



## The Effect of Children and Young Persons' Law 1990 on the Juvenile Justice Administration in Nigeria

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### ABSTRACT

This research examined about the effect of children and young person law 1990, on the Juvenile Justice administration in Nigeria. The Act gave the children and young person some basic Right and established some duties and obligations as responsibilities on the parent and government to discharge as to juvenile Justice Administration. The right such as right to be heard, right to protection of their identity, right to be educated, prohibition as to Conviction and sentence (i.e. not to be imprison), and exclusion of public during their trial etc. Duties and obligation place parent and government as to do with the implementation of their social-cultural challenges, economic challenges etc., which has to do with their correctional measure, are recommendation among other thing that government should amend the Act. And the research work is purely empirical and does not call for data collection and their analysis. This is because the issue and challenges and way forward facing the Act enforcement in Nigeria is examined from theoretical perspective rather than a literature point of view.

**Keywords:** Juvenile, Justice, Administration, Nigeria and Children

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### 1. INTRODUCTION

The children and young person is traceable to 1799 when Hannah Moore said in her book (1799, structure on the Modern System of Female Education) in relation to the wave of Right which became recognized under the American Declaration of Independence in 1777 and the French Declaration of Man and citizen in 1789 that;

*"It follows according to the actual progression of human being that the next influx or irradiation which our enlighteners are pouring on us will illuminate the world with grave discount on the right of your, the right of children and the right of babies".*

This paper seek to identify the problem and implementation and enforcement of children and young person's right in Nigeria from socio-cultural economic, poor awareness, non reflection of local peculiarities, lack of political will etc. The paper aimed at observing the effect of enforcement and in conclusion present finding and to make recommendation that will be helpful in overcoming the challenges militating against the Juvenile Justice Administration in Nigeria.

#### 1.1 Statement of the Problem

The research work will be based on abuse on the right of the juvenile and failure of obligation on the part of the government and parent.

#### 1.2 Objectives

The objectives of this paper is to provide a solution on the juveniles' right in respect of their protection-, socio-cultural education and to offer reasons as to the obligation of the government and the parents.



### 1.3 Research Methodology

The work is purely empirical based on legislation and legal books on Juvenile Justice Administration in Nigeria.

## 2. JUVENILE, RIGHTS AND RESPONSIBILITIES UNDER THE LAW

### 2.1 Who is a Juvenile?

A Juvenile may be a “child” or a “young person”. A “child” means a person under the age of 14 years while a “young person” mean a person who has attained the age of 14 years and is under the age of 17 years (i.e. Section 2 of children and young persons’ law 1990) and under Section 30 of criminal code.

*“A person under the age of seven year is not criminal responsible for any act or omission”. A person under the age of twelve years is not Criminal responsible for an act or omission it is proved that at the time of doing the Act or making the omission he had no capacity to know the right not to do the act or make the omission (see the State V Nwabueze (1980) INCR 41).*

The child Right Act in S. 277 of (2003 LFN) define a child mean a “person under the age of 18 years i.e. “children” and a young “person”.

### 2.2 What is Right?

Having known who a Juvenile is under various legal instruments, it is imperative to look at what right entails. Right is literally defined inter alia as a moral or legal claim to have or get something or to behave in a particular way. Therefore, Right is legally defined as a legally enforceable claim that another will do or not to do a given act, a recognized and protected interest the violation of which is wrong. The focal point of both definitions is “a legal claim” the legal definition which emphasizes enforceability is the one appropriate to the juvenile in the paper. The right of juvenile are provided under various laws such as International Regional and Domestic are to protect the juvenile preferentially above the general Human Right. Domestically, the 1999 Constitution under Chapter IV provided for a general fundamental Right applicable to all Irrespective of age. The United Nations’ Convention on the Right of Children which was adopted by the United Nations General Assembly as a treaty on the 20<sup>th</sup> day of November, 1989 and became applicable to member nation among which Nigeria is one and has adopted and ratified in 1991.

The African Union Charter on the Right and Welfare of the Children is a Regional legal instrument on the Assembly of Heads of State and Government of the OAU in 1990 and ratified by the Nigeria in the year 2000. The children and young persons’ Act (Law) was promulgated in 1943 by the British Colonial government providing for the welfare of the young person and treatment of young offender and establishment of Juvenile court. It became operated in the East and West in 1946 and in the North in 1963.

### 2.3 Responsibilities under the Law

There are some responsibilities under the law to be shouldered by children or a young person. The parents and the government for the realization of the objective of the Act. Below are some of such responsibilities.

S.19. CRA 2002-S

*“Every Child has responsibilities towards his family and society, the Federal Republic of Nigeria and other legally recognized communities nationally and internationally”.*

Contribution to the moral wellbeing of the society preserves and strengthens social and national solidarity, preserves and strengthens the independence and integrity of Federal Republic of Nigeria, respects the ideals of democracy, freedom, equality, humanity, honesty and justice for all person, relate with other members of society, with different cultural values in the spirits of tolerance, dialogue and consultation, contribute to the best of this ability at all times and levels to the promotion and achievement of Nigeria. Africa and world unity and contribute to the best of his abilities, at all time and level to the solidarity of Africa people and all human rice.



## 2.4 Implementation of the Law:

The effort of the government in implementing the right toward their health services, right to be protected, right to compulsory primary education, right against trafficking, establishment of court and recent procedural rule sign by the Chief Justice of Nigeria.

- a. **Health and Health Service:** The implementation or adoption of the UN millennium development Goal (MDCR) as a member national with agreement to achieve the millennium goal by the year 2015. i.e reduction of mortality rate, combating HIV/AIDS, malaria and other disease.
- b. **Education:** Government adopted the universal primary education policy which is the MDG2 with universal framework under the compulsory free universal Basic Education (UBE) Act on 26 many 2004 provided compulsory primary and junior secondary school age.
- c. **Trafficking:** On trafficking, the federal government established National Agency for Probation of Trafficking in Person and other related matter (NAPTP) in 2003 to tackle human trafficking which mostly involve children as the worst form of human degradation (<http://www.naptip.gov.ng/does/natural>)

## 3. ESTABLISHMENT OF COURT

In the effort to dispense cases in respect of Juvenile, the federal government under the act approved or allowed for what is known as Juvenile Court for the trial of young offender in respect of criminal matters. The Court seat only if there are issues affecting a young person or a child. The Court can be either High Court if the matter has to do with Homicide offence and magistrate Court if it is other felony outside homicide, both in F.C.T and all the state of the federation.

### 3.1 Composition of the Court

The composition of the Court at both levels is as follows:

### 3.2 Juvenile Court (1.e High Court or Magistrate Court)

Where the charged is one of homicide S.8 (2) CYPL the Court shall hold a preliminary inquiry; where the Juvenile is charged jointly with an adult S.6 (2) CYPL the trial shall take place in the regular Court.

#### Features of the Juvenile Court:

- a. Court is not open to the public
- b. Identity of young offender not to be published without leave of court (i.e. S.6 (5) CYPL)
- c. The expression "conviction" and "Sentence" not to be used (i.e. S.16 CYPL)
- d. A "child" shall not be ordered to be imprisoned and "Young Person" shall not ordered to be imprisoned if he can be suitably dealt with any other way whether by probation, Fine, Corporal Punishment and committed to any approved institution (i.e. S.17 CYPL)
- e. Determination of age in case of controversy, a certificate of birth signed by government medical officer (i.e. S. 29 CYPL and S. 208 Criminal Procedure Law and the case of R V Oladime as a classical case).

### 3.3 Administration of Justice under the Act

Administration of Justice for the enforcement of Juvenile right which comprises of criminal process is a concept develop out of the understanding of the difference between children and adult in relation to the harsh nature of normal court process which the juvenile is to be protected. In Europe, during the middle age children were punished in the same way s adult when they committed crime. (ISUA, I.N, Juvenile Justice and Jurisdiction of the court, Paper presented at the All Nigeria Judge Conference Abuja 16<sup>th</sup> – 20<sup>th</sup> November 2009 page 3). This justice system was brought to an end by the French Educational and religious revolution for the 16<sup>th</sup> century based on inability to know the consequences for their action.

In Nigeria, the concept of juvenile justice got recognition in 1943 when the children and young persons' Act was promulgated. The Child Right Act which supersedes any other law relating to children in Nigeria, has provided for child justice administration based on child justice system under part xx as follows:

*"No child shall be subjected to the criminal justice process or to criminal sanctions, but a child alleged to have committed an act which would constitute a criminal offence if he were an adult shall be subjected only to the child justice system and processes set out in this Act" (see S. 204) also the case of Gudbadia V State (2004) 6 NWLR PT 869 S.C 860).*



The Act further provides other processes of child justice administration such as protection of privacy, professional education and training of Courts officers and police, specialization with Nigeria police force, use of direction, disposal of case without resort to formal trial, report of legal status and right of juvenile etc. (see Effia State (1998) 2 NWLR PT 837 CA 275).

#### **4. CHALLENGES OF ENFORCEMENT OF JUVENILE JUSTICE IN NIGERIA.**

Both Act Federal and State Level in Nigeria the Act prospectively to guarantee their right, promote and protect the right through legal and institutional frame work, those effect are not effective in practical sense thereby rendering the aim and objective of the right defeated. Failure to achieve effective implementation and enforcement of this right can be attributed to a plethora factor that operate as challenge militating against the enforcement which are to be examined. Thus

##### **4.1 Socio-Cultural Challenges:**

Some of the culture are harmful, discriminatory and degrading to the children. Base diverse culture and tradition which exposes the juvenile to behavior which society frowns at such as Tattoo and skin marks. Child marriage denied female child to education base on tradition and religion, social background whose antecedent poses serious challenge on the enforcement in some state (see M.T Ladan: Introduction to Jurisprudence classic and Islamic 2010 accessed on the 20/02/2017).

##### **4.2 Economic Challenge**

The alarming rate of poverty has rendered many parents incapable of giving the required care to their children in terms of feeding, shelter and education. The inability pushed many children into different activities such as drug taking, prostitution, and exploitative labour etc.

##### **4.3 Lack of Special training or Police in Juvenile Related Office**

Most police officers are not brief of the knowledge of what amount of juvenile right violence which will likely jeopardize the enforcement of Juvenile right by the police as agent of law enforcement. (See M.T Ladan, Child rout Act 2003 Challenge of it adoption by the 19 northern state 2007).

#### **5. CONCLUSION, FINDING AND RECOMMENDATION:**

The administration of Juvenile justice is a major concern globally due to the vulnerability of the juvenile to certain abuse. As seen juvenile are define in different way by different laws. However, all definition aimed at protecting the interest of the children and young persons. The aim of the Act cannot be without proper administration and enforcement, hence the setting up of a committees at various tiers of government to ensure enforcement of law through administrative mechanism such as courts and other law enforcement agencies with stipulate justice administration system.

The findings made:

- i. The enactment of Law is not enough to solve social problem but rather observance of social values and morals are required
- ii. The right guaranteed are less or not check, because they are no still punishment for the parent who fail to take care of their children below the age of 18years, there is no specified punishment for the children who fail to observe their responsibilities under the law.
- iii. The unlimited jurisdiction of the court vested by the Act is a threat to 8 other law relating to children, most especially the Sharia Court. The Sharia Court are in existence in the Northern part of Nigeria even before the adoption of Sharia Legal System by some state in the north. The court have jurisdiction to decide cases amongst Muslim including their children. This recognition and jurisdiction is constituted and is not contemplated by the Act.
- iv. Another challenge has to do with the borstal home made for reformation of the juvenile but the reverse is the case reason been that the administration in charge of the home as custodian are not proper equipped and so they fail in discharging their duty in reforming the juvenile. So it become a challenge in training of the juvenile.



Based on the findings from the research the following recommendations are made:

- i. Emphasis should be placed on discipline and observation of societal value rather than enactment of law which can hardly be obeyed without moral and good societal value.
- ii. This right guarantee should be checked through modification of Act by providing for specified punishment to ensure discipline and restriction. It is impossible to have law obeyed without sanction leaving a child unsanctioned, if there is failure to observe his responsibility will not augur well with the society
- iii. The unlimited jurisdiction of the court should be relaxed thereby giving other court such as Sharia and Area Court Jurisdiction to entertain children and young person related cases to promote and protect the administration of justice because of some positive impact of the Act on Muslims
- iv. The government of Nigeria should put more efforts in equipping the foster homes to help in rehabilitating and returning the juveniles sent for corrections.

On a final note, this research observed that the enforcement and administration of justice in Nigeria are poor as evidenced by diverse abuses despite the efforts and mechanism in place to forestall such.



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