is a national concern that focuses on punishment and extraordinarily little on prevention or intervention. With more than one fourth of Nigerians under the age of 18, the court system distinguishes juvenile delinquents from adult criminals on the assumption that juveniles are less culpable and more responsive to positive behavioural change than adult offenders, basically by virtue of their socio-cognitive innocence.

It is necessary at this juncture to dwell on the term, “Juvenile” as conceived in law.

- a. The Black’s Law Dictionary 5th Edition at Page 779 defines Juvenile as:
“A young person who has not yet attained the age at which he or she should be treated as an adult for purposes of criminal law..... A term which may be, though not commonly, is applied to a person who has not reached his or her legal majority for purposes of contracting, marrying etc. In law the terms “Juvenile” and “minor” are usually used in different contexts; the former is used when referring to young criminal offenders, the latter to legal capacity or majority.”
- b. Section 2 of The Criminal Procedure Act¹⁴ defines a “Juvenile offender” as an offender who has not attained the age of seventeen years. Under the same section of the Act, it is ascertained that the following set of offenders come under the same heading:
 - i. **Infant:** a person who has not attained the age of seven years.
 - ii. **Child:** any person who has not attained the age of fourteen years.
 - iii. **Young Person:** a person who has attained the age of fourteen and has not attained the age seventeen years.

It is pertinent to note that Section 2 of the Children and Young Persons Law Vol. 1 Laws of Ogun State, 2006 is an *in pari materia* with the above definitions as it relates to who is a child or a young person.

- c. Section 1 (2) of The Child Rights Act also defines a child to mean a person who has not attained the age of eighteen years¹⁵.
- d. The Adoption Law of Ogun State also defines a Juvenile as a person under the age of seventeen years.

The age factor, under many laws in Nigeria, renders legal status; imposes certain liability or protects the child with some privileges. In law, liability for an act or omission is determined by a child’s age which may absolve him from criminal liability, alleviate his punishment or elevate stricter liability. Often, legal language relating to age is used interchangeably while some are also considered synonyms of one another. However, a deep analysis of such words and their usage relativity reveals the true sense about them. The words that readily come to one’s mind in any matter where age is pertinent in law are “age of majority” or adulthood, and “age of infancy or minor” While the age of majority may not necessarily represent age of adulthood, in the same vein, a minor may not adequately convey the same meaning with a child¹⁶.

Apparently, to clear the ambiguity, the constitution employs a different nomenclature entirely, “full age”¹⁷. A fundamental question is: Is “full age” the same as “age of adulthood” or “majority”? It could be examined from various laws that the intention of the lawmakers does

¹³ “Lad kills 10-year-old for Abusing Him”, The Punch, 31 December 2014, page 4.

¹⁴ Criminal Procedure Act.

¹⁵ Child Rights Act, CAP C 50, Laws of Federation of Nigeria, 2004.

¹⁶ In *State v Nwabueze* (1980) 1 NCR page 41, the young offender, less than 12 in age, allegedly caused the death of the deceased in the course of a fight and was charged with murder. He was discharged and acquitted on the ground that evidence adduced at trial did not established that he knew that the consequence, death, was wrong in law.

¹⁷ Section 27 (2) (a), Constitution of the Federal Republic of Nigeria, 1999 (amended).

not dwell on adulthood or maturity *per se* but rather focuses on the age of capacity which differs from one area of law to the other¹⁸.

As postulated above, under the children and Young Persons Law, a child is a person under the age of 14 years and young person means a person who has attained the age of thirteen years and is under the age of 18 years. Thus, above 18 years of age is an adult. In the same vein, the African Charter on Human and People's Rights defines a child as every human being below the age of 18 years while the United Nations Convention on the Right of a Child¹⁹ also presents a child as somebody below the age of 18 years. These two views, that is, domestic and international legal instruments on the age of a child, differ in that while the Nigerian law limits the age of childhood to 14 years the foreign law extends it to any age below 18 years.

A pertinent question is: where both local and international laws to which Nigeria is a signatory made contrasting provisions on the same subject matter, which of the two laws serve as precedent? This question seems to have been settled by the provision in *section 12 of 1999 Constitution* which says, "No treaty between the Federation and any other Country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly".

It may be argued further that in view of the fact that *African Charter on Human and Peoples Right* has become part of the Nigerian laws²⁰, its provision should be superior to any other local or municipal law, save the constitution whenever there is conflict. This is the position of the court in the case of *Abacha v Fawehinmi*²¹ when the Supreme Court held: "*The Constitution is Nigeria's supreme law, and all other laws, including the African Charter on Human and Peoples rights are subordinate, not super-ordinate to it. Nonetheless, the African Charter on Human and Peoples Rights is special in status relative to other national laws and cannot be superseded by other national laws*".

It is therefore submitted that for all intent and purposes where age of childhood is in issue, anybody less than 18 years of age should be considered a child or minor to be in line with the provisions of the *African Charter on Human and People's Rights*.

What is Juvenile Crime?

In its simplest connotation, crime is any specific act or omission defined as such by a written law by which society, through the state, has provided a formal sanction. Kinds of offences or crimes, whether committed by adults or juveniles, are classified by the gravity of same. A felony is the most grievous offence, punishable by a sentence to a state institution (Borstal Institution or adult prison). Felonies generally include violent crimes, sex offences, and many types of drugs and property infractions.

A misdemeanour is a less serious offense for which the offender may be sanctioned with probation, detention (in a juvenile facility or jail), a fine, or some combination of these punishments. Misdemeanours generally involve crimes like assault and battery, petty theft, and public drunkenness. An infraction is the least serious offence and is punishable by a fine. Many traffic offences are considered infractions. Juveniles, like adults, can be arraigned with a felony, a misdemeanour, or an infraction. In most states of the federation, a juvenile charged with a serious crime, such as capital offences of robbery or manslaughter, can be transferred to criminal court and tried like an adult.

¹⁸ Despite the good intention of the policy makers in providing legal framework for juvenile justice, their arbitrariness is demonstrated by not furnishing consideration for the biopsychology of a child over mere computation of figures-age!

¹⁹ See, also, Rule 5.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (known as Beijing Rules), adopted on 29 November 1985.

²⁰ by virtue of Cap 10 Laws of the Federation of Nigeria 2004.

²¹ *Abacha v Fawehinmi* (2000) 6 NWLR (part 228).

Legal reformers concerned about the harsh treatment of children have advocated the establishment of a separate judicial system for juveniles. The philosophy behind juvenile court is that children in confrontation with the law should be helped in lieu of punished. Essential to the idea of juvenile court was the principle of *parens patriae*²². This means that instead of lawyers fighting to decide guilt or innocence, the court would act as a parent or guardian interested in the welfare of the child²³.

Today, every state has established a separate court system (Family Court, Area Court or Magistrate Court) for juveniles, generally handling two different sets of juveniles: the delinquent offender and the status offender. A delinquent child is one who has committed an act that is a crime for adults under federal, state, or local law.

Status offenders, on the other hand, are youths who are considered unruly or beyond the control of their parents or legal guardians. Status offences are not crimes but illegal misdemeanours that can only be committed by juveniles, which include running away from home, skipping school, refusing to obey parents, or engaging in certain anti-social behaviours such as drinking alcohol while under the age of majority²⁴.

Comprehending crime and delinquency is a difficult task. A plethora of factors contribute to the understanding of what leads to delinquent behaviour. While bio-psychological indicators may be appropriate when explaining crime and delinquency, perhaps social factors can best x-ray juvenile delinquency. Crime is such a peculiar subject that the explanation of this social malaise is just as diverse. This perspective considers delinquency as a product of the social environment in which a juvenile exists. The refrain, “society made me do it”, can best explain this notion^{25/26}. These children are in need of protection because they are abandoned by both the parents and the society. Often, the victims of their criminal endeavours are the family members, making it seem morally wrong to report to the authorities for remedial measures.

The public appears much more sensitized of juvenile crime today than in the past; this is due in part to more thorough reporting techniques and greater emphasis on publicizing delinquent acts in the social media²⁷. Unofficial reports, however, suggest that a higher percentage of juveniles are involved in minor criminal behaviour; grossly under reported common offences include exuberance, stealing, underage drinking, and using marijuana.

The juvenile justice system has evolved over the years based on the premise that juveniles are different from adults and juveniles who commit criminal acts generally should be treated differently from adults. Separate courts, detention facilities, rules, procedures, and laws were created for juveniles with the intent to protect their welfare and rehabilitate them, while safe guiding public safety. The juvenile justice system is a huge web of persons and authorities that process almost one third of a million children and young persons annually at a significant cost.

22 Rights of the Child in Nigeria Report on the implementation of the Convention on the Rights of the Child by Nigeria. A report prepared for the Committee on the Rights of the Child 38th Session; January 2005; Geneva.

23 Section 2, Children and Young Persons (Harmful Publications) Law, CAP C11, Laws of Lagos State, 2004; section 4, Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003.

24 “Street Children and the Juvenile Justice System in Lagos State of Nigeria”: A Nigerian Report. Human Development Initiatives, 2004.

25 Ogunlesi A.O.: “Nigerian Juvenile Offenders: A Case Controlled Study”, Med. Law, 1991; page 369.

26 This is an escapist persuasion to win the hearts of the state penal officers.

27 Nigeria: Focus on the Administration of Juvenile Justice. Humanitarian News Analysis of the UN Office for the Coordination of Humanitarian Affairs, at www.irinnews.org/reports, visited on 23 September 2016.

Understanding the system needs a baseline knowledge of the statistical trends that shapes its ability to function and the roles perform by the various segments of the system.

The root agents of crime are many. An aspiration of confronting those causes fruitfully requires multi-dimensional strategies, which can be implemented by families, schools, communities, and various levels of government. The scope of efforts involved ought to be as broad as the society. Only 2 percent of juveniles arrested eventually are placed in state institutions²⁸. While the state is a bit player in the day-to-day staging of the juvenile justice system, it has the ability and responsibility to carve out a powerful role as a policy leader and facilitator for local solutions.

Statistics demonstrate the disproportionate impact of those under the age of 18 on criminal activity; while comprising roughly one-sixth of the nation's population, they make up a full one-quarter of all people arrested and account for nearly one-third of the arrests for the seven crimes in the uniform crime index (homicide, rape, robbery, aggravated assault, burglary, vehicle theft and larceny). Statistics indicate that between 30 and 40 percent of all boys growing up in an urbanized area in Nigeria will be arrested before their 18th birthday for various offences. Although juveniles account for only a small proportion of the total population, older juveniles have the highest arrest rates of any age group²⁹.

Furthermore, studies of criminal careers have demonstrated that one of the best predictors of sustained and serious adult criminality is the age of initiation and seriousness of the delinquent career. For many minors, the crude experience of the Nigerian juvenile justice system - being arrested by a law enforcement officer, facing their perturbed parents, having to spend at least a night in messy detention, interacting with a probation officer or a disturbed judge is sufficient to restrict them from offending again. Juvenile delinquency or crimes are engendered by, *inter alia*, the following circumstances:

The structure of the first informal school of every child, the family, has undergone social changes in the last three decades. More families are becoming single-parent households or "full-time", working parents; accordingly, children are likely to have less supervision at home unlike what was common in the traditional family structure. This lack of parental direction is an influence on juvenile crime progression³⁰. Other identifiable causes of delinquent acts associated with the family challenge include frustration, the increased accessibility to social media, and the growing incidence of child abuse and child neglect. All these conditions tend to increase the probability of a child committing a criminal act.

Family institution is an important consideration in the explanation of juvenile delinquency. It is crucial and critical to a child's social development and healthy growth, as much of what a child learns came through the family or guardians. A criminal parent can teach their child adverse lessons about life when such a child views or witnesses their parent's delinquent behaviour. This factor includes a history of criminal activity in the family. It also includes juveniles who have been subject to sexual or physical abuse, neglect, or abandonment. It is also manifested by a lack of parental control over the child.

²⁸ This is patently seen from the fact that Nigeria, with juvenile offenders constituting 1/3rd of prison inmates, has only 3 Borstal Institutions in Abeokuta, Ilorin, and Kaduna.

²⁹ Retrieved from A. A. Adeyemi's "Administration of Juvenile Justice and the Treatment of Juvenile Offenders in Nigeria", a presentation at the International Seminar on Administration of Juvenile Justice and Treatment of Offenders, at the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), Fuchu, Tokyo, Japan, November 14-19, 1983.

³⁰ It is trite from personal relation with juveniles, that, "an idle hand is Devil's workshop".

Social factors that bring about changes in the Nigerian social structure may indirectly affect juvenile crime rates. For one, recession in the economy that led to fewer job opportunities for youth and rising unemployment in general. At tender age, many children become independent socially and aspire to experiment with adult endeavours in order to boost their ego and economic wellbeing.

Peer pressure also teaches an adolescent child criminal behaviour. If children feel as though they are viewed as delinquent, then they will act as such and find a sense of self-esteem by doing so; it is a syndrome of “if you cannot beat them, you join them”.

Failure in school also manifests itself at an early age. Failure at school includes poor academic performance, poor attendance, or more likely, expulsion or dropping out of school. With the distorted and perverted notion that one may not need academic degree to be successful in life, this is an important factor for predicting future criminal behaviour. Leaving school early reduces the chance that juveniles will develop the social skills that are gained in school, such as learning to meet deadlines, following instructions, and being able to deal constructively with their peers.

Establishment of the Juvenile or Family Courts

There is no direct creation of Juvenile Courts under Section 6 of the 1999 Constitution (as amended) which vests Judicial Powers in the Court, but they come under such courts which may be enacted under Subsection 5 (J) and (K). Juvenile Courts according to the Black’s Law Dictionary, 5th Edition is a court having special jurisdiction, of a paternal nature, over delinquent, dependent, and neglected children.

This type of court is established under Section 6 of the Children and Young Persons Law, Ogun State for the purpose of hearing and determination of cases relating to children or young persons³¹. The courts are now designated Family Courts in Ogun and Lagos States, among others, to protect the rights of Juveniles³².

In order to determine the legal issues concerning young offenders, it is imperative to x-ray the subject in the prism of the law. That is, what are the extant positions of law in respect of the capacity, evidential weight, contractual obligations, etc of a child or young person?

Child and Legal Capacity

The consequences for age in deciding certain legal capacity of a young offender cannot be undermined. In the United States of America, almost the same in Nigeria, juveniles involved with violation of the law are treated differently from adults. However, this has not always been the case. In earlier times, children were thrown into jails with adults. Long prison sentences and corporal punishment were frequent. Some children were even put to death for their crimes³³.

³¹ It is disheartening to observe that many of the judges or magistrates hearing juvenile matters are not, though qualified by virtue of legal education and some post-call experience, competent enough to determine the cases. This writer, as a stakeholder in the juvenile justice administration and a voluntary teacher at the Borstal Training Institution, Adigbe, Abeokuta (between 2007-2012) and a visitor to the Borstals in Ilorin and Kaduna, is a living witness to the excruciatingly painful conditions of vulnerable kids in some Borstal Institutions who are “sentenced” to more than 3 years statutory limit enshrined in the law, e. g. section 33, Children and Young Persons Law, Ogun State.

³² Some Correctional Homes are also used as Transit Homes for psychotic adults in state custody. An instance is the Juvenile Correctional Home, Asero, Abeokuta, before 2016!

³³ Abram K.M, Choe J.Y, Washburn J.J, et al. “Suicidal Ideation and Behaviors among Youths in Juvenile Detention”, *Journal of American Academy, Child-Adolescent Psychiatry*, 2008, page 291–300.

The juvenile courts established under the Children and Young Persons Law, have jurisdiction only to try children and young persons, while lacking jurisdiction to try adults³⁴. The law states that where a person is brought before any court and it appears to the court that the person is a child or young person the court shall make inquiry as to the age of that person and may even require:

1. The production of birth certificate.
2. Or order direct evidence as to date of birth- e.g. parent's relatives.
3. Or a certificate signed by a medical officer in the service of the government giving opinion as to his age, such shall be deemed to be the age of the person.

This reiterates the trite fact that resolution of age issues is evidential and premised upon the understanding of the child than of his age³⁵. Be that as it may, it is clear that the legal capacity to give evidence in court is not based on the age but upon the satisfaction of two basic tests. Firstly, ability to understand the nature of oath and secondly, ability to understand the need to speak the truth³⁶.

The followings are some legal implications on the age relevance to legal ability and liability in relation to children and young persons:

Capacity to Contract Marriage

Section 3 (1) (e) of the Matrimonial Causes Act 1970 provides: "a marriage that takes place after the commencement of this Act is void and not otherwise, that is to say where; either of the parties is not of marriageable age". This implies that a marriage is void where either of the parties is less than "prescribed age". However, there is no statutory flavour to garnish what a marriageable age denotes. Many legal opinions informed the argument that our legal system is bound by the common law rule. The age of marriage was fixed in England for the first time in 1929 and by the statutory doctrine of general application, this law is inapplicable to Nigeria as same came to effect after 1st of January 1900. Therefore recourse may be had to the common law rule on the age of marriage which stipulates 14 years and 12 years for boy and girl, respectively³⁷.

The palpable gender discrimination is conspicuous in this common law rules as the age of capacity to marry differs according to sex. Customarily, the two given ages, i.e. 12 and 14, are not only ambiguous but unrealistic in view of the rapidly growing cognitive and physiological status of the sexes, especially female, as against the misplaced cacophony on child abuse and early marriage. It is an illogical absurdity to appraise a person who is married and perhaps has children at the age 12 or 14 years to fall below the definition of adulthood in Africa, which is in contrast to the English Common Law principles. The crux of international law is that the fundamental requisites for marriage should be maturity which, in this technologically advanced age, can be attained at an earlier age than 18 years.

³⁴In Section 36 thereof.

³⁵ See Section 209 of the Evidence Act, CAP E14, laws of the Federation of Nigeria, 2004; *Shazili v State* (1998) 5 NWLR (part 93) 164.

³⁶ See, also, *Onyegbu v State* (1995) 4 SCNJ 275 at 290. In the case of *Olaleye v The State* (1970) 1 ALL N.L.R., 300, it was the dictum of Coker J.S.C that "...there is an absolute prohibition to a conviction by virtue of the unsworn evidence of a person of tender age unless the evidence be corroborated. Again, the offence of which the Appellant was charged falls within the provisions of section 282 (5) of the Evidence Law, Cap. 40. It is manifest therefore that in order to ground a conviction, the unsworn evidence of the complainant must be corroborated. In both cases, the requirement of corroboration is statutory".

³⁷ Hanawalt, Barbara A.: *The Ties That Bound: Peasant Families in Medieval England* Oxford University Press, 1986. Pg 96.

A legal system that enshrines no provision for age of “having sex” but speculates on age of marriage can be viewed as myopic and parochial, thereby crucifying the innocence of the minor while turning blind eye to the inevitable hormonal chemistry of the body³⁸. Since a law is yet to be promulgated to prescribe the age of marriage, it is certain that this conclusion of common law may be binding. Marriage is an important concept to every citizen’s life as it influences the social and biological status of individual. Thus, the age of capacity to marry should be the same as age of adulthood.

Capacity to Give Evidence

Generally, both adult and children are competent to testify before a court of law. Such evidence may be admissible save where the person giving evidence has defective intellect as a result of infantile behaviour, senility or mental infirmity. Under the evidential rules, the unsworn evidence of a child is admissible as sworn evidence of an adult where the court can satisfy itself that the child could comprehend what he is doing, or he possesses sufficient intelligence to justify admitting the evidence and understand the obligation of speaking the truth.

The age of adulthood or minor is not contained in the Evidence Act but it can be inferred that where the age of individual before court is in issue, the court is obliged to ascertain the age of such person. In the case of *State vs. Njoku Obia* Araka J (as he then was) held that although there is no definition of a child in section 154(1) and 182 (1) of the Evidence Act, a person of 15 years old is a child who could not understand the gravity of an oath or the duty of speaking the truth³⁹. Empirical evidence has shown, however, that courts are quite reluctant in believing or acting on the evidence of a child even if such evidence is admissible in law⁴⁰. Without furnishing deserved credence to “the best interest of the child”, this writer has seen (and is still seeing!) plethora of cases in which the family courts just conclude that such a minor litigant would do better if sent to Juvenile Correctional Homes or Borstal Training Institutions and thus, crucifying justice on the altar of extraneous factors⁴¹.

Contractual Capacity

Under the common law, persons under the age of 21 are considered as “infants” and have limited capacity to contract. The general principle is that a person below the age of 21 years is incapable of entering into a contract and where he does, he is not bound by the terms of such contract because he does not have capacity to contract. This common law principle is further strengthened by the Infant Relief Act, 1874 under which contracts made by an infant is rendered voidable at his option i.e. only binding on the other party. The said Act put the age of contractual capacity at 21. The Infants Relief Acts is applicable in Nigeria being a Statute of General Application in force as of January 1st 1900.

In the notorious case of *Labinjoh vs. Abake*⁴², the full court finally laid the contentious issue to rest on the age of contractual capacity in Nigeria. An adult trader supplied goods to 18-years-old defendant and was restrained from suing for recovering the price of the goods, on the ground that the defendant was an infant and therefore not bound by the contract. Prof. Itsey Sagay declared thus: “In any contractual transaction governed by English law, whether statutory, common law, received or local, the age of majority is 21 and for all practical purpose this is the contractual age in Nigeria”⁴³.

38 <https://www.researchgate.net>, retrieved on 26/3/2018.

39 *State vs. Njoku Obia* (1974) 4 E.C.S.L.R. 67.

40 Section 209 of the Evidence Act has altered the provisions on the reception of a child’s testimony and now makes a distinction between the evidence of a child who is under 14 years old and a child who is 14 years of age and above.

41 This non-judicial and injudicious practice gives birth to over congestion of the Homes and Institutes.

42 (1924) 5 NWLR 33

43 Nigerian Law of Contract, Spectrum Law Series, 2009, page 295). See, also, section 277 of the Child Right Act, 2003 and the Infant Relief Act, 1874.

To resolve that, in this silicon age when people under 21 years of age are graduates of tertiary institutions as professionals in various fields, are minors who are not liable for their contractual transactions, is nothing but illogicality and unreasonableness. It is legal extremism to hold this rule of received English law by Nigeria courts, especially when the English legal system itself has rectified the common law *lacuna* by other laws. For one, in the United Kingdom, the Family Law Reform Act 1969⁴⁴ has reduced the age of majority to 18 and amended the lexicon, “minor”, as an alternative to “infant”.

In order not to pronounce the young offender as guilty *ab initio*⁴⁵, until proven innocent by other circumstances, the Nigerian courts must shift their judicial basis and accept 18 as the age of contractual capacity with an enabling instrument since the decision in *Labinjo's case* (supra) still remains *locus classicus* on the subject.

Legal Rights of a Juvenile

The rights of a child under the law are decipherable from several legal and statutory provisions. The extant and the most codified of these is the Child Rights Act. Section 3 of the Act provides on the application of Chapter IV of 1999 Constitution:

“The Provision in Chapter iv of the Constitution of the Federal Republic of Nigeria, 1999, or any successive Constitutional provisions relating to fundamental rights, shall apply as if those provisions are expressly stated in this Law”.

While the Act is held in high esteem by all stakeholders in the juvenile criminal system, its provisions are, unfortunately, observed in default by both the government and the people, though it is believed that the legislation is the most pro-active enactment that has affected the Nigerian child in the nation’s legislative history. Prior to 2003 when it was made, there was not a single substantive Act containing the law on the child. The laws in relation to the child and the legal principles on child abuse and neglect could be found in various legislations.

Principally, the intendment of these laws is to provide protective canopy for the child against parental and societal exploitation, “*sexploitation*” and other abuse of the child rights and, *inter alia*, to prescribe the rehabilitation process and sanctions for offensive acts as well as to entrench certain rights for the child⁴⁶.

It therefore means that legal consequences of child abuse and neglect will naturally flow from the violation of the protective legislation and where there is an abuse, from the legal prescription for rehabilitation, the remedy, and the punishment. Among others, the following are rights and privileges guaranteed⁴⁷ by the Child Right Act:

1. Rights to survive and right to develop.
2. Every child shall have the right to survive and develop.
3. Right to name.
4. Freedom of peaceful association.
5. Freedom of thought, conscience, and religion.

⁴⁴ This law has persuasive force under Nigerian legal system.

⁴⁵ i.e. from the beginning.

⁴⁶ The overriding contemplation in parenthood, as well as in *in loco parentis*, is the “best interest of the child”. This divine principle is integrated into the CRA as the most important consideration in all actions concerning a child. As enshrined in the Act, the reach of the best interest of the child painstakingly extends to the child’s physical, mental, spiritual, moral, and social maturity. The expression is repeatedly mentioned in connection with the child’s involvement with the criminal justice system Unfortunately, neither the CRA nor the CYPL provided any detailed information on the practical meaning of the best interest of the child.

⁴⁷ These provisions are given subjective misrepresentations by courts, institutions, and the society. Nevertheless, a perusal of social realities of the provisions under the Convention on the Rights of the Child (to which Nigeria is a signatory) shows that they are generally used as a standard to check practices which harm children and infringe on their well-being.

6. Right to privacy and family.
7. Right to freedom from discrimination.
8. Right to the dignity of the child.
9. Right to Health.
10. Right to parental care, protection, and maintenance.
11. Right of the child to free and universal primary education, etc
12. Right of a child in need of special protection measures.

It is not in dispute that most of the aforesaid provisions are observed in default by those saddled with the administration of juvenile justice in Nigeria. A reflection of the lack of commitment to it is seen in the archaic provisions on violation of the rights which treat the violators with kid-gloves. For instance, the Children and Young Persons Law, Ogun State makes it mandatory for a juvenile to be provided with care and protection. It provides:

Section 33: "Power to bring before a juvenile court in certain cases."

- (1) Any local government, any police officer, or any authorized officer, having reasonable ground for believing that a child or young person comes within any of the description hereinafter mentioned:-
 - (a) Who is an orphan or is deserted by his relatives; or
 - (b) Who has been neglected or ill-treated by the person having the care and custody of such child; or
 - (c) Who has a parent or guardian who does not exercise proper guardianship; or
 - (d) Who is found destitute, and has both parent or his surviving parent undergoing imprisonment; or
 - (e) Who is under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have the care of the child; or
 - (f) Who is the daughter of a father who has been convicted code in respect of any of his daughter; or
 - (g) Who is found wandering and has no home or settled place of abode or visible means of subsistence; or
 - (h) Who is found begging or receiving alms, whether or not there is any pretence of singing, playing performing, offering in any street, premises, or place for the purpose of so begging or receiving alms; or
 - (i) Who accompanies any person when that person was begging, or receiving alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise; or
 - (j) Who frequents the company of any reputed thief or common or reputed prostitute; or
 - (k) Who is lodging or residing in house or the part of a house used by any prostitute for the purpose of prostitution, or is otherwise living in circumstances calculated to cause, encourage, or favour the seduction or prostitution of the child; or
 - (l) In relation to whom an offence under chapter 21 of the criminal code has been committed or attempted; or
 - (m) Who, having been born or bought within a state, would, but for the provision of the law relating to the legal status of slavery, be a slave; or
 - (n) Whose welfare is endangered by a dispute to which a parent or a guardian is a party.
 - (o) Who is otherwise exposed to moral danger, may bring that child or young person before a juvenile court.
- (2) The Court if satisfied that the child or young person comes within any of the paragraphs in subsection (1) may:
 - (a) Make a corrective order-
 - (i) Send him to an approved institution; or
 - (ii) Commit him to the care of any fit person, whether a relative or not, who is willing to undertake the care of him; or

- (b) Order his parent or guardian to enter into a recognizance to exercise proper care and guardianship; or
- (c) Without making any order, or in addition to making an order under either of the two last preceding paragraphs, make an order placing him for a specified period, not exceeding three years, under the supervision of a probation officer, or of some other person appointed for the purpose by the court.

Statistics, however, reveal that like adult prisons that are quite congested with the Awaiting Trial Mates (ATM), minor offenders in various Juvenile Correctional Homes and Borstal Training Institutions in Nigeria are spending far more than the statutory three years⁴⁸. Section 427 of the Act provides for methods of dealing with children and young persons charged with offences. Where a child or young person is arraigned by any court, and the court is satisfied of his guilt, the court shall take into consideration the manner in which, under the provisions of this or any other Law enabling the Court to deal with the case, the case should be dealt with, namely whether –

- (a) By dismissing the charge; or
- (b) By discharging the offender on his entering into a recognizance; or
- (c) By so discharging the offender and placing him under the supervision of a probation officer; or
- (d) By committing the offender to care of a relative or other fit person; or
- (e) By sending the offender to a Government establishment or an institution; or
- (f) By ordering the offender to be caned; or
- (g) By ordering the offender to pay a fine, damages, or costs; or
- (h) By ordering the parent or guardian of the offender to pay a fine, damages, or costs; or
- (i) By ordering the parent or guardian of the offender to give security for his good behaviour; or
- (j) By committing the offender with the approval of the Governor, to custody in a place of detention established under the Children and Young Persons Law; or
- (k) Where the offender is apparently fourteen years old or upwards, by sentencing him to imprisonment; or
- (l) By dealing with the case in any other manner in which it may be legally dealt with.

This provision is observed in default not only by the security agents who apprehend the young offenders and decide most of their cases at the preliminary stage but also the courts that are not well trained in juvenile criminal system. A visit to any Juvenile Correctional Home in a state or Borstal Training Institution will graphically reveal the excruciatingly painful conditions under which the children are struggling to survive.

Conclusion

It can be deduced from this work that rather than assistance in relieving Juvenile delinquency the Juvenile Justice system in Nigeria increases and aggravates the challenges in the system. The population of juvenile offenders is rising daily on our streets because the stakeholders, including parents, schools, government and non-governmental organizations, are not really committed. Notwithstanding the challenges confronting the system, Nigerian homes are congested without proper plan for the future of the children while the minors are constrained to enter the labour market prematurely. Sentiments, instead of law, adjudicate in the family courts, coupled with paucity of funds from the government and misappropriation of the scarce resources by the personnel.

Recommendations

⁴⁸ For instance, as of June 2019, the Borstal Training Institute, Abeokuta, Ogun State, Nigeria, has not less than 350 boys as inmates, majority having various criminal allegations in many Family and High Courts. Out of these boys, almost half have spent about 3 years in custody while a few have spent more than the statutory limited time.

Juvenile Justice in Nigeria: Guilty Until Proven Innocent

It is our profound conviction that there is still hope in reviving the juvenile justice system in Nigeria if all hands are on deck to salvage the predicament. Children should be taught both at home and in schools informed decision-making processes. They should learn that, in theory and in practice, there are swift consequences for poor decisions and both tangible and intangible rewards for good decisions.

To reinforce these lessons, all of the actors in the juvenile justice system, from the social services or social welfare worker, the policeman on the beat, to the judge in juvenile court, must strive to make the system work more effectively in providing consequences at all levels of criminal severity.

To start with, the family formation should adopt the truth in the proverb that “*prevention is better and even cheaper than cure*”. Also,

1. I recommend attitudinal change for our elders to serve as good examples to our Juveniles.
2. We should endeavour to be friendly and show love to the destitute so as to reincorporate them into the system.
3. Parents should be ready to build and stand on good homes as a panacea to training up our children.
4. We should put a check to unnecessary child procreation.
5. Awareness, enlightenment and educating the populace on the purports of the Child Rights Act should be embarked upon.
6. Parents should as well be educated on the provisions of our various laws on provision of necessities for the children and the punishment that awaits them if they fail.
7. Governments at all levels should also be ready to play their roles at establishing and promoting a virile juvenile administration system in this country.

Prevention works better and is cheaper than treatment. The fact is that prevention and early intervention hold far more promise than good rehabilitation programs for actually reducing crime. Children are much harder to fix once they have become criminals than they are when they first show signs of deviant or anti-social behaviour.