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An Appraisal of the Legal Framework for Child Justice Administration in Nigeria

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Abstract

This article examined the two regimes of laws that regulate child justice administration in Nigeria. The main law in the first regime is the Child Rights Act (CRA) that was enacted in 2003 in order to give effect to the United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) to which Nigeria is a party. Although the CRA contains current international standards as provided by the CRC and ACRWC, the CRA is confronted with many implementation challenges. The provisions of the laws in the second regime comprising the Children and Young Persons Act (CYPA) and some criminal laws that are applicable to the States that have not adopted the provisions of the CRA are inadequate, archaic, and inconsistent with the current standards on child justice administration as contained in the international instruments and adopted in the CRA. Consequently, children that come in conflict with the law are often denied due justice in Nigeria. The article therefore recommended among others, the adoption and implementation of the CRA in all the States of the Federation, a repeal of the CYPA and the provisions for children in the other laws in the second regime.

Keywords: Child Justice Administration, Legal Framework, Appraisal, Repeal, Nigeria.

1. Introduction

The development of the legal framework for the administration of child justice dates back to the period of colonisation of Nigeria. During that period, the introduction of Western education, Christian religion and urban development by the British resulted in the breakdown of controlling mechanisms within the extended family as well as communal efforts in the country.[2] Consequently, juvenile delinquency emerged as a social phenomenon and this led to the emergence of legislation[3] which includes the Criminal Code Ordinance of 1916 that was later enacted as Criminal Code Act (CCA), applicable only in Southern Nigeria.[4] It regulates and penalises offences committed by, and against citizens including children and is still applicable till date. This was followed by the Prison Ordinance of 1917 which provides for the separation of juveniles below 14 years of age from adult prisoners.[5] In 1943, the Children and Young Persons Ordinance (CYPO)[6] was enacted for the colony of Lagos and later reproduced with amendments for the whole country as the Children and Young Persons Act (CYPA), chapter 31 in the revised laws of Nigeria, 1948. This was subsequently reproduced in the laws of the Federation of Nigeria and Lagos in 1958[7] but currently operates as States' Children and Young Person's Law (CYPL) with identical provisions to the Act. Prior to the enactment of the CRA, the CYPA was regarded as the first major enactment solely dedicated to juvenile justice in Nigeria.[8]

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[2]Osoba, O. S., & Fajana, A., (1980). Educational and Social Development during the Twentieth Century. In O. Ikime (Ed.), Ground work of Nigerian History (pp. 570-600). Ibadan: Heinmann Educational Books (Nigeria) Plc.

[3] Fourchard, L., (2006). Lagos and the Intervention of Juvenile Delinquency. Journal of African History, 47 (1), 115, 137.

[4] Criminal Code Act, Cap C38, Laws of Federation of Nigeria, 2004.

[5] Fourchard, L., note 3 above.

[6] Ordinance No. 41 of 1943.

[7] Cap 32,Laws of Federation, of Nigeria (LFN), 1958.

[8]Iguh, N. A., & Nosike, O. (2011). An Examination of the Child Rights Protection and Corporal Punishment in Nigeria. Nnamidi Azikiwe University Journal of International Law, 2, 99.

Shortly before the end of colonial rule, on 30th September 1960, the Penal Code Ordinance was also enacted and later designated as the Penal Code (applicable only in Northern Nigeria).[9] The Sharia Penal Code was subsequently enacted in Zamfara State in year 2000 and later adopted by other 11 States in Northern Nigeria.[10] The foregoing constitutes the laws in the second regime discussed in this article.

Nigeria is a party to the Convention on the Rights of the Child (CRC)[11] which was ratified in 1991 and the African Charter on the Rights and Welfare of the Child (ACRWC) also ratified in 2001.[12] In compliance with Nigeria's obligation under article 4 of the CRC and article 1 of the ACRWC, to implement the principles enumerated in these international instruments through legislative, administrative and other measures, the CRC and ACRWC were domesticated into the CRA[13] which made comprehensive provisions for the protection of children's rights generally and in particular children who offend the law and with equivalent re-enactments in other States of the Federation that have adopted the Act as Child Rights Laws (CRL) of States. The Administration of Criminal Justice Act (ACJA) was enacted in 2015 and adopted the provisions of the CRA although with some varying provisions that will be highlighted in this paper and for which an amendment was suggested. The three major international instruments for the administration of child justice (even though soft laws and non-legally binding), are also applicable to Nigeria as a member of the United Nations (UN). More so, that the soft laws have been recommended by the UN Committee on the Rights of the Child as compulsory for the implementation of the provisions of the CRC on child justice, and also regarded as the existing international standards on child justice.[14] These are the United Nations Minimum Rules for the Administration of Juvenile Justice (Beijing Rules),[15] the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (Havana Rules)[16] and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), 1990.[17]

A critical examination of these laws showed that even though the CYPA and other related criminal laws used to be the main statute on child justice administration prior to the enactment of the CRA, the provisions of these laws are not up to date and therefore inconsistent with the current international standards contained in the CRC, ACRWC and adopted by the CRA. That is, they fail to reflect the guidelines and standards prescribed by the International Instrument for the treatment of children offenders to which Nigeria has subscribed. The consequence is the application of inappropriate laws and flagrant denial of justice due to children who come in conflict with the law. Hence the need to enact the Child Rights Act purposely to supersede all other laws that have a bearing on the rights of the child in Nigeria and all other laws inconsistent with the Act are to be rendered void.[18] This has, however, been difficult to achieve because the CRA is only applicable to the 25 States[19] of the Federation that have adopted the provisions of the Act to their States' laws while the CYPL and those other inadequate laws still apply to the remaining 11 States that have not adopted the Act.

This article, therefore, examined the various provisions of the international laws that were domesticated in Nigeria and the country's domestic laws that regulate the administration of child justice in the country. The aim is to identify the level of compliance and the level of variation between the provisions of the domestic laws and current standards on child justice administration as provided by the International Instruments.

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[9] Penal Code (Northern States) Federal Provisions Act, Cap P3, Laws of Federation of Nigeria, 2004.

[10] Sada, I. N. (2007). The Making of the Zamfara and Kano State Sharia Penal Codes. In P. Ostien, (Ed.), Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook (pp.22-32). Ibadan: Spectrum Books Ltd.

[11] G.A Res 44/25, 1989.

[12] OAU Doc. CAB/LEG/24.9/49, 1990.

[13] Cap C50, Laws of Federation of Nigeria (L.F.N) 2003.

[14] Report of the Committee on the Rights of the Child, General Assembly Official Records, 55th Session. (2006). Supplement No. 41 (A/55/41) (p.6). New York: United Nations.

[15] United Nations General Assembly Resolution A/RES/40/33, 1985.

[16] General Assembly Resolution A/RES/45/113 1990.

[17] General Assembly Resolution A/RES/45/112, 1990.

[18] Section 274 of the Child Rights Act, note 13 above.

[19] The States that have adopted the Child Rights Act are Abia, Anambra, Bayelsa, Ebonyi, Ekiti, Imo, Edo, Delta, Jigawa, Kwara, Kogi, Lagos, Nasarawa, Niger, Ogun, Ondo, Oyo, Osun, Plateau, Rivers, Benue, Akwa-Ibom, Cross Rivers, Taraba and the most recent being Enugu in 2016. See Ogunniran , I., (2015). A Centurial Legal History of Child Justice Reforms in Nigeria 1914-2014. Law, Crime and History, 2, 57.

The paper will also highlight the challenges to the effective implementation of the CRA, the criticisms against the CYPA and other domestic laws, the impact the laws have made on children who come in conflict with the law and make recommendations for better practice.

2. Understanding the Concept of Child Justice Administration

The concept of child justice administration was neither defined by any International Instruments adopted in Nigeria for child justice administration nor other Nigerian laws, but the provision of the CRA is instructive. Section 204, part XX of the Act introduced the term which is titled "Child Justice Administration." It prohibits the subjection of children that commit criminal offences to "the criminal justice process or to criminal sanctions … but only to the child justice system and processes set out in this Act" and is applicable at all the stages of investigation, adjudication and disposition of any case against such a child.[20] From this provisions of the CRA, child justice administration entails having a separate legal process from that of adults including the trial of children in Family Courts set out by the Act with due regard given to the best interest of the child and the observance of due process and fundamental rights of the child guaranteed by the CRA pursuant to the fundamental rights of citizens provided by the Nigerian Constitution.[21] The concept of child justice administration can also be used interchangeably with juvenile justice administration based on the definition of the word juvenile in Rule 2.2 (a) of the Beijing Rules,[22] that "a juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult."[23] The rational for this was rightly explained by the United Nations Children's Fund (UNICEF) that the child justice system is based on the fact that, unlike adults, children are vulnerable, immature emotionally, psychologically and physically and should therefore, not be exposed to the formal criminal process.[24] Although in Nigeria, despite the provisions of the CRA, children are being exposed.[25]

3. An Overview of the Laws on Child Justice Administration in Nigeria

Discussion on this is in two parts. That is, International Instruments ratified in Nigeria and the country's domestic laws.

3.1. International Instruments

These include Statutes, Bye-laws, Rules or Commentaries and Guidelines[26] that have been agreed upon by all or many nations of the world.[27]According to section 12 of the Constitution of the Federal Republic of Nigeria, 1999, and the decision in the case of *Abacha and others v Fawehinmi,*[28] only international treaties that have been domesticated into Nigerian law, have the force of law in the country. Therefore, for child justice administration in Nigeria, the relevant International Instruments are the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, and the United Nations Rules and Guidelines. They provide for the basic and current standards for child justice administration that are applicable to Nigeria.

3.1.1 Convention on the Rights of the Child (CRC)[29]

The CRC is the foremost International Instrument for protecting children's rights. Articles 37 and 40 specifically provides for the administration of justice for children who come in conflict with the law. Article 1 defines a child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is

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[20] See generally, part XX, sections 204-237, Child Rights Act, 2003.

[21]Constitution of the Federal Republic of Nigeria, 1999 (as amended). Section 36 gurantees the right to fair hearing while section 42 provides for individuals' right to freedom from discrimination.

[22] United Nations Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), United Nations General Assembly Resolution A/RES/40/33, 1985.

[23] Ibid.

[24]United Nations Children's Fund (UNICEF) (2006). Profile of Existing Diversion Programmes in Nigeria. Nigeria: UNICEF.(Chapter 1).

[25]Ibid.

[26] Garner, B. A. (2009). Black's Law Dictionary, (pp.835 and 869), St. Paul Minnesota: West Publishing Co.

[27]Soanes, C. & Stevenson, A. (2004). Oxford English Dictionary. (p. 742). New York: Oxford University Press.

[28] (2000) 6 NWLR (Pt.660), 228.

[29]G.A Res 44/25, 1989.

attained earlier."Article 3(1) provides for the best interests of the child to be the basic principle guiding all institutions and authorities, including courts of law in all actions concerning children.

Article 37 (a) prohibits "the torture or other cruel, inhuman or degrading treatment or punishment" and the imposition of capital punishment or life imprisonment without possibility of release on children below 18 years. Article 37 (b) prohibits the unlawful or arbitrary deprivation of a child's liberty and requires that arrest, detention or imprisonment of a child shall be in conformity with the law and to be used only as a measure of last resort and for the shortest appropriate period of time. Article 37 (c) requires that children deprived of liberty shall be treated with humanity and separated from adults except it is in their best interest not to do so.

Article 40 (1) maintains that a child alleged or recognised of infringing the penal law should be treated with dignity and respect for the child's human rights while taking into account the child's age with the aim of reintegrating the child into a constructive role in society. Article 40 (2) (a) provides that children can only be accused of offences that are prohibited by national or international law at the time they were committed and under article 40 (2) (b) they are entitled (i) To be presumed innocent until proven guilty according to law;(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality; (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law; (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used and (vii) To have his or her privacy fully respected at all stages of the proceedings.

By article 40 (3), States Parties are obliged to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and, in particular shall establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law and also devise measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. Alternative measures to court processes listed under article 40 (4), include care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programmes and also assures other alternatives to institutional care so as to ensure the children's well-being and are dealt with in a manner proportionate both to their circumstances and the offence.

The effective implementation of articles 37-40 of the CRC enumerated above is to be aided by the application of the three UN instruments.[30] The first is the United Nations Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).[31]These Rules predate the CRC into which most of the Rules were incorporated as analysed above. This is evident in the provisions of article 40 (4) of the CRC which reiterated the provisions of Rule 5that the two important aims of juvenile justice are the promotion of the well-being of the juvenile and that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence. That is, "the principle of proportionality." This was described as an instrument for curbing punitive sanctions, mostly expressed in terms of just deserts in relation to the gravity of the offence.[32] This means that reaction to young offenders should be influenced by the personal circumstances like social status, family situation, the harm caused by the offence or other factors affecting personal circumstances, and the child offender's endeavour to indemnify the victim or to his/her willingness to turn to wholesome and useful life.[33].

Like in article 40 (2) of the CRC, Rule 7.1 provides for the basic procedural rights of the juvenile offenders for a fair and just trial. Rule 8 provides for the Protection of privacy. Rule11.1 provides for diversion for juvenile offenders without resorting to formal trial by the competent authority.

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[30] Report of the Committee on the Rights of the Child (2000). General Assembly Official Records, 55th Session, Supplement No. 41 (A/55/41) (p.6). New York: United Nations.

[31] United Nations General Assembly Resolution A/RES/40/33, 1985.

[32]Rule 5 and commentary to the United Nations Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), United Nations General Assembly Resolution A/RES/40/33, 1985.

[33]Ibid.

This involves the removal from criminal justice process, redirection to community support services or programmes, temporary supervision and guidance, restitution, and compensation of victims which are commonly practised on a formal and informal basis in many legal systems.[34] This practice is rightly described as capable of hindering the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence) as applicable to offences of non-serious nature.[35] By Rule 13.1, detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time and under Rule 13.2, whenever possible, such detention shall be replaced by alternative measures like close supervision, intensive care or placement with a family or in an educational setting or home.

Rule 14.2 provides for the proceedings of the Court to be conducive to the best interests of the juvenile and right to participate therein and under Rule 15.1 the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country. The guiding principles in adjudication and disposition are provided in Rule 17. These include the application of the rule of proportionality, restriction of personal liberty to be limited to the possible minimum and deprivation of liberty which shall not be imposed unless the juvenile is adjudicated of having committed a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response; and the well-being of the juvenile shall be the guiding factor in the consideration of her or his case.[36] Rule 26.3 requires that Juveniles in institutions shall be kept separate from adults. Under Rule 19.1, the placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period. Rule 17.2, 3 prohibits the imposition of capital punishment and subjection of the juvenile to corporal punishment while Rule 18 provides for various disposition measures including (a) care, guidance and supervision orders;(b) probation;(c) community service orders;(d) financial penalties, compensation and restitution;(f) orders to participate in group counselling and similar activities and (h) other relevant orders.

The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (Havana Rules)[37] make similar provisions to that of the CRC and the Beijing Rules.[38] It was formulated as a preventive rather than a curative policy mechanism for dealing with the problem of children in conflict with the law.[39]Additional innovations to that of the Beijing Rules are that Rule 1 (a) specifically defines a juvenile as every person under the age of 18. Rule 49 entitles juveniles in detention to adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. Rule 79 provides for all juveniles to benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end. By Rule 81 Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. The aims and objectives of the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)[40] are stated in Rules 1 and 4 as; To provide a framework "to implement the Convention on the Rights of the Child and to pursue the goals set forth in the Convention with regard to children in the context of the administration of juvenile justice, as well as to use and apply the United Nations standards and norms in juvenile justice and other related instruments…"

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[34] Commentary to Rule 11.4 of the United Nations Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), United Nations General Assembly Resolution A/RES/40/33, 1985.

[35] Ibid.

[36] Rule 17. 1 (a-d), note 31 above.

[37] General Assembly Resolution A/RES/45/113 1990. Rules 17, 18, 29 provide for right to fair trial including right to legal counsel and legal aid, leisure, detention before trial shall be avoided to the extent possible and when used, it shall be to the shortest duration possible. Right to materials for leisure and recreation as is compatible with the administration of justice is also guaranteed including the separation of juveniles from adults in detention except as is beneficial to the juvenile

[38] United Nations Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), United Nations General Assembly Resolution A/RES/40/33, 1985.

[39]Owasanoye, B. (2004). Street Children and The Juvenile Justice System in Lagos State. In B. Owasanoye & M. Wernham, (Eds.), Street Children and Juvenile Justice System in Lagos State of Nigeria, (p.26). Nigeria: Human Development Initiatives.

[40] United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) General Assembly Resolution A/RES/45/112, 1990.

Rule 15 mandates a review of existing procedures and, where possible, diversion or other alternative initiatives to the classical criminal justice systems should be developed to avoid recourse to the criminal justice systems for young persons accused of an offence. It also mandates appropriate steps to be taken to make available throughout the State a broad range of alternative and educative measures at the pre-arrest, pre-trial, trial and post-trial stages, in order to prevent recidivism and promote the social rehabilitation of child offenders.

By the provision of Rule 24, all persons having contact with, or being responsible for children in the criminal justice system like "…the police and other law enforcement officials; judges and magistrates, prosecutors, lawyers and administrators; prison officers and other professionals working in institutions where children are deprived of their liberty; and health personnel, social workers, peacekeepers and other professionals concerned with juvenile justice…should receive education and training in human rights, the principles and provisions of the Convention and other United Nations standards and norms in juvenile justice as an integral part of their training programmes."All these provisions have been incorporated into the CRA of Nigeria.

3.1.1.1 **African Charter on the Rights and Welfare of the Child (ACRWC)**[41]

At the African regional level, article 17 (1) of the African Charter on the Rights and Welfare of the Child provides for the administration of Juvenile Justice by stating that "Every child accused or found guilty of having infringed the penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others."Article 17 (2) prohibits the torture, inhuman or degrading treatment of children deprived of their liberty and such children should be separated from adults in detention. Those children are also entitled to fair hearing and have their matters determined as speedily as possible by an impartial tribunal and if found guilty they have the right to an appeal to a higher tribunal. By article 17 (3), "the essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation."

In spite of the commendable provisions in the international instruments for protection of child offenders, a lot of challenges remain to be solved. For example, juvenile delinquency is a worldwide problem[42] particularly in Nigeria where juvenile delinquency is on the increase as juveniles engage in a range of criminal activities including stealing, rape[43] and internet scam. Such children pose a lot of risk to the communities and families. Millions of children are also being jailed globally without committing any serious offences,[44]usually for acts described as "non-criminal status offences" like vagrancy, truancy and homelessness, acts that would not be criminal if committed by adults.[45] This treatment is discriminatory and the offences should be abolished out-right while such behaviours of children should be seen as part of the process of "growing up." It also contravenes Rule 13 (1) of the Beijing Rules which specifies that detention should be used as a measure of last resort. Detention is used here as a first resort and remains a common form of punishment for juvenile offenders.[46]

3.2. Domestic Legislation

These laws are grouped into two regimes. The laws in the first regime are the Nigerian laws that comply with current international standards on child justice enumerated above. These are the Child Rights Act and its equivalent re-enactments in 25 States of the Federation of Nigeria (Child Rights Laws), and the Administration of Criminal Justice Act of Nigeria. The major laws in the second regime are the Children and Young Persons Act, the Criminal Code Act applicable to Southern Nigeria, the Penal Code which is also applicable to Northern Nigeria and the Sharia Penal Code applicable to the Sharia implementing States in Northern Nigeria.

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[41]OAU Doc. CAB/LEG/24.9/49, 1990.

[42] Cox S. M., Allen, J. M., Hanser, R. D., & Conrad, J. J. (2013). Juvenile Justice: A Guide to Theory, Policy, and Practice (8th ed.). Los Angeles, CA: Sage Publications Inc. (Chapter 13).

[43]Adegoke, N., (2015). Factors Responsible for Juvenile Delinquency: A Case Study of Selected Primary Schools in Ikorodu, Lagos State Nigeria. Research on Humanities and Social Sciences, 5 (5), 78-84.

[44] United Nations Children's Fund (UNICEF). (2009). Progress for Children: A Report Card on Child Protection. (8thed.). New York: UNICEF.

[45]Ibid.

[46]Ibid.

3.2.1 Child Rights Act[47]

The CRC and ACRWC and other United Nations instruments considered above laid down uniform international standards for children's rights that was adopted and domesticated into the CRA. The Act contains the most populous and standard provisions that best address the plight of children in Nigeria.[48] The Child Rights Act (CRA) provide for Child Justice Administration to replace the Juvenile Justice Administration which has been in existence for several decades in Nigeria. This is amplified in section 274 (1) of the CRA which provides that "The provisions of this Act supercede the provisions of all enactments relating to: (a) children; (b) adoption, fostering, guardianship and wardship; (c) approved institutions, remand centres and borstal institutions; and (d) any other matter pertaining to children already provided for in this Act." Section 274 (2) further stipulates that "…where any provision of this Act is inconsistent with that of any of the enactments specified in subsection (1) of this section, the provision of this Act shall prevail and that other provision shall, to the extent of its inconsistency, be void."

A major obstacle to the realisation of the above provisions is that the CRA has been adopted only in 25 States of the Federation[49] and by implication, the Act applies only to those States while the remaining 11 States that have not adopted the Act still apply the Children and Young Persons Laws (CYPL) and other laws in the second regime even though those laws are out-dated and are not consistent with the current standard on child justice.

Section 277 of the CRA defines a child as any person under the age of 18 years without subjecting it to any other law or custom as provided in article 1 of the CRC. Like in the provisions of the CRC, ACRWC and other UN instruments, section 1 of the CRA requires basically that in all actions concerning the child whether undertaken by the court of law or an individual, public or private body or any authority, "the best interest of the child shall be the primary consideration." Part XX of the CRA covering sections 204-237 of the Act makes comprehensive provision for child justice that complies with international standards and is applicable at all the stages of investigation, adjudication and disposition of any case against a child.

A highlight of the provisions include ; Right to privacy of a child offender including the protection of the identity of the child from publication, training of persons that handle child offenders including judges, magistrates, police officers in the children unit, supervisors and child development Officers, establishment of specialised children police unit, exercise of appropriate discretion by persons who make determinations on child offenders at all stages of the proceedings, empowerment of the police prosecutor or any other person dealing with the case of a child offender 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 guaranteeing the fundamental rights of the child including the presumption of innocence, right to be notified of the charges, right to legal representation and free legal aid.[50]

Section 209 (1) and (2) provides for diversionary measures. That is, measures for dealing with children alleged or accused of infringing the penal law without resorting to judicial proceedings. Under this section, the police, prosecutor or any other person dealing with a case involving a child offender has the power to dispose of the case by settling the case without resorting to formal trial by using other means of settlement that includes supervision, guidance, restitution and compensation of victims. They are to encourage parties to settle the dispute. This method can be used if the case is for an offence of a non-serious nature and if there is a need for reconciliation; or the family, school or other institution involved has reacted or is likely to react in an appropriate manner; or if they think it appropriate in the interest of the child offender and the parties involved.[51] Section 209 (3) emphasised that police investigation and adjudication before the court shall be used only as measures of last resort.

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[47] Cap C50, Laws of Federation of Nigeria, 2003.

[48] Alemika, Emily & Kigbu, Salome (2015). Translating the Legal Framework on the Rights of the Child (The Child Rights Act2003) Into Effective Practice Through Human Rights Education in Nigeria. [Online]. Available: https://www.ihrec2015.org/.../Panel%2010.%20Alemika%20-%20paper.pdf (November 1, 2017).

[49] The States that have adopted the CRA are: Abia, Akwa-Ibom, Anambra, Benue, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Imo, Jigawa, Kwara, Lagos, Nassarawa, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Niger, Bayelsa, Kogi and Taraba. While the States that are yet to adopt the Act are Adamawa, Bauchi, Borno, Gombe, Kaduna, Kano, Katsina, Kebbi, Sokoto, Yobe and Zamfara. See note 19 above.

[50] Sections 205, 206, 207, 208, Child Rights Act, note 47 above.

[51] Section 209 (1) and (2), Child Rights Act.

In the course of investigation and on apprehension of the child, the court is required to consider the immediate release of the child, promote the best interest and well-being of the child and avoid harm to the child, detention pending trial to be used only as a measure of last resort for the shortest possible time and wherever possible alternative measures, including close supervision, care and placement with a family or in an educational setting should be used.[52]

By virtue of section 213, adjudication over child cases should only take place in "the Court" which here refers to "Family Court" as provided in the interpretation section 277 of the CRA while section 149 of the CRA provides for the establishment of the Court. This practice complies with the aim of the Child Rights Act and the requirement of article 40 (3) of the CRC which enjoins States Parties to "promote and establish laws, procedures, authorities and institutions specifically applicable to children that come in conflict with the law." Section 150 indicates that the Court operates at two levels of High Court and Magistrate Court and in section 151(1) the Court is vested with unlimited jurisdiction to hear and determine any civil or criminal proceeding in respect of an offence committed by a child or against the interest of a child. Section 151(3) also requires that in the exercise of its jurisdiction, the family courts are to be guided by the principle of conciliation of the parties involved or likely to be affected by the result of the proceedings, and facilitate the settlement of any matter before it in an amicable manner.

Like under the International Instruments, section 215 (1) (a-d) of the CRA requires the proceedings to be conducive to the best interest of the child allowing the child to participate and express himself freely; the reaction taken should be in proportion to the circumstances and gravity of the offence and the circumstances and needs of the child and the society; the personal liberty is restricted only after careful consideration of the case including the use of alternative methods in dealing with the child and the restriction is limited to the possible minimum; a child can only be deprived of his liberty if he is found guilty of committing serious violence against another person or persistently commits other serious offences.

By virtue of section 215 (2), the Court can discontinue proceedings at any time if it is the best thing to do and the cases shall be handled expeditiously without delay. Section 213 does not permit the use of the terms "conviction" or "sentence" in relation to a child dealt with in the court while section 221 prohibits the imprisonment, or subjection to corporal punishment or death penalty and recording of same against a child. The Judges are empowered under section 223 to dispose of cases where they are satisfied that an offence has been committed, with alternatives to custodial or institutional placement such as dismissing the charge, discharge with recognisance, placement under care order, guidance order and supervision order, corrective order, order the child to participate in group counseling or similar activities, or to pay fine, damages, costs or compensation, undertake community service under supervision or make hospital order for treatment, order foster care, guardianship living in community or educational setting.

3.2.1.1 Challenges to the Effective implementation of the Child Rights Act

As laudable as the provisions of the CRA are, implementation is seriously challenged in Nigeria due to many factors. The first factor is the fact that the Child Rights Act is applicable only to the Federal Capital Territory, Abuja and has been adopted only in 25 States of the Federation while the remaining 11 States have opted not to adopt the Act mainly on grounds of culture and religion.[53] This is because child rights is not on any of the legislative list of the Constitution and being a domestication of international treaties, the CRA cannot be imposed on States by virtue of section 12 (3) of the Constitution of Nigeria, 1999, which requires that the bill for such laws must have been ratified by all the States of the Federation before becoming law. The bill for the CRA was neither ratified nor consented to by the States of the Federation before its enactment [54] hence the need to adopt the CRA and enact similar laws by the States' Houses of Assembly.

[52] Sections 211 and 212, Child Rights Act.

[53]Akinwumi, O. S. (2009). Legal Impediments on the Practical Implementation of the Child Right Act 2003. International Journal of Legal Information, 37 (3), 385-386.

[54]Ogunniran, I. (2010). The Child Rights Act Versus Sharia Law in Nigeria: Issues, Challenges & A Way Forward. Children Legal Rights Journal, 30 (1), 62-84.

The problem of implementation is further compounded by the fact that even the States that have adopted the Act are merely paying lip-service to the provisions of the Act and have not really shown enough political will with regard to implementation.[55] This is despite the fact that sections 260-264 of the CRA provide for the Implementation Committees at the Federal, State and Local Government levels. The implication is that the provisions for child justice administration under the CRA suffer implementation challenges in Nigeria. Secondly, there exists a contrary provision in section 254 of the Constitution of the Federal Republic of Nigeria, 1999 which vests exclusive jurisdiction over issues relating to, or connected with child labour, child abuse and human trafficking (including child trafficking) in the National Industrial Court (NIC) of Nigeria.

The Constitution neither made any reference to the Child Rights Act nor the Family Courts and child rights to participate during court proceedings. The Constitution failed to specify the mode of trial of child cases that come before the NIC. This implies that children will be tried the same way and in the same court with adults. Based on the principle of the supremacy of the Constitution over all other Nigerian laws as enshrined in section 1 of the Constitution of Nigeria, 1999, the provisions of the Child Rights Act and other State Child Rights laws for Family Courts and for child's participation in proceedings that affect him/her are invalid and attaining child justice in the context of the current international standard as reflected in the CRA remains a dream.

Thirdly, under the various States' High Court Rules,[56] children lack the capacity to institute or defend an action except through their guardians/parents who may not truly represent the children's interest. This contradicts the provision of section 158 of the CRA which guarantees the child's right to express himself and participate in court proceedings. Furthermore, reports have confirmed that in some States in Nigeria including the States that have adopted the CRA, there are no specific buildings designated as juvenile courts/Family Courts, and as such, child offenders are tried in regular court buildings in those States.[57]

Fourthly, the Act does not specify the age at which a child becomes criminally liable contrary to the requirement of article 40 (3) of the CRC that States' Parties should fix such ages. This implies that under the CRA, anyone under 18 years of age has no criminal responsibility. Fifthly, arising from lack of political will by the Nigerian government is the problem of inadequate funding for the building of new facilities, training of legal counsel and other assessors dealing with children, especially in human rights based approach to handling juvenile cases.[58] The foregoing indicates that the provisions for child justice administration under the CRA are prone to several challenges leading to inadequate implementation of the Act.

3.2.2. Administration of Criminal Justice Act (ACJA)

In relation to child offenders/child justice administration, the ACJA[59] is most probably the first federal law in the country to acknowledge the existence of Child's right by providing in section 452 (1) that the provisions of the Child Rights Act shall apply to child offenders[60] except in respect of bail proceedings for which the CRA contains no provision and for which section 452 (2) of the ACJA will be applicable to the child. This provision is novel firstly, because it strengthens the need for the implementation of the CRA against some archaic and outdated laws that provide for the child especially the Criminal Code, Penal Code, and the Children and Young Persons Law.

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[55]Durojaiye, E. (2015). Children and Adolescents' Access to Reproductive and Sexual Healthcare. In I. O. Iyioha & I. R. Nwabueze, (Eds.), Comparative Health Law and Policy: Critical Perspectives on Nigerian and Global Health Law. (P.174). England: Ashgate Publishing Limited.

[56] For example Order 2 Rule 3 and Order 13 Rule 9 of the Lagoos State High Court Civil Procedure Rules, 2004 described any person below 18 years as a minor and legally incompetent to institute or defend an action except through their guardians.

[57] United Nations Children's Fund (UNICEF), (2006). Profiles of Existing Diversion Programmes in Nigeria (1st ed.). Nigeria: UNICEF, (Chapter 1).

[58]Bamgbose, O., (2014), Reevaluating the Juvenile/ Child Justice System in Nigeria. [Online]. Available: https://wordpress.com/... /reevaluating-the-juvenile-child-justice-system-in-nigeria/. (March 11, 2018).

[59] Section 1 of the ACJA explains that the purpose of the Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim

[60] See also section 372 of the ACJA which also provides that "where a child is proceeded against before a court for an offence, the court shall have due regard to the provisions of the Child Rights Act."

Secondly, section 493 of ACJA repeals the Criminal Procedure Act[61] which contains archaic provisions that do not correlate with current international standards on child justice.

Section 494 of ACJA defines a child as "a person who has not attained the age of 18 years." With respect to sentencing of a child offender, section 405 prohibits the pronouncement or recording of sentence of death against anyone below 18 years at the time the offence was committed thus complying with the provision of section 221 (1) (c) of the CRA and the case of *Modupe v State*.[62] A shortcoming of the ACJA, however, is that section 405 allows the sentencing of a child to life imprisonment in lieu of death penalty. This provision contradicts the provision of section 221 (1) (a) of the CRA (ACJA's reference point for children) which prohibits any form of child imprisonment. Section 405, however, allows other alternatives to be applied in determining any sentence as listed in section 401 of ACJA. These are prevention, restraint, rehabilitation, education and retribution.

All these are acceptable alternatives except "retribution" one of the principles of which is that those who commit certain kinds of wrongful acts, paradigmatically serious crimes, morally deserve to suffer a proportionate punishment.[63] The implication of this is, for example, that children who kill must die whereas imposition of death penalty against child offenders is prohibited even by ACJA itself, CRC and CRA.

3.3. The Children and Young Persons Act (CYPA)

This is the major law for child/juvenile justice administration in the second regime of domestic laws being considered in this paper. The basis for the application of the CYPA[64] in Nigeria presently is because the CRA has not been adopted in 11 States of the Federation and the CYPA along with other States' laws are applicable in those States. Prior to the enactment of the CRA, the CYPA was the major piece of legislation dealing with a child offender.[65] The text of the law is broadly divided into nine parts.[66] Part 1 deals with preliminary issues (definitions), part 2 deals with the bail issues relating to child offenders under arrest and constitution of juvenile courts, part 3 deals with probation officers, parts 4 & 5 deal with approved institutions and juveniles in need of care and attention, part 6 provides for the contribution of parents/guardians towards the maintenance of juveniles while parts 7, 8 and 9 deal with miscellaneous issues; trading in children and power to make regulations. It has been asserted[67] that the enactment of the CYPA, (which was later adopted by States as Children and Young Persons Law (CYPL) and the application of special codes and procedure in juvenile matters were intended to protect the child from the highly technical, cumbersome and harsh nature of procedure applied in ordinary courts, and a response to the necessity for a modern social justice system, with the objective of providing "…for the welfare of the young and the treatment of young offenders and for the establishment of juvenile courts." Therefore, it was rightly argued that even though a plethora of criticisms and intellectual attacks can be readily launched against the juvenile system in the country, the law and how it is being administered should not just be dismissed as relics of colonial past but should be perceived as some of the hydra-headed legacies of British colonial criminal justice system.[68] This argument is supported by Brown's assertion, that the legislation is a rare example of law, working with the science of human behaviour, that is, psychology and sociology.[69] To the arguments against the CYPA, it was rightly pointed out that much of the criticism rests not so much on the philosophical orientation of the imported mode of juvenile justice system as the failure to effect extensive reforms in the relevant laws and improve on the administration of the system. This is a major challenge of the Nigerian laws particularly the CYPL which has not been reviewed to meet the present needs of a child offender in Nigeria.

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[61] Cap. C41 Laws of the Federation of Nigeria (LFN), 2010.

[62] (2004) 6 NWLR (Pt.869) 360. In this case, the court fixed the age at 17 years but from the time the offence was committed.

[63] Alec, W., (2016). Retributive Justice. [Online]. Available: https://plato. Stanford .edu/archives/win2016/ entries/justice-retributive/. (December 4, 2017).

[64] Cap 32, Laws of Federation, of Nigeria (LFN), 1958.

[65] Abdulraheem-Mustapha, M. A. (2016). Child Justice Administration in the Nigerian Child Rights Act: Lessons from South Africa. African Human Rights Law Journal, 16, 435-457.

[66] See Children and Young Persons Act, Cap 32, Laws of Federation of Nigeria, 1958.

[67] Badaiki, A. D., (2008). The Law : Young Persons and Deviant Behaviour in the 21st Century. In Ikedinm, P. O. A., (Ed.), The Role of The Judiciary in Nigeria Democratic Process : Essays in Honour of Sir, Hon. Justice Iche, N, Ndu, (PP. 238-249). Lagos: Vox Nigeria Limited.

[68] Ibid.

[69] Brown, A. N. (1998). The Machinery for the Protection of Children in Nigeria. In B. O. Umunna, E. I. Nwogugu, & P. O. Ebigbo, (Eds.), Laws Relating to Children in Nigeria (pp. 34-35). Enugu: UNICEF Publication.

3.3.1. A Critique of the Children and Young Persons Act (CYPA)[70]

In spite of the above provisions and support for the CYPA, the Act has been rightly criticised on a number of grounds that warrant its immediate repeal. A review of the Act showed that when compared with the present dispensation of advancement and development of international law on child's rights protection to which Nigeria has subscribed particularly relating to child justice administration, the CYPA can be described as obsolete and out of tune with modern development having been enacted originally by the colonial masters since 1943 (over 70 years ago) without any major reforms that comply with current standard.

This made Owasanoye to assert that in view of the changes that have occurred with reference to population growth, increased sophistication and the pressures of a parlous economy in the Nigerian society, applying the CYPA has rendered children helpless, exploited or abused as it cannot effectively cover the principles and objectives so elaborately expounded by the United Nations.[71] The law contains provisions with inadequate Guidelines while Judges are granted wide discretionary powers in sentencing.[72] Section 2 of the CYPA still perceives a child as a person under the age of 14 years and a young person as one who has attained 14 years but is under 17. This clearly contradicts the provisions of section 277of the CRA and article 2 of the ACRWC which prescribe 18 years as maturity age. Section 11 (1) and (2) of the CYPA prohibits the imprisonment of a child and a young person but allows other forms of imprisonment like commitment to a place of detention and imposition of corporal punishment among others. This also contravenes section 221 (b) of CRA and other International Instruments which prohibit corporal punishment for children and section 212 (1) (a) also of CRA which requires detention to be a matter of last resort for the shortest possible time. Sections 4, 5 and 16 of the Children and Young Persons Law of Lagos State[73] and equivalent States' laws prohibit the detention of juveniles with adult prisoners but in practice, these juvenile offenders were detained in police cells, remand centres and prisons.[74] Unlike in section 208 and 209 that encourage diversionary measures, the emphasis of the CYPA is on custodial measures. The CYPA made no provisions for the principles upon which juvenile/child justice administration is based as analysed in the provisions of the International Instruments and the CRA. This include the principle of best interest of the child, the principle of proportionality, prohibition of retribution and the training of judges and other personnel handling child offenders. The implication is that the CYPA is not in tune with modern development on child justice administration.

Pronouncement of sentence of death against a juvenile who has not attained the age of seventeen years is prohibited by section 12 of the CYPA. In determining the time when the age is applicable, in the case of *Modupe v State,*[75] the Supreme Court held that if at the time the offence was committed, an accused charged with capital offence has not attained the age of 17 years, it will be wrong for any court not only to sentence him to death, but even to pronounce or record such sentence. In the case of Mohammed *Garuba and Ors. v Attorney General of Lagos State*,[76] however, the principle in Modupe's case was not followed as a Lagos High Court sentenced 12 juveniles to death. But in the subsequent case of *R v Bangaza*,[77]the Supreme Court fixed the relevant age as the age at the time of commission of offence. This appears to be the current trend regarding imposition of capital punishment on juveniles. The implication of the decisions in these cases is that children who are 17 years old but below 18 can be sentenced to death under the CYPA. Alternative to death penalty under the CYPA is that the accused juvenile may be committed to custody at the pleasure of the head of state.

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[70] Cap 32 Laws of Federation, of Nigeria (LFN), 1958.

[71]Owasanoye, B., & Adekunle, I. (1996). Overview of the Rights of the Child in Nigeria. In I. A. Ayua, & I. Okagbue (Eds.), The Rights of the Child in Nigeria (pp.38-39). Lagos: Nigeria Institute of Advanced Legal Studies (N.I. A.L.S).

[72]Ogunniran, I., (2013). The Lock and Key Phenomenon : Reforming the Penal Policy for Child Offenders in Nigeria. Justice Policy Journal, 10 (1), 1-20.

[73] Children and Young Persons Law, Cap 10, Laws of Lagos State, 2003 (now repealed by the Child Rights Act of Lagos State, 2007).

[74]Aduba, J. N., (1993). From Punishment to Treatment: Humane Approach to the Sentencing of Young Offenders. In A. U. Kalu, & Y. Osinbajo, (Eds), Women and Children Under Nigeria Law (215-218). Lagos: Federal Ministry of Justice.

[75] (1988) 4 NWLR (Pt.87), 130 or (1988) 9 SC 1.

[76] Unreported, suit No. ID/559/90, High Court of Lagos State, Ikeja Division.

[77] (1996) 5 FSC 1.

This shows that the CYPA emphasises institutionalisation. Section 14 of CYPA listed the various dispositions at the disposal of juvenile courts including whipping which contradict international standards particularly Rules 18 and 26 of the UN Standard Minimum Rules on Juvenile Justice Administration.[78] From the foregoing, it is obvious that the provisions of the CYPA are inclined more towards punishment.[79]

To complement the above, the findings of the juvenile justice administration research undertaken by the Constitutional Rights Project in 2002[80] described the main problems of juvenile justice in Nigeria as the use of inappropriate legal framework (CYPA) that does not meet the standards of international law, non-implementation of legislation that is appropriate and beneficial, over reliance on deprivation of liberty/institutionalisation with little regard to the seriousness of the offence including the children who have not committed an offence. Other problems reported are long delays between arrest, remand and trial leading to long pretrial detention in remand homes or other form of custody, insufficient use of alternatives to custody, severed contacts with parents and relatives while in detention, no resettlement/after care programmes to secure the reintegration of the children released from prisons or correctional facilities.[81]

It is against this background that the research report[82] recommended, among others, that the age of criminal responsibility should be raised from the current seven years prescribed by the CYPA. For example, this has been effected under the Lagos State Criminal Law of 2011 where section 30 stipulates that the age of criminal responsibility is 10 years. Furthermore, that the Nigerian juvenile justice system should de-emphasise the use of police and prison custody while detention should be as a last resort and must not exceed 48 hours, Juvenile offenders should be detained separately from adult criminals and the remand of juveniles in prisons which is more of a punitive than a reformative or rehabilitative measure should be prevented.[83] A critical look at the foregoing reveals that most of the above recommendations have been incorporated into the CRA which was subsequently adopted about a year after the conference but suffers implementation challenges thus, creating a wide gap between law and practice. This further justifies the need for the States that have not adopted the CRA to do so as a matter of urgency so that provisions for Family Court and child justice can be successfully implemented.

3.4. Penal Legislation

The Penal laws of Nigeria generally penalise the infraction of the law by or against citizens with minimal provisions for children offenders. The major ones are the Criminal Code Act (applicable in Southern Nigeria),[84] the Penal Code (applicable in Northern Nigeria) and the Sharia Penal Code also applicable in 12 Northern States. The Criminal Code and the Penal Code were originally enacted by the colonial government and were both made applicable since then till present times in Nigeria. A review of the laws also showed that most of their provisions relating to child justice are outdated and contrary to international standards. For example the Criminal Code and the Penal Code did not define the word "child" and like the CYPA section 30 of the Criminal Code fixes the age of criminal responsibility at 7 with further provision that a child of 12 years is not criminally liable except it can be proved that he knew that he ought not to do the act at the time that he did it. Under this situation, it means a child of 12 may be liable. Section 18 allows the caning of any person under 17 who is found guilty of an offence while section 295 permits the application of a blow or other force for correction of a person under 16 years who is guilty of disobedience or misconduct.

There is also a corresponding provision in section 55 of the Penal Code containing the use of physical corrective measure for a child's deviant behaviour. This amounts to corporal punishment contrary to current standards.

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[78] United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), United Nations General Assembly Resolution A/RES/40/33 of 1985.

[79] Alemika, E. E. O., & Chukwuma, I. (2001). Juvenile Justice Administration in Nigeria: Philosophy and Practice. (1st ed.), Lagos: Centre for Law Enforcement Education (CLEEN).

[80] National Human Rights Comission (NHRC), Constitutional Rights Project (CRP), Penal Reform International (PRI), and United Nations Chidren's Fund (UNICEF) (2003). A Report of Three Conferences on Juvenile Justice Administration in Nigeria, Abuja 2002, Northern Zonal Consultative Conference on Juvenile Justice Administration in Nigeria, Kano, 2002, and Southern Zonal Consultative Conference on Juvenile Justice Administration in Nigeria, Ibadan, 2002. [Online]. Available: www.nigerianlawguru.com/.../criminal%20law%20and%20procedure/juvenile%20%20justice%20in%20nigeria.pdf.(March12, (2018).

[81] Ibid.

[82] National Human Rights Commission (NHRC), note 80 above.

[83] Ibid.

[84] Criminal Code Act, Cap. C38, L.F.N., 2004.

By virtue of section 39 of the Criminal Code, an offender who is below 17 years of age shall not be sentenced to death as was held in *Guobadia v State*[85] but will be detained at the pleasure of the President. Thus, emphasizing institutionalisation like the CYPA and implying that persons over 17 but under 18 years that are deemed to be children under the current law can be imprisoned. Section 71 of the Penal Code provides for an accused person who has completed his seventh but not his eighteenth year of age and is convicted by a court of an offence to be dealt with in accordance with the provisions of the Children and Young Persons Act. The provisions of this Act, earlier considered, are contrary to current standards on child justice administration.

For the Sharia Penal Code Law (SPCL),[86] Ogunniran rightly posited that the concept of rights for children as articulated under CRA does not appear to have a place in Sharia jurisprudence.[87] This is because the Sharia Penal Codes violate basic human rights on several scores with the most important area of conflict being that these laws prescribe for certain offences penalties which must be regarded as torture or degrading and inhuman punishment.[88] Out of the 12 Sharia implementing States, only Jigawa has adopted the CRA.[89] Compared with CRA which emphasises child-oriented justice, reintegration and rehabilitation, the underlying objective of the Sharia legal system is stated to be deterrence, retribution and compensation.[90] For example for *hadd* (offences), the *hudud* (punishments) are copied from the Quran, they are severe and non-amenable.[91] In the Sharia states, Muslims may be sentenced to death from puberty, although some states allow for sentencing instead to detention in a reformatory home or to 20 strokes of the cane as provided for example in section 95 of Zamfara State Sharia Penal Code.[92] The age of criminal responsibility under the Sharia begins from the age of puberty.[93] The implication is that children below 18 years can be sentenced to flogging, death and amputation. For instance, in Zamfara State, 17 year old Bariga Ibrahim was flogged for becoming pregnant outside marriage in 2001.[94] In the north, the 11 Sharia states which have not adopted the CRA as State's law provide for corporal punishment of Muslim children in the Sharia criminal laws for example under the Sharia penal codes, sentences of *hadd* may be imposed on children from the age of puberty and these include corporal punishment (caning, retribution and amputation).[95] Lashing or caning is a punishment for certain offences relating to alcohol, drugs, sex, theft, murder and hurt as provided for example in sections 125, 128, 129, and 163 of the Sharia Penal Code Law of Kano State, 2000. All these contradict current provisions and practices in child justice administration and should be reviewed in harmony with the current practice.

4. Recommendations

Further to the foregoing review revealing the inconsistencies in the provisions of the current international instruments as adopted by the CRA and other domestic laws, and the challenges of implementation of the CRA, the following recommendations are made**.** Firstly, the CRA should be adopted and implemented in all the States of Nigeria. This can be achieved through public enlightenment by civil society groups and government agencies in conjunction with the implementation Committees set up by the Act. Secondly, the Jurisdiction of the National Industrial Court over child matters should be expunged from the Constitution of the Federal Republic of Nigeria, 1999 while the Family Court established by the CRA should be listed as a court of record under the Constitution and child rights is incorporated into the Exclusive Legislative list of the Constitution so as to provide the necessary legal backing to the CRA.

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[85] (2004) 6 NWLR (Pt. 869) 360.

[86] For example, Sharia Penal Code Law of Zamfara State, 2000.

[87]Ogunniran, I., (2015). A Centurial Legal History of Child Justice Reforms in Nigeria, 1914-2014. Law, Crime and History, 2, 44-68.

[88] Ruud, Peters & Maarten Barrends (2001). The Reintroduction of Islamic Criminal Law in Northern Nigeria. [Online]. Available: https://www.ecoi.net/file_upload/mv177_peters-ngr0901.pdf. (March 12, 2018).

[89] The other Sharia States that are yet to adopt the CRA are Adamawa, Bauchi, Borno, Gombe, Kaduna, Kano, Katsina, Kebbi, Sokoto, Yobe and Zamfara.

[90]Ogunniran, I., note 87 above.

[91]Bambale, Y. Y., (2003). Crimes and Punishments in Islamic Law. (2nded.). Ibadan, Nigeria: Malt House Press Limited. (Chapter 4).

[92] See also Human Rights Watch. (2004). Political Shari'a? Human Rights and Islamic Law in Northern Nigeria. [Online]. Available: https://www.hrw.org/report/2004/09/21/political-sharia/human-rights-and-islamic-law-northern-nigeria (March 12, 2018).

[93] Peters, R. (2005). Crime and Punishment in Islamic Law: Theory and Practice from the 16th to the 21st Century. (1sted.). United Kingdom: Cambridge University Press, (Chapter 5).

[94]Ogunniran, I., note 87 above.

[95] Child Rights International Network (2013). Inhuman Sentencing of Children in Nigeria: Briefing for the 17th Session of the Human Rights Council Universal Periodic Review in October 2013. [Online]. Available: http: //www.crin.org>sites>default>files. (December 18, 2017).

Thirdly, adequate fund should be released towards the training of officers and personnel in charge of child justice administration and for the provision of institutional capacity and building of family courts and other facilities. Fourthly, the age of criminal responsibility should be specifically fixed by the relevant international instruments while the CRA incorporates same as it is provided under the Lagos State Criminal Code. Fifthly, the CYPA should be repealed and the provisions for child justice in the penal legislation (Criminal Code, Penal Code and the Sharia Penal Code) should be expunged.

5. Conclusion

A review of the legal frame work for child justice administration in this article showed that the Nigerian Government has made great efforts in enacting laws at the federal and States' levels that comply with international standards but the laws remain largely ineffective due to the failure of domestication in many States coupled with the challenge of enforcement in the States that have adopted the CRA. It was observed that the punishment prescribed for children under the Sharia law are too harsh compared to what obtains under current standards and so such provisions should be expunged. The CYPA, Penal Code and the Criminal code have been described as grossly inadequate, weak, un-coordinated, archaic and out of tune with present day offences, and Nigeria's current international commitment[96] towards the attainment of child justice. Since they have not undergone any major reforms since their enactment by the British, they cannot address the challenges of children who come in conflict with the law in present day Nigeria. The repeal of the CYPA and provisions for children in the other criminal laws stated above is therefore, justified so that the CRA can be adopted and effectively implemented in all the States of the Nigerian Federation.

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