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Children in Penitentiary: Legal implications

Chinazor Queen Umeobika, PhD*

Abstract

Children are being incarcerated in Adult correctional centres across Nigeria, thereby depriving them of their right to child justice administration anchored on reformation and rehabilitation. This aberration in the Nigerian Criminal justice system spawns a lot of concern in view of its devastating and perilous effects on the children and the society by extension. Incarceration divests the children of rights to life, health, education and dignity of human person. It further advances recidivism, moral decadence and insecurity in the society. This paper examines this pertinent issue which is prevalent in Nigeria and recommends an immediate government intervention towards establishing a proper child justice administration with sustainable correctional institutions for children in every State of the Federation for proper treatment of child offenders in line with international standards and trends.

Keywords: Children, Children in Penitentiary, Correctional Institutions, Rights, Child offenders, Reformation, Re-integration.

1. Introduction

No society is devoid of crime, however, treatment within the criminal justice system differ for children. This is because children are mentally and physically immature and thus more amenable to reformation. Again, child's nature of dependency on adults can negatively influence the behaviour of the child as much as it does positively. Furthermore, the prevailing deplorable economic situation in Nigeria is greatly intensifying the problem of juvenile delinquency. It is based on these premises, that the child justice system is more concerned on the cause of the child delinquency and possible reformation, than on the offence committed. Despite the provisions of the law on the contrary, incarcerations of children thrive in the criminal justice system in Nigeria.

In view of the fact that children are vulnerable members of the society resulting from their immaturity and dependence on adults as stated earlier; adequate legal and social protection is very important for their development and welfare. However, the incessant undermining of child's rights thriving in Nigeria negates the principle of securing the best interest of the child as provided under the Laws.

Protection of the child is a global concern. The International concern to specifically and sufficiently protect children recognised as having special needs for protection was captured in the Geneva Declaration on the Rights of the Child[1] to the effect that mankind owes the best that it has to the child, and that the child must be given the means requisite for its normal development, both materially and spiritually. Thereafter, the United Nations Declaration of the Rights of the Child, likewise provided in its preamble that: 'the child by reason of his mental immaturity needs special safeguards and care including appropriate legal protection before as well as after birth, and that

*Chinazor Queen Umeobika, PhD, Lecturer, Faculty of Law, Nnamdi Azikiwe University, Awka, Nigeria. cq.umeobika@unizik.edu.ng. Tel: 08035018582

[1] The League of Nations Resolution adopted in Geneva, Switzerland, in September 1924.

mankind owes the child the best it has.[2] Other International Laws such as the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1996 (ICCPR), the International Covenant on Economic and Social Rights 1996(ICESR) among others, made provisions for the protection of human rights, the child inclusive. The United Nations Convention on the Rights of the Child[3], as well as regional laws such as the African Charter on the Rights and Welfare of the Child further protects the child. To key in to international standard, Nigeria domesticated the Convention and the African Charter as the Child Rights Act (CRA).[4] Prior to the enactment of the CRA, the Children and Young Persons Act (CYPA)[5] subsisted in Nigeria alongside the provisions of the Constitution and other extant laws which made provisions for rights, welfare and development of the child. It can be described as really worrisome that notwithstanding these legal credits in Nigeria, child's rights are undermined. The way and manner at which matters concerning child's rights and welfare are not given effective and speedy attention attests to it. For example, the continual imprisonment of children in Nigeria is an aberration of the provision of the CRA and the Administration of Criminal Justice Act; which prohibits child imprisonment. Accentuating the legal rights of children in penitentiary within the present criminal justice system in Nigeria is the crux of the discussion herein.

2. Conceptual Framework: Who is a Child/Child in Penitentiary in Nigeria?

The definition of a child in Nigeria depends on the context it is used. According to the Black *Law Dictionary*, a child is a person under the age of majority; and at Common Law, a person who has not reached the age of fourteen; a boy or girl; a young person; a son or a daughter'.[6]The Oxford Advanced Dictionary described a child 'as a young human who is not yet an adult'.[7] In Nigeria, the Criminal Code has its definition based on criminal responsibility 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 is not criminally responsible, unless it is proven that such a child at the time of making the omission or committing the act had the capacity to understand his action'.[8] Similar provision was made in the Penal Code as follows , 'no act is an offence which is done by a child under seven years of age or by a child above seven years of age who has not attained sufficient maturity of understanding to judge the nature and consequences of his act'.[9] The Child Rights Act, which is a comprehensive legislation on the rights of the child, defines a child as a person who has not attained the age of eighteen years. There are definitions of the child in other laws that are in consonance with the CRA. The Immigration Act for instance defines the child as any person under the age of eighteen years [10] while the Constitution of the Federal Republic of Nigeria, provides that 'every citizen of Nigeria, who has attained the age of eighteen years residing in Nigeria at the time of the registration of voters for purpose of election to any legislative house shall be entitled

[2]Preamble to the Declaration of the Rights of the Child adopted by the General Assembly of the United Nations in 1959.
[3]*Ibid*, p 230.
[4] Child Rights Act, (CRA)2003.
[5]Initially enacted as an Ordinance in 1943.
[6]B A Garner, *Black's Law Dictionary* (9th edn, USA: Thomas Reuters, 2009)p 271.
[7] A S Hornby, *Oxford Advanced Learner's Dictionary of Current English*, (8th edn, UK: Oxford University Press,2010) p 243.
[8] Cap C38 LFN, 2004, s 30.
[9] Penal Code Act, Cap P3, *LFN*, 2004, s 50.
[10]Immigration (Amendment) Act, 2015, s52.

to be registered as a voter for that election' as well as for the purposes of citizenship' thereby indicating eighteen years as age of majority[11]. The Trafficking in Persons (Prohibition) Act provides that a child is a person under the age of eighteen years, and a person under eighteen years should not be taken or enticed out of the custody of the lawful guardian of such a person beyond limits of Nigeria, without the consent of someone legally authorised to give consent to such, if done an offence has been committed.[12] The Administration of Criminal Justice Act, defines a child as a person who has not attained the age of eighteen years[13]. These Statutes mentioned are in conformity with International Conventions which provide eighteen years as the age of majority. In the United Nations Convention on the Rights of a Child (UNCRC) for instance, a child is defined as a person below the age of eighteen unless, under the law that apply to the child, majority is attained earlier[14], while the African Charter on the Rights and Welfare of the Child has a child as a person below the age of eighteen years[15]. It therefore follows that in Nigeria, the definition of a child as a person below eighteen years in the Child Rights Act is in tune with international Laws. This work therefore adopts this definition.

Accordingly, Children in penitentiary are therefore persons below the age of eighteen years who are confined in the regular correctional institutions for being guilty of a criminal offence, or remanded in prison custody while on trial.

3. What is the Law? Are children supposed to be in the Regular Correctional Institution?

The plight of children in penitentiary begins with the initial steps taken within the criminal justice system. These steps can be discussed as follows: (i) Criminal responsibility of children: whether the child is old enough to be criminally responsible for the acts or omission that amounts to a crime? (ii) Arrest of children: whether the child suspect is managed by the specialised police unit for children upon arrest to ascertain age and deal with the child in accordance to the law? (iii) Trial of the child offender: whether the child offender is exposed to trial under the regular criminal justice process rather than the child justice process? and (iv) whether the child is sent to the children correctional institutions provided under the Law, if that is the correctional method pronounced by the court, or to the Adult correctional institutions.

3.1 Criminal Responsibility of Children:

It is not all children that are criminally responsible for their acts and /or omission. Thus, the Criminal and the Penal Code make provisions for criminal liability of children. Section 30 of the Criminal Code provides:

> *A person under the age of seven is not criminally responsible for any act or omission. A person under the age of twelve 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 he had the 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.*

[11] Constitution of the Federal Republic of Nigeria, 1999 (as amended) ss. 29 (4),117(2), 77(2).
[12] Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003, ss 82, 19.
[13] Administration of Criminal Justice Act, 2015, s. 494.
[14]United Nations Convention on the Rights of a Child,1989, Art. 1.
[15] African Charter on the Rights & Welfare of the Child 1990, Art. 11.

The effect of this is that a child under the age of seven cannot be held criminally responsible for any act or omission. However, the child can be brought to the Family Court in accordance with the CRA as a child in need of care and protection. Similarly, a person under the age of twelve is not criminally responsible for any act or omission that amounts to a crime except the prosecution can prove that he or she had the capacity to know that he or she ought not to make the act or omission. A summary of the foregoing is that there is an age limit to which the child can never be held guilty of a crime. However, when a child is twelve and above, he becomes fully responsible for his or her acts or omission that amounts to an offence except any of the general defences provided under the law avails him. However, a Child offender who is responsible for his acts or omission is also entitled to rights provided under the law for all persons facing criminal trials, and the court has a role to protect and promote the rights of the child offender appearing before the court.

3.2 Arrest of Children

In the child's encounter with the police, the Child's Rights Act, provides for the establishment of a specialised unit for children in the Nigeria Police Force known as the children police unit consisting of police men charged with the prevention and control of child offences, the apprehension of child offenders, the investigation of child offences and other related functions. The police officers in the unit should be continually trained and instructed to be able to discharge the functions. To that end, the police prosecutor or any other person dealing with a case involving a child offender is empowered by the Act 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 encourage the parties involved in the case to settle the case.[16] The exercise of this power is with respect to offences that are not serious; when there is need for reconciliation; where the family, school, institution involved has reacted or is likely to react in an appropriate or constructive manner; where the police, prosecutor, or other persons deems it necessary in the interest of the child offender and parties involved to exercise the power. On the other hand, the Law provides that police investigation and adjudication before the court shall be used only as measures of last resort.[17] It therefore means that once the child offender is within the child justice administration; there is an opportunity of terminating the process at the first stage if it conforms to the above stated provisions, and proceeding to court is to be a measure of last resort. If this provision is complied with, many matters involving the child will be determined at the initial stage in the police unit thereby reducing the number of children arraigned in court and then taken to correctional institutions.

3.3 Trial of the Child Offender

According to the Child's Rights Act, 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 its processes[18]. The Administration of Justice Act provides that where a child is proceeded against before a court for an offence, the court shall have regard to the provisions of the Child Rights Act.[19]It further provides that where a child is alleged to have committed an offence, the provisions

[16] CRA, 2003, s 209(1)
[17] Ibid, s 209(2)
[18] CRA, 2003,s. 204.
[19] Administration of Criminal Justice Act, 2015 s. 371.

of the Child Rights Act shall apply.[20] This is because the child justice system has its very peculiar features tailored to suit the best interest and active participation of the child, which shall be of benefit to the society at large in the long run. These features are based on the premise, that child justice system is more concerned on the cause of the child delinquency and possible reformation than on the offence committed. Hence, the procedure at the Family Court under the child justice process is entirely different from the regular court under the criminal justice process. Thus section 149 of the CRA provides as follows:

> *There will be the establishment of a Court to be known as the Family Court[21] for the purposes of hearing and determining matters relating to children whether civil or criminal. It entertains criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a child, against a child or against the interest of a child.*

The CRA also provides that:

> *in the determination of the cases the court shall be guided by the principle of conciliation, and shall encourage and facilitate the settlement of the matter in an amicable manner between the parties involved or likely to be affected by the result of the proceedings, such as the child or parents or guardians of the child or any other person having parental or other responsibility for the child. The court shall be properly constituted of a judge and two assessors at the high court level and a magistrate and two assessors at the magistrate Court level. Under this special system, a child is not to be subjected to the regular criminal justice process. It provides that the personnel of the court shall be afforded professional education and constant training on matters relating to children.[22]*

The CRA also incorporates many measures that will help the court to determine the reasons for the delinquency and the best approach to cure the delinquency and reform the child to a better and more useful child. These measures include but not limited to prohibition of the use of the terms 'conviction' and 'sentence' for the child offender; avoiding the use of detention, at the trial, trial and post-trial stages, except as a means of the last resort, in which case, it must be for a short period of time is also provided; in all cases concerning the child, there must be the use of social inquiry report which must contain information about the background of the child, including the social and family background and school career and educational experience, the circumstances in which the child is living and conditions under which offence was committed.[23] The Family Court under the CRA is mandated to appoint free legal services for the child to ensure proper participation of the child. This will enable the court have an overview of the position of the child, and exercise its role in the best interest of the child. The import of these measures is because the court should be more minded about the cause of the child delinquency and possible cure than on the delinquency itself. When a child offender is tried in the regular court as an adult, the regular court process will be followed and the child will be tried and punished as an adult offender and his or her rights under the child justice process will be eluded. This is an abnormality in the criminal justice system in Nigeria which affects the child offender critically. It is therefore pertinent to note that

[20] Ibid, s. 452.
[21] Ibid, s. 149.
[22] CRA, s 154.
[23] Ibid, ss 213& 219.

determination of the age of the child upon arrest and arraignment is important and indispensable, as age is the sole determinant of the right process and procedure to be adopted, and the police and the court has a duty to that effect.

3.4 Correction

Lastly, the child justice system is geared towards rehabilitation and reformation for the child offender. Thus, the CRA [24] provides that no child will be imprisoned, subjected to corporal punishment or to death penalty or have death penalty recorded for him rather, if he or she is tried and the court is satisfied that the child committed the offence, the court can adopt measures such as dismissing the charge, dismissing the child on his entering recognisance or placing the child under the care, supervision, guidance, placing the child under a supervision by a supervision order, committing the child by means of corrective order to the care of a guardian and supervisor of a relative or any other fit person, sending the child for correction to an approved institution among other measures. [25] This is due to the fact that it is easier to rehabilitate the child and re-integrate him or her into the society because of the physical and mental immaturity of the child. The Act further provides that placing a child in an approved institution must be a disposition of last resort, which must not be ordered unless there is no other way of dealing with the child. In doing so, the court must be satisfied that there is a vacancy in an approved institution before it can make an order committing the child to the institution. The court under the CRA is empowered to make and vary corrective orders on child offenders, and the role of the court here is very important, thus stressing the need for the child to be in the Family court and not the regular court. For example, the court has the power to order parents or guardian where the parents have not carried out their parental roles effectively, this will motivate parents to exercise their parental role very well, as it is a right of the child to maintenance and care by the parents or guardian. Again, where a child is brought before the court for an offence, and the court decides that the case would be best disposed of by the imposition of a fine, damages, compensation or costs, whether with or without any other measure, the court shall order that the fine, damages compensation or costs whether with or without any other measure, the court shall order that it be paid by the parents or guardian of the child, unless the court is satisfied that the parents or guardian of the child cannot be found; or the parents or guardian has not condoned the commission of the offence by neglecting to exercise due care, guidance of and control over the child.[26] Another is where a child is charged with an offence, the court may order his parents or guardian to give security for his or her good behaviour. Also where the court thinks that a charge against a child is proved, the court may make an order on the parents or guardian under the section for the payment of damages or costs or requiring him to give security for good behaviour, without proceeding to find out that the child committed the act.[27] This means that if the child offender is brought before the child justice system, non-institutional correction may be adopted, and if on the other hand the court decides on institutional correction for the child, it will be in the child approved correctional institution, where the rehabilitation method is adopted. The rehabilitation method of correction adopted in the child justice administration for the child offenders is largely due to the reason that children do not have the same mental and intellectual capacity with adults, and are more disposed to accept rehabilitation and reformation, which will

[24]Ibid, S 221.
[25] CRA, S.233.
[26]Ibid, s25.
[27]Ibid, s 220(2&3).

aid their reintegration into the society. The Child Rights Act provides[28] that approved institutions consist of approved children institutions and special mothers' centres, all of which shall be established. It further provides that the minister shall establish, in any part of the Federation or any part of a State, the following institutions to be known as approved children Institutions: children attendance centre; a children centre; a children residential centre; a children correctional centre; a special children correctional centre; and such other institutions as the minister may, from time to time, establish and make rules for the management, upkeep and inspection of the approved children institutions. The CRA also requires the Minister to also establish institutions to be known as special mother's centres, and make rules for the management, upkeep and inspection of the approved children institutions and the special mothers' centres.[29]

The Act empowers the Minister to declare any building, place or land within the Federation or State as the case may be, to be a Children Attendance Centre, a Children Centre, a Children Residential Centre, a Child Correctional Centre, an Emergency Protection Centre, a Special Children Correctional Centre, or such other institutions as may be established by the minister.[30]

i. Children Attendance Centre

The Act provides that a Children Attendance Centre shall be a non-residential place at which children shall attend, on a daily basis or on such only as may be prescribed, on the order of the court which dealt with the case of the child concerned.[31] If this particular institution is established children beyond parental control or truants can be brought here for counselling and other correctional measures by specialised individuals and this will promote their right to rehabilitation and save them from venturing into delinquency.

ii. Children Centre

A children centre shall be a place for the detention of children who are remanded in or committed to custody for trial or for the making of a disposition order after trial, or awaiting adoption or foster. A children residential centre shall be in a place in which school education and such other training and institutions as may be conclusive to their reformation and re-socialization and the removal or reduction, of their tendency to commit anti-social acts and such other acts which violate the criminal law.[32]The CRA Further provides that in exceptional circumstances, children in need of care and protection may be kept in approved institution.[33] The establishment of this centre will curb the inhuman and degrading treatment on children by the police when arrested and awaiting trial. It will thus restore the right to the child's dignity of human person and right to life. It will also eliminate the remanding of children in prisons before and during trials and give room for rehabilitation. The children will also be handled by specialised personnel in the institution, who will handle the child in accordance with the international standard of best interest principle.

iii. Children Correctional Centre

A Children Correctional Centre shall be a place in which offenders may be detained and given such training and instructions as will be conducive for their formation and re-socialization, and the

[28]CRA 2003, ss 247&248(1).
[29]Ibid, s 248(1&2).
[30]Ibid, s. 249.
[31] Ibid s 250(1)(a).
[32] CRA, s 250(2).
[33] Ibid, s 50& 52.

removal or reduction, in felons, of their tendency to commit anti-social acts and such other acts which violate the criminal law.[34] The establishment of this centre will go a long way to eliminate recidivism and delinquency in children. When a child offender is placed in this institution; education, skills acquisition, counselling, faith approaches, medical approaches will help to turn the mentality of the child positively and the child will be reformed and re-integrated in the society a better person. The child offenders' right to life, dignity of human person, good health, education, rehabilitation, child justice system among others will be promoted and protected.

iv. Emergency Protection Centre

An Emergency Protection Centre shall be a place in which a child taken into police protection or in respect of whom an emergency protection order is made shall be accommodated until the expiration of the order.[35] According to section 42, if there is a reasonable cause to believe that the child is likely to suffer or is suffering grievous harm, the court upon application made may make an order that such a child be placed in the Emergency protection centre.[36] Also, where the specialised children police in a state have reasonable grounds to believe that a child is otherwise likely to suffer significant harm, a specialised children police may take the child into police protection by removing the child from the place and keeping him or her in the Emergency protection centre or explore other options provided in the Act.[37]This centre is a very important place for the protection of the life and safety of children in danger or likely to suffer harm. The establishment of this centre therefore will go a long way to secure children in those conditions.

v. Special Children Correctional Centre

A Special Children Correctional Centre shall be a place to which children who are found to be incorrigible or to be exercising bad influence on other inmates detained in a children correctional centre may be detained.[38] Where this institution exists, children that committed very serious offences as well as those who come from very crime prone area or immoral and unfavourable environments will be accommodated therein. This will enable the correctional officers to apply more measures of treatment that will be adequate to turn such incorrigible child offenders, and also avert the possibility of influencing other inmates who may not be as bad as this ones.

vi. Special Mother Centre

A Special Mothers Centre shall be a place in which expectant and nursing mothers are held for purposes of remand, re-socialisation and rehabilitation in the society in an atmosphere devoid of the regime of institutional confinement which may be damaging for the proper development of their children.[39]This is a very welcome development in custodial corrections, as many children find their way into conventional correctional centers because they are either born there or taken by their mothers to the prisons. The establishment of this institution will go a long way to protect the interest of the child and foster the welfare and development of the child.

The CRA requires in the interest of the child, that the child shall be provided where appropriate with necessary assistance, including accommodation, education or vocational training,

[34] Ibid, s 250(4).
[35]Ibid, s 205(5).
[36]Ibid, s 42.
[37] CRA 2003, s 44.
[38] Ibid, s 250(6).
[39]Ibid, s 250.

employment and other helpful and practical assistance, during the period of rehabilitation order in the institution.[40] In furtherance to that, the Child's Right Act just like the CYPA provided that a child offender in an institution shall be given care, protection and all necessary assistance, including social, educational, vocational, psychological, physical and medical assistance, that he may require having regard to his age, sex, personality and in the interest of his development. A female child offender placed in an institution shall be treated fairly, receive no less care, protection, assistance, treatment and training than a male child, and be given special attention as to her personal needs and problems. The parents and guardians of a child offender placed in an institution shall have the right to access to the child in the interest and well-being of the child.[41]

The rationale for the establishment of these various children's centres is to avoid the sad episode of children being lumped together with adults in adult prisons, and to make provision for their special treatment, most especially educational advancement, learning of vocational skills and proper counselling. The Child's Right Act no doubt established more institutions than was established by the CYPA[42], and took cognisance of all sundry of children whether as offenders, in need of care and protection, in emergency situations, beyond parental control, affected by conflicts and insurrections.

Furthermore, The National Correctional Service Act[43] provides that a superintendent shall not admit into prison an underage child, and prohibits the incarceration of children in Adult prisons,

4. Is there an aberration of the Law?

The child justice system in Nigeria can best be described to be more in theory than in practice. Though there has been some efforts made in some States of the Federation to implement the CRA[44], yet it is still a far cry. There is a high prevalence of imprisoned children across Nigeria, and the consequences associated with it. Children are being incarcerated in adult correctional institutions and deprived of reformation and rehabilitation in child correctional institution as provided by the CRA. Many child offenders have been arraigned before the regular courts and imprisoned even for very long periods of time. In Nigeria today, the right to child justice system in the Family Court elude some children. These children are apprehended and kept in police custody, arraigned and tried in regular courts. After trial, the child offenders are sent to adult correctional institutions alongside adults. For example, Headfort Foundation an NGO on Child Rights Protection stated [45] that they discovered during their visits to various Adult correctional centres in Nigeria, that children bellow the age of eighteen years are remanded in adult prisons in Nigeria against the provisions of the law. The foundation expressed worry that despite clear legal provisions prohibiting detention of children in adult correctional centres in Nigeria, courts continue to remand children in prison based on poor and inaccurate data presented by the police. The foundation stressed that abuse and inhumane treatment of children continues in the Nigerian

[40]Ibid, s 234.
[41]CRA,s 236.
[42] The borstal institutions and remand homes.
[43] National Correctional Service Act, s. 13 (3) and 35.
[44] For example, Lagos State.
[45]Change.org "End Incarceration of Children in Adult Prisons in Nigeria" a report by Headfort Foundation(NGO) on 29thFebruary, 2024. https://www.change.org/p/end-incarceration-of-children-in-adult-prison-in-nigeria, accessed on 14th March, 2024. National Human Rights Watch disclosed that a recent visit to the Nigerian Correctional Center Awka in Anambra State, that many children were being held in the facility- The Cable https://www.the cable.ng/inside-the world-of -Nigeria-child-prisoners. Bu Ameh Ejekwonyilo. Accessed on 14th march, 2024.

Justice system in blatant disregard for statutory provisions. An example of the children reported to be found in adult prisons by the foundation includes the case of Haruna, a 15 year old boy, arrested in 2022 and remanded in Kirikiri medium prison for stealing until the foundation provided legal aid for him, another is Godwin, a 16 years old but the police wrote in his records that he is 20 years old and based on that inaccurate data, he was remanded to an adult correctional centre by the court, among other reported by the foundation and other human rights groups that shared their findings in the correctional centres visited. The situation is very worrisome, because even with the borstal institutions and remand homes as provided for in the CYPA and other Laws, only some states like, Lagos, Ogun, Rivers, Ekiti, Delata etc have these institutions when we have children in conflict with the Law in all the states in Nigeria. We can also recall the news of Justice Olufunmilayo Atilade's discovery and release of many children in prison custody serving jail terms for minor offences in August, 2017. The same report had it that police prosecutors failed to come up with the right criminal charges against the children and also increased their ages in the charge so that they can be arraigned in the regular court.[46]This persists today despite the fact that Child Rights Act even provides for a specialised children police unit to handle child offender. It requires that effort should be made by the police prosecutor or the Family Court to dispose of the case of a child offender without resorting to formal investigation, trial or disposition, and other means of settlement, such as: conciliation, supervision, guidance, restitution, compensation, and adjudication before the court should be used as measure of last resort. By the same provision, if institutional correction is needed, it should be at the Government children's correctional institutions.[47]The Criminal Code[48]also provides that any person who having arrested another upon a charge of an offence, wilfully delays to take him before a court to be dealt with according to Law is guilty of a misdemeanour and is liable to imprisonment for two years. The lumping of children with adults in regular correctional institutions, forecloses their right to rehabilitation/ reformation and reintegration into the society, and advances recidivism as well as infringement of human rights

5. Why the aberration?

The reason for this incessant aberration of the law can be linked to poor commitment on the part of government to implement the Law, thereby providing the necessary institutions, personnel and other measures necessary to have a sustainable and functional child justice system. In many States that adopted the Child Rights Act, the problems is usually that of proper implementation: the establishment of Family Courts, the Child Department Police Unit, Correctional institutions for children, trained personnel for the court, institutions and the trained police as well effective monitoring and funding for sustainability. A couple of examples of the situation of the child justice system in many States across Nigeria attest to these facts. There are no properly established Family courts as well as correctional institutions in many States of the Federation despite the adoption of the CRA. In Anambra State for example, the only existing government correctional institution for

[46] Vanguard News, https://www.vanguardngr.com/2017/05/lagos-cj-frees-66-inmates-kirikiri-medium-prison/, Insider, https://www.prison-insider.com/en/articles/nigeria-lagos-cj-frees-62-juvenile-offenders-67-inmates-with-disabilities-from-prison, Daily Trust, https://dailytrust.com/lagos-frees-62-juvenile-offenders-67-inmates/,punch,https://punchng.com/lagos-releases-43-underage-inmates-from-ikoyi-prison/Vanguard News, August 16, 2017 reported by Dele Akinsola for News Agency of Nigeria<https: //www.vanguard.com/2017/08/tears –joy-Lagos-Chief-Judge-Frees-209-underage-prisoners>. Daily Trust, August 20,2017, reported by Chuks Azu < https: //www. Dailytrust.com.ng/news/general/how-kids-are-hooked-up-with adults-in-Nigeria-prisons/210783html>. Accessed 15th of March, 2024.

[47]Child's Rights Act, 2003, s 207- 213.

[48]Criminal Code, *Opcit,* s.130.

children located at Abagana for boys and girls do not harbour child offenders presently, the inmates are children in need of care and protection and children beyond parental control.

Thus, the challenge at stake is the implementation of the CRA as well as the sustenance of the institutions when established. This is because while the theoretical framework of the Act is very interesting, there has not been implementation after several years of the promulgation of this law to the detriment of the child who continues to be thrown into Adult correctional centres. This is really worrisome as the Nigerian child is not benefitting from the law as it should be. The focus of correctional institutions is reformation and rehabilitation or re-orientation of child offenders and children in need of care and protection. If these institutions are properly established and made functional, child offenders and children in need of care and protection will be benefitting there from. It behoves the government to ensure the observance of basic and required standard for children in correctional institutions. In the United Nations Rules for the Protection of Juveniles Deprived of their Liberty,[49]Member States are required to ensure that juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity. It further provides that the design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment. This includes standard that should comply with the physical needs of the child such as clothing, clean environment, feeding, education, vocational training and work, and those that work should have right to an equitable remuneration, right to recreation, right to satisfy the needs of his or her religious and spiritual life, right to receive adequate medical care, right of the family of the child to be notified of illness, injury and death of the child. It further provides for the prohibition of use of force or instruments of constraint on the child while in the institution.[50]It further provides that any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely instilling a sense of justice, self-respect, and respect for the basic rights of the person; the child should have the right to return to the community; and the personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other staff should normally be employed on a permanent basis.[51] In Nigeria, with respect to appointing officers to all the approved institutions, the CRA provides that persons with background in criminology, criminal justice, sociology, psychology, social psychology, guidance and counselling, or social work be recruited. Lack of adequate and unqualified staff is one of the challenges to proper realization of the goals or purposes of correctional institutions in Nigeria. When personnel do not have the required training and knowledge, he or she will definitely not give what he or she does not have. Training is very important, because it is essential in the rehabilitation of the child, which is expected to leave the institution once he or she is above eighteen depending on the number of years as provided in the CRA. Accordingly, the CRA provides that when a child attains the age of eighteen, and he is detained in a Children Attendance Centre or a Children Correctional Centre, he shall be released; but if he is considered to require further training and instruction in a Youth Correctional Centre, he shall be transferred to Youth Correctional Centre.[52]

[49]Adopted by General Assembly Resolution 45/113 of 14 December 1990.
[50]Ibid, Rules 31 - 65.
[51]Ibid, Rules 66- 87.
[52] CRA, s 257.

6. Effects of Child Incarceration

This aberration in the Nigerian Criminal justice system spawns a lot of concern in view of the devastating and perilous effects it has on the children and the society at large. It divests children in penitentiary of their rights to life, good health, education, adequate development, welfare, and ultimately reformation from criminal mentality and rehabilitation. It exposes to human rights abuses inhumane treatments. Most worrisome is that child incarceration advances recidivism, moral decadence and insecurity in the society. It gives rise to insurgencies, banditry, kidnappings, stealing, financial crimes, and related crimes.

Child delinquency can be cured if properly managed under the child justice system. Children are immature and dependent and can be reformed and re-integrated into the society. Child delinquency is fuelled by various factors which include economic, political and cultural concerns, such as poor parenting, moral decadence in the society, unemployment, lack of education, poverty, urban migration, ill-health and death of parents and guardians, cultural practices, misplaced societal values, conflicts and insurgency, natural disaster among other factors. In many of these cases children are rendered homeless, helpless and hopeless; not attended to; and thus vulnerable to delinquency. Furthermore, the children due to their immaturity can be lured into delinquency by the people whom they depend on for their welfare and social media influence. However, the same children can be reformed and rehabilitated in the correctional institutions having determined the cause and reason for their delinquency. Incarceration of children in prisons is causing more harm than good, and more importantly contrary to law, hence the need for urgent intervention.

Again, the child justice system protects the rights of the child from arrest to correction, and reforms the child to be a better person after curing the delinquency. For example, the fundamental right of the child to dignity of human person and freedom from torture is usually violated during incarceration and could even begin upon apprehension. Section 211(1), (2) of the CRA provides that on apprehension of the child, the police should avoid harming the child, having due regard to the situation of the child and the circumstances of the case. Harm is defined to include use of harsh language, physical violence, exposure to the environment and any consequential physical, psychological or emotional injury or hurt. Same position applies to detention pending trial. Section 212 of the CRA provides that detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time, and that can be replaced where possible, by alternative measures, including close supervision, and placement in an education setting or home. It provides that while in detention, a child be given care and protection and all necessary individual assistance, including social, educational, vocational, psychological, medical and physical assistance that he may require having regard to the age, sex and personality of the child. These measures of care and protection will transform the child into a better person. Despite these legal credits, many children go through inhuman and degrading treatments in the hands of the police during and after arrest. This first experience in the justice system encountered by child suspects and offenders in the police in some cases may affect the rehabilitation and reformation of the child. The fact remains that there are no specialised policemen trained for handling of children nor specialised police units in many States as provided in the CRA. Delinquent children are handled by the same set of policemen as adults and in the same manner. The correctional centers are not left out, as it was reported that the children released by the Chief Justice of Lagos from prisons in 2017 mentioned earlier in this work, were all looking very sick, malnourished and manhandled.

If functional correctional institutions are established, it will promote the rights of a child a great deal. This is because it is aimed at rehabilitation, reconstruction and reformation of child offenders and children in need of care. In other words, the roles of the correctional institutions are geared towards protecting the rights of the child offender as well as a child in need of care and protection, which includes right to rehabilitation, right to education and acquiring of skills, rights to reformation, right of access to welfare facilities, right to live in a healthy environment and good health and the fundamental rights to life and dignity of human person among others which have been discussed earlier. It is then pertinent that correctional institutions are established and made functional as well, so as not to be left or seen on the pages of paper alone. If there are no functional correctional institutions, child offenders will be sent to adult correctional institutions with adults prisoners and treated alike. The implication is that they will end up as hardened criminals or recidivists and the insecurity situation in Nigeria will keep getting worse. Children in need of care and protection who need institutional interventions may be denied of this basic welfare and reformation measures which will affect their lives positively. There is need to highlight these roles to enable government to wake up to reality and do the needful.

7. Conclusion and Way Forward

Despite the fact that children are exceptionally vulnerable members of the society, effective response to the needs and welfare of the child is presently lacking in Nigeria. The rights of the child are undermined by government and the society. Children have been grossly abused, exploited and subjected to inhuman and degrading treatments within the Criminal justice system, thus jeopardising the wellbeing and development of the child. The Child Rights Act which is a comprehensive law on the rights and welfare of the child is clogged by adoption and implementation complexities. The implication is that child offenders will be denied opportunity of reformation and rehabilitation in the correctional institutions under the child justice system as provided in the law. The plight of child offenders in the regular courts and prisons due to lack of effective family courts and correctional institutions is devastating and worrisome. The child justice system meant for children is guided by concern, care and reformation anchored on the concept that the mental and physical capacity of the child should not be equated with that of adults as rightly posited by Akpan and Nwanna.[53], wherein they argued that the child justice system which is guided by concern, care, and reformation is anchored on the concept that the mental and intellectual capacity of children should not be equated to that of adults, and children should not be exposed to the formal process and practices in order not to foreclose their rehabilitation and reformation within the correctional institutions and their reintegration into the society Therefore children should not be exposed to the formal process at the regular court in order not to foreclose their rehabilitation and reformation within the correctional institutions as mandated under national and international laws. It is no doubt that correctional methods geared towards reformation are beneficial to children and even advocated for adults in some cases. This is because more focus is placed on why the offence is committed and how to cure such mentality than on the crime committed. Child delinquency is a human behaviour which needs to be corrected, and this particular human mentality may not be jettisoned with punishment in children, but with rehabilitation and reformation as discussed in this work. Responsive government initiatives towards the provision and sustenance of correctional institutions in accordance with the relevant law are therefore advocated. This will leave the actors in the Criminal Justice System with no

[53] C R Nwanna, N E N Akpan, 'Research Findings of Juvenile Justice Administration in Nigeria', Constitutional Rights Project (CRP) in Partnership with Penal Reform International (PRI) and the European Union (EU),2003.

choice than to follow the right procedure. Awareness on the rights of the child should be created in schools, churches, rural areas, and any other public forum to advance the treatment given to children within the justice system. Adoption and effective implementation of the Child Right's Act in all States in Nigeria is key towards achieving adequate legal protection for the child. Furthermore, public awareness and education on the rights of the child, as well roles of parents, media, and the law on delinquency prevention is key at this point.