



Child Penal System in Southwest Nigeria, 1960-2010

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Abstract

Across the country, the spates of juvenile violence and juvenile delinquency have continued to rise at a disturbing rate. This is many times a major characteristic of the urban centre. Over the years, as it has been noted, juvenile crimes result from the breakdown of the moral, ethical and legal norms that govern individuals or generally as it concerns the family and the society at large. This research explores the interplay of various factors, which have none the less influenced the Child Penal System in Nigeria. In this vein, the different measures by those at the helms of affairs or more importantly their policies, particularly as it concerns young people/juveniles, are considered. This study posits that the idea of a Child Penal System in the country only exists in theory and where there is a semblance of it, the principles are at variance with the United Nations Convention on the Rights of the child. Furthermore, it demonstrates that there has not been any sufficient effort by Nigerians to redefine the institutional structures of the system since the exit of foreign domination by the British.

Keywords: Penal Systems, Children, Southwest Nigeria, Crime

Introduction

Reference and discourse on children in the Southwest of Nigeria are amply reflected in works of literature; however, works that critically examine how children are treated when they come in conflict with the set laws of the land are grossly inadequate in view of historical inquiry. Potentially, study into childhood history has taken various path and focus, with more insight and deliberation on the societal engagement with an adverse effect on the child. There has also been engagement by literature on the developmental stages of the child in relation to societal expectations and standard. Scholarly works in this light have emanated from intellectual debates and engagement in the social sciences, namely the political sciences, sociology, psychology, etc.; and this is not to leave out works emanating from the law discipline where works of literature are engaged on appropriate principles and procedures of law bothering on children.(Alemika 142-173)More broadly speaking, the social sciences has done a great deal on contemporary child problems which include crime, child labour, poverty, education, diseases plaguing the child, just to

mention a few of these scholarly engagements. Studies in this vein with more direct bearing on the present paper have attempted a survey into the definitions, policy and programmes as provided by governmental institutions on the young offender. For instance, the work by Alemika, E.E.O and Chukwuma, I.C., renders analysis and discussion of the juvenile justice law and administration in Nigeria, showing several inadequacies in the philosophy, legal framework, administration and facilities for the treatment of juvenile offenders. At the philosophical level, juvenile offenders are held to be immature and deserve to be handled with compassion. But the penal practice runs counter, to the philosophy as the emphasis is on the institutionalisation and punishment. Again, Ayua, I.A. and Okagbue I.E. in their study on the Rights of the Child in Nigeria, an overview of perspectives on the current state of the regime of children's rights in Nigeria is presented. To this end, they explored the contents and substance of these rights as enunciated by legal instruments and policymakers.

Even more germane to this study are studies that have equally attempted a historical inquiry into various developments with regards to children. (Fourchad 115-137) Laurent Fourchard's and Simon Heap's works on youth delinquency have provided the much needed colonial roots of urban vagrancy and juvenile delinquency in contemporary Nigeria with clear perspectives rather than ageneralisation. Indeed, their exploration of the colonial roots with specific reference to the southwest of Nigeria constructively narrates the reality of colonial childhood in the face of its attendant vicissitude. Against this backdrop, their study avails the bases to underscore the changes and experience of the post-colonial period.

There has been a relatively contentious effort at conceptualising who exactly is a child and how is this distinguished on the basis of age or how long an individual has lived. The concepts of a child have developed since the inception of the idea of a juvenile court in the latter part of the 19th century in America. (Robert and Merry 138-143) It has its roots in concept of *parens patriae*, a Latin phrase which literally means "the parent of the country." (Robert and Merry 138-143) and refers to the belief that the state, as the ultimate authority, has both the right and the obligation to direct and protect those of its citizens who, because of some impediment, demonstrate a need for such direction and protection. Now the impediment here might be age, infirmity, mental incompetence, or in the case of minor, immaturity. The nature of the intervention was conceived to be in the manner of parental guidance and admonition, with the strong emotional ingredient of familial concern. These points become pertinent because historical account of childhood records the apparent lack of distinction between child and adult in medieval society. Within the Nigerian context, the concept varies from one ethnic group to another. This is a consequence of the lack of a uniform system of customary law in the country. In some ethnic setting, a boy remains a child until the initiation process into an age grade society or even more fascinating is when he is old enough to contribute financially to community development. (Ayua and Okagbue 28-60) But this could be in very rare cases because Uchendu gives a seemingly widely observed view of children in African traditional setting when he writes:

Children take an active and important part in the work of the compound and the village. Mat making and carrying mud for house building are services which children are expected to render to any villager. Food is the only reward for such communal work. Children fetch firewood and carry water in large gourds or clay pots skillfully balanced on their heads. (Uchendu 62)

The legal system of every country stipulates the age brackets that falls into this categorisation. According to the Children and Young Person Act,(1934) "a child is a person under the age of fourteen years" and it defines a young person as "a person who has attained the age of 14 years but under 17. With reference to the convention on the rights of the child, criminal procedure laws and the children's laws, a young person or a juvenile is a person under the age of 18 years.(UNICEF 2003)With regards to Okonkwo and Naish, while trying to explain the age of criminal responsibility in Nigeria states that a child below the age of seven years is not criminally liable for any act or omission. Equally, a child or juvenile between the age of seven and 12 will not be held for his/her actions. However, if genuinely proved that at the time of the offence he/she had the capacity to know that the act ought not to be committed, only then can charges be brought against the juvenile. A juvenile above 12 years up to 17 years of age is fully responsible for his/her actions. But whatever charges at this level, statutorily, should be carried out in the juvenile court.(Okonkwo 119-122) For the purpose of this study, therefore, juveniles are persons (children or young persons) between the ages of 7 and 17.

The Southwest, like other parts of Nigeria, have since independence undergone untold upheavals in the area of social imbalance and social control. Over and over again, the crises have been illustrated by a high crime ratio, armed robbery, drug and currency trafficking, fraud, cheating, embezzlement, massive unemployment corruption, nepotism ethnicity and scarcity. The situation is so appalling that even when statistics do not present them as they are, the condition, in a sense never pretend or assume a hypocritical disposition. Arguably, however, this vortex of high social disequilibrium has been a function of the inability to mobilise the entire populace for high levels of production and efficiency. This explains the social condition of children (including those who are not involved in the Child Penal System) find themselves.

The special forms of treatment expressed and applied when the policies, laws and procedures meant for an adult are made milder to accommodate children and young persons. Simply termed as the Juvenile Justice or as the current paper chose to put it, Child Penal System; this has been employed over time as a term used to describe the branch of criminal law which is responsible for cases involving children and young persons. (Akinseye 1-2) It could also be described as a body or system of laws, policies, and procedures aimed at regulating the process and treatment of non-adult offenders for violations of law and to provide appropriate legal remedies that would protect their interest in conditions of conflict and neglect.(Encyclopedia Britannica) It is significant, to point out that when punishable offences (which may be murder, theft, and so

on) by an adult are termed as criminal offences, for a child or young person, it is termed as delinquency.

It becomes pertinent to state that this study comes on the backdrop of the over fifty years of independence and existence of the Nigerian legal system, interrogating the historical dynamics of the principles, programmes and practices within the southwest of Nigeria. Specifically, therefore, the penal system for children includes law enforcement agencies, courts, correctional institutions and welfare homes. They constitute the major components and an integral aspect of the operation and function of the penal system, serving the interest of children who are lawbreakers or maybe in the nearest future.

Treatment of Juvenile Offenders Before 1960

The idea of justice among the people of pre-colonial southwest essentially occupied a pride of place. This is probably because the issues related to justice are embedded in the tradition and culture of the people. The culture of the people was all-encompassing. It was composed of the knowledge, beliefs, art, morals, religion, customs, politics, technology, law and other aspects of the people's life. This does not exclude the law and justice approaches of the people. It is apt to note that:

Under this system, customs and time-honoured practices governed daily life and interaction. Strict adherence to verbal greetings, ritualized prayers, and public ceremonies all reflected the significance of... laws within various societies.(Encyclopedia of African History and Culture 149)

Atanda had noted, that the transformation engendered by the agrarian revolution in Yorubaland marked the beginning of a juristic tradition in the society. The fundamental framework of its government became centralised, with a piece of administrative machinery that was hierarchical in nature. These hierarchies, as this study hopes to demonstrate, embodies the judicial institution of the people.

The traditional justice system was efficiently organised from the lowest point to the highest, that is, hierarchical, to be in charge of the people's affairs. From the family level, every deviant act was adequately dealt with under the supervision of the *Bale*. It must be noted, that a typical Yoruba family is made-up of the father, mother, and children. In this setting, individuals had their expected roles and obligations or duties. Equally, the members play a significant part in social control by socialising children in the customs and expected values of the society. In other words, motivating them to conform to social order and norms. Issues beyond the *Bale* were taken to the *Oloriebi*. Depending on the seriousness of the case, other notable heads are requested to be part of the adjudicatory process. This is always the case when there are inter-family disputes to be settled.(Olaoba76-99)

Children in conflict with the laws of the land do not get the kind of treatments apportioned to adults who have committed one crime or the other within the

society. As noted earlier, juveniles who had flouted societal regulations or who is found guilty of an offence is dealt with at the family level. It becomes pertinent to point out that not until 1900, the traditional beliefs of most western societies, particularly the American, do not see or believed that juvenile delinquent should be treated differently from adult criminals primarily in the area of punishment.(Lamar 157)

The use of corporal punishment was for a long time commonplace in traditional Yoruba societies. This involved the use of whip particularly for young persons. The idea is that physical punishment would help to restore the erring individual. In some other cases, the use of prisons might be employed. It is argued that the abodes of kings and very highly placed Chiefs had prisons or cells. This becomes really useful for keeping both criminals and prisoners of war.(Soyombo127) Sometimes when the first two options do not seem to work, such criminal was served with banishment. Depending on the gravity of the offences, the criminal could be restricted from some societal outings to complete expulsion from the land. (Soyombo127) Summarily, from a broad point of view, the justice system was the affair of some important and concerned elderly adult in society. And these same persons have reposed the authority of the land, from the family head to the *Oba* at the apex of the traditional administrative structure.

Of great importance to this study is the question of children in conflict with the law. In one of his reports, during our period, Alex Petterson noted the process such children go through.(NAI 2-3) The Police on arrest would take the individual, not to be remanded in the Police cell, but to the part of the Social Welfare hostel that is reserved for the child offender. On a set, therefore, the individual child offender is brought before a juvenile court. The case would be investigated and pronouncement is made by a group of carefully selected magistrate. The group would often consist of a reputable individual who must be an African woman. As the case progresses, there will be adjournment to have a proper understanding of the issues revolving around the case. Depending on the outcome of the proceedings, a Probation officer is appointed for the young delinquent.(NAI 2-3)The Children and Young Persons Ordinance (CYPO) made provision for probations due to some of the complexities that may be involved and the need to ensure that the child is protected. In Lagos, it was noted during our period that there were four Probation Officers whose appointment places them in a court setting where they were needed.(NAI 27) It was further pointed out considering the number of cases before the juvenile court that approximately 33% of the cases fell within the purview of the Probation Officers against the 15% that ended up being committed into institutional facilities like the 'Approved Schools.'(NAI 27)

In addition to these efforts, the Social Welfare Department initiated youth clubs that accommodated both males and females. It became a scheme under the juvenile social welfare to engage young people and perhaps dissuade them from engaging in social vices within their neighbourhood. (NAI, Oyo Prof 68)In an effort to support the colonial government, Christian Missionary Organisations

were also involved. They equally set up “approved schools” and charity homes to cater for delinquent juveniles.

During Nigeria’s colonial experience, the most important thing that the nationalists wanted was to have political independence so that people could once again have control of their own country’s affairs. Of course, this was a common goal and principal objective of most nationalists elsewhere. According to Kwame Nkrumah, during this period nationalists like himself was implored and inspired to “Seek ye first the political kingdom and all other else shall be added unto you.” In other words, their energies should be channeled towards capturing political powers above all else. Ali Mazrui, (Mazrui 34) though has pointed out that in the real sense the optimism of Nkrumah was a betrayal to the entire nationalist struggle because without economic freedom for the people, political freedom is limited in its ability to foster seemingly unpretentious independence. In spite of the challenges posed by the rising spate of youth crime beginning from 1920 through to 1960, it never became an issue for the nationalist to discuss or even deliberate upon.

Nature of Child Crimes

Crimes carried out by youngsters or a child as it were, is mostly referred to as delinquency. For emphasis, it implies conducts which do not in any way conform to the legal and moral standard of the society. It usually applies essentially to acts that, if performed by an adult, would be termed criminal. Within the southwest like most society, the idea of delinquency has evolved with the passing of time. References have been made to what was obtainable in the society before the advent of colonialism. However, with the advent of the British, the society also encountered important social and economic changes which had profound consequences on its development. The definition of delinquency activities at this time revolved around; running away from home, violation of curfew, truancy, and ungovernable behaviour. (Cavan1-2) While describing the state of crime by young offenders during the period 1920 to 1960, Luarnet Fourchard noted three important features, namely the increase in the number of young offenders (engaging in petty offences against property), the affirmation of the existence of male offender youth groups [this was constituted by popular and adventurous *jaguda* (pickpockets) and *onijibiti* (swindlers)] (Tekena 106) and the emergence of an organised network of juvenile prostitution. These features no doubt served as the foundational bases for delinquent behaviours exhibited in the post-colonial period.

At the beginning of 1960, the landscape of delinquency activities began to change. One important factor at the time was the activities within the political setting. (Ige 200-224) Many young people became tools as well as victims of the political skirmish, which wreaked havoc to many families in the Southwest. As the engagement continued in this light, another phenomenon began across the country, which involved the notorious escapades of armed robbers. Their activities were well known and dreaded because they terrorised people from all walks of life. As a result, many were invariably of the opinion that the police could not even match up with the deftness of the armed robbers. (Newswatch 10) It was a disturbing trend not only in the southwest, but all over the country.

There are, however, indications that the experience within the southwest was alarming. Armed robbers were described as serious business, like-minded like other professionals doing legitimate jobs. They operated both at day and at night and having nothing to hide and they present themselves without masks to veil their faces, indeed they were known to wear the natural faces. The "profession" during the period under review, featured less the activities of the middle-aged, but witnessed the rather high performing and energetic young men, young ladies, and teenagers robbing and killing as their operations permitted. (*Newswatch* 9) As at 1972, the *Daily Sketch* reported about a schoolboy, who was sentenced for death by the Western State Firearms and Armed Robbery Tribunal as a consequence of armed robbery. (*Daily Sketch* 1)

It should be noted that even well before this time, precisely in 1981, the government of President Shehu Shagari had launched what became known as "The Nigerian Ethical Revolution." (Oji 17) This was a compelling idea by the government to initiate deliberate and fundamental change with a long term decisive impact, to move the nation, at large, steadily and permanently in a discernable new direction of self-reliance and dedication to excellence in leadership, in discipline, in orderliness, in hard work, in industry, in morality, in mutual respect and tolerance, along with the submission of the citizenry to God in national affairs and personal pursuits. (Oji 17)

All through our period, the perception of delinquency activities by young people still left much to be desired, considering the fact that there were no status offences identified within the child penal system. For example, incorrigibility, truancy, sexual misconduct, using alcohol, disobeying school officers, curfew violation, idleness, running away from home, disobeying parents, having delinquent friends, immoral conduct would all pass as status offences in the United States. (Seige and Senna 56) In all of these however, in Nigeria, only a case of sexual misconduct and curfew violation could attract the attention of the police. And in any case, an adult could also be arrested and prosecuted for these crimes. It is pertinent to note that juvenile use of tobacco and alcohol is not a deviant behaviour in Nigeria; therefore, such use is by no means a delinquent act. While the other status offences (namely truancy from school, using profanity, disobeying school officials, idleness, running away, disobeying parents, having delinquent friends, and immoral conduct) constitute deviant behaviour, they are not legal violations in Nigeria and, consequently, are not reported to the police. Parents, the juvenile's peers, the school headmaster or principal, and the community or village members act as informal control agencies for such behaviours. (Ebbe 191-204)

Delinquency and the child involvement in the southwest, like most regions has changed since the 1960s. Beginning from the period, a close observation indicates a gradual progression in the form and method of carrying out a delinquent act. The delinquent mentioned above has persisted among young offenders, however, there has been re-modifications or what may be considered as an upgraded version of some of these actions. For instance, the use of hard drugs by young offenders has changed remarkably over time. In the first three decades, our young offenders could most times be observed

making an exploit into the use of tobacco and a wild consumption of alcohol. With time, particularly beginning from the 1980s, there is noticeable graduation into the use of marijuana, cocaine and other substances.(Toyin 10) In the latter period of this study, that is up to 2010, appreciably their quest in this act has taken a higher dimension. Young offenders could be observed using codeine, tramadol etc. and ingesting gum (cold patch). The objective has not really seemed to change. It has always been to get 'higher,' in which case would be to carry out a nefarious act or just simply for the pleasure of it.

Fraudulent acts among young people have equally evolved with time with regards to its form and method. In the early period of the 1960s, young offenders could be observed coming together as a band or an armed gang. Sometimes they may not even be armed with any weapon but would deceptively, through cunning means, dispossess unsuspecting victims of the belongings at very crowded city centres. Such occurrence still pervades major market places in the southwest today. However, many of them have developed even more dubious means to carry out such acts. With the advancement of modern communication technology and the proliferation of internet services, the cybercrime phenomenon emerged. This was majorly in the last decade of this study. Of course, this did not start with young people, but within a very short period has become an exclusive engagement of young people.(Odufejo, interview 2019)

Nigeria, at large, has been witnessing increasing growth in the rate of children involved in crimes of different kinds in the course of this study. In respect of the trends and patterns of child offences in the country, Alemika and Chukwuma (44-55) reported that 63.2% of the offences of the juvenile were on property crimes, 20.6% for moral and status offences, 13.3% for personal offences and 2.9% for antisocial offences that bothered on public order. In another statistical study during the last decade of this study, a change in the pattern of delinquency was observed as truancy accounted for 4.5%, while status offence or beyond parental control was 26.3, robbery was 15.2, public demonstration or riot 7.6%, drug-related offences 7.0% and murder 5.3%.(Nwanna and Akpan 45)

In respect of children in conflict with the law, the juvenile share of total criminality has remained below 10%. (The 1994 Annual Police Report details the arrest of 295 juveniles nationwide in that year, down from 717 cases the previous year.) Most of the offences are male-dominated, although hawking is predominantly a female offence. In the Institute study, out of a sample of 351 children in criminal custody, 84.3% were male. The sample was limited to children between the ages of 8-17 and more than four-fifths (81.5%) of the respondents were between 14-17. The offences they had been accused of were stealing/burglary (57.3%), assault/fighting (9.7%) wandering/truancy (8%) and murder/manslaughter (4.9%). Other offences included illicit drug use (1.7%), prostitution (0.9%) and rape (0.3%). (Okagbue 127)

Law Enforcement

The Nigerian Police Force has been saddled officially with the responsibility of law enforcement in the southwest. The police remain the first contact with an offender in the child justice system. This is so because they have a responsibility to investigate a suspected delinquent child and make an arrest. At the advent of colonialism, the police were very important machinery that helped to execute colonial policies. This they did by employing violence and fraud or deceptions. Effectively therefore, the Police was established in 1930, as a consequence of the merger of the Northern Nigeria Police Force with the Southern Nigeria Police Force. (Tamuno 90)

With reference to the Children and Young Persons Act, the Police are assigned the duties of law enforcement. And over the years, a unit of juvenile welfare in most divisional Police offices is managed to take care of cases pertaining to children who come in conflict with the law. It, however, becomes fundamental to note the neglect or complete omission of rules and *modus operandi* for the Police in the treatment of child delinquents. The southwest has witnessed a rather appalling characteristic display of the Police, be it in an arrest, detaining and in an effort to investigate facts behind a given case. For the purpose of this study, the case of Bisi evidently presents a child's experience with the Police.

When she was 13 years old "Bisi" was brought to Lagos by a distant relative to seek employment as domestic help. She found employment with a family where she was responsible for the care of two young children and general household duties. After about a year, her employers suspected her of stealing certain household items and hauled her off to the police station where she denied the allegation. The police beat her with an iron rod and threatened to kill her if she did not confess. After several hours of this, she was placed under arrest and locked up in a police cell at 2 a.m. The two adult female inmates of the cell subjected her to the usual initiation rites that new inmates are put through. She was beaten up and forced to fan them until daybreak. (Okagbue 276)

The experience of Bisi is a common one. But it was not a case of an arrest at random or the Police were invited, but she was handed over to them. And with little or no concern as to her status as a child or even proven guilty, she was subjected to that much unpleasant experience. In the absence of procedural act for the Police in the Child and Young Peoples Act, there are provisions for this in the Beijing Rules, Criminal Procedure Act and the Criminal Procedure Codes of the States. According to Rule 10.3 of the Beijing Rules:

Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

Considering Section 3 of the Criminal Procedure Act (CPA), a police officer or any other person making an arrest must actually touch or confine the body of the person to be arrested unless he submits to the custody by word or action. The arrested person should not be handcuffed, bound or subjected to unnecessary restraints except by court order unless there is a reasonable apprehension of violence or of an attempt to escape or if the restraint is considered necessary for the person's safety. A most important feature of the arrest procedure is that the person making the arrest must inform the arrested person of the reason for the arrest unless he is in the actual process of committing the offence or is pursued immediately after its commission or escape from lawful custody. This requirement is designed to ensure that the arrested person knows the reason why he is deprived of his freedom and that the procedure of arrest is peaceful. However, over and over again in the course of this study, the law enforcers have consistently acted contrary to the spirit of these guidelines.

Judicial Process and Procedure

The establishment of the juvenile court in Nigeria dates back to 1958, under the Children and Young Persons Act. According to the Act, the juvenile court is for the purpose of hearing and determining cases relating to children or young persons. It shall be constituted by a magistrate sitting with such persons, appointed by the Chief Justice of the given state. (Williams 31-38) In the trial process of a child in conflict with the law, certain provisions are employed and in Section 8 of the CYPA, the procedures to be applied in juvenile courts are explicit.

Where a juvenile is brought before a juvenile court the court has a duty to explain to him as soon as possible, in simple language, the substance of the alleged offence. The court must finally dispose of the case unless the offence charged is homicide. It is not necessary to ask the parent of the child whether he consents that the juvenile is dealt with in the juvenile court.

After explaining the substance of the offence to the juvenile the court will ask him whether he admits it. If he does not admit it the court will then hear the evidence of the witnesses in support of the charge. At the end of the evidence in chief of each witness the court asks the juvenile, or if it considers it necessary, his parent or guardian, whether he wishes to ask the witness any question. If the juvenile does not wish to ask any question, but to make a statement, he will be allowed to do so. However, the court has a duty to ask the witnesses such questions as appear necessary. It may also ask the juvenile such questions as appear necessary to explain anything in his statement. Having heard the witnesses in support of the charge, if the court is of the opinion that a *prima facie* case has been made out, it will then proceed to hear the witnesses for the defence and the juvenile will be allowed to give evidence or make any statement.

If the court is satisfied that the offence has been proved or if the juvenile admits it, the court then asks him if he wishes to say anything in extenuation or

mitigation of the penalty or otherwise. Before deciding how to deal with the juvenile the court must obtain such information as to the juvenile's general conduct, home surroundings, school record and medical history as would enable it to deal with the case in the best interests of the juvenile. It may put to the juvenile any question arising out of such information.(Okagbue 276)For the purpose of obtaining such information or for special medical examination or observation, the court may from time to time remand the juvenile on bail or to a place of detention. In that event, the court may record in the court's records that the charge is proved and that the juvenile has been remanded. When the juvenile is subsequently brought before any court, that court may make any order in respect of the juvenile which could have been made by the court which remanded him, without further proof of the commission of the offence.(interview, Ogunlere 2019)

In Section 7, if the offence is proved or the juvenile admits it, the court will receive and consider any relevant reports (without reading them aloud) before deciding, how to deal with the juvenile. But it must inform the juvenile of the substance of any part of the report bearing on his character or conduct which the court considers material to the manner in which he should be dealt with. If his parent or guardian is present he shall also be informed if that part of the report has reference to the character or conduct of the parent or guardian, or the character, conduct, home surroundings, or health of the juvenile. Both the parent or guardian and the juvenile are entitled to produce evidence to contradict the report if they wish to do so.

Juvenile disposition measures should essentially be beneficial. The principal aim is not punishment but correct, reform and rehabilitate. Punishment may not necessarily follow a finding of guilt. The words "conviction" and "sentences" are not to be used in relation to juveniles found guilty of an offence.(Nwana and Akpan 26-35)By Section 11 of the CYPA, no child shall be ordered to be imprisoned. A young person shall also not be ordered to be imprisoned if he can be suitably dealt with in any other way whether by probation, fines, corporal punishment, committal to a place of detention or to an approved institution. However, if a young person is ordered to be imprisoned he shall not be allowed to associate with adult prisoners. This injunction is hardly observed in Nigerian prisons.

A sentence of death shall not be pronounced or recorded against an offender who had not attained the age of 17 years at the time the offence was committed. In lieu thereof, he shall be detained at the pleasure of the President or of the Governor in the States. In June 1988, the Robbery and Firearms Tribunal sentenced 12 children to death for armed robbery.(*Newswatch* 10-13) Their sentence generated a lot of controversies as the trial was generally believed to have been riddled with "procedural irregularities". Legal experts, human rights groups and the media among others strenuously canvassed the release, which was not effected until 1st January, 1993. (Civil Liberty Organisation)

Rule 18 of the Beijing Rules set out a number of disposition measures,(CYPA Section 14) which have been practised and found successful. These among

others include; Care, guidance, probation etc.

Correctional Institutions

Societies at one point or the other require conformity to its behavioural norms or the legal status of the land. As such, violations of its laws are dealt with according to measures provided by the society. Depending on the gravity of the violation, detention or some other measure is invariably employed. In the southwest of Nigeria, children in conflict with the laws of the land already processed to the point of disposition could end up in one correctional or custodial institution or another. There are four types of recognized correctional institutions for juvenile offenders in Nigeria. These are the Remand Homes,(LFN Section 3(1)) where juvenile offenders are detained. Another is the Borstal Centre, which is a federal institution for the detention of convicted offenders between the ages of 16 and 21 years. Other custodian institutions include Approved Schools(CYPA Sections 8, 9 and 14) for the care and protection of juvenile offenders, while the Prisons or Police Cells,(CYPA Section 111(1))perhaps for unruly or depraved characters.

The history of correctional institutions for young offenders evolved through the period under review. The earliest was the Approved School, which was established in 1933 under the name Reformatory and Industrial School, Enugu. By the 1940s, two of such schools were established, namely the Military Street Approved School and the Isheri Approved School. Ibadan equally enjoyed a facility like that of Lagos(Approved Schools) in 1957. It was established by the Western Region government to serve as a correctional home for a young person. The Borstal institution did not begin until 1960, when the Borstal and Remand Centers Act was promulgated. This facilitated the Federal Government establishment of the three well-known borstal institution in Kaduna, Abeokuta and Ilorin.(National Planning Commission, Abuja and UNICEF) Remand has equally evolved along the same line as the borstal institutions but in this case, it is not a federal facility. The different states manage their own Remand homes and with the creation of the Ministry of Women Affairs and Social Development (MWASD) in the states, they have taken the responsibility of operating these homes in their respective states.(Kassim, interview 2019)

As varied as the correctional institutions are, they have not at any point been sufficient and adequate to manage the burgeoning number of young offenders by the day. In this case, many of them have been compelled to stay in custody with adult offenders. According to the Beijing Rule 13.4, which states that the "Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults." In the same vein, the CYPA frown at attempt to confine young offenders along with adult, but should be in Borstal or Approved institutions. The Nigeria Prisons Service Annual Report for 1986 noted to the contrary that, "With the rising wave of juvenile delinquency in the country, the Borstal institutions are becoming grossly inadequate for the treatment of young offenders."(Nigerian Prisons Annual Report12) In other words, young offenders "above 16 years are presently being incarcerated in regular prisons where they easily get contaminated by adult criminals."(Nigerian Prisons Annual Report

46) As of 1983, it was reported that the Nigerian Prisons had in its custody more than seven thousand young offenders in adult prisons.(Ladan 7)

The experience of young offenders not sent to a Borstal facility remains quite unpleasant with gory memories which would not in any way rehabilitate, rather brings out the worst. Put differently, the reality and peculiar dimensions of the problem of juvenile delinquency in Nigeria and particularly the southwest follows that the methods for reform of juvenile offenders must of necessity be strategic as resocialisation, education, a psychological process help positively to create for the young offender functional skills. The idea is to keep juveniles out of the law courts and custodial centres, ultimately making them more useful members of the community.(Oyeniran, interview 2019)

Conclusion

The child penal system of southwest Nigeria is modeled after the British system, which officially was instituted in 1914. With the introduction of Children and Young Persons Ordinance in 1943, young offenders got a relatively separate treatment compared to adult offenders. The Ordinance was modified in various locations to accommodate local customs. Child offenders are legally defined as those aged 7 to 17, and they are subject to the authority of the juvenile court or a family court, as established in 1958 by the Children and Young Persons Act. The juvenile court proceedings take place in a closed court environment, consisting of a magistrate and two laypersons, including one woman. At some other times, it could be before a high court judge. Proceedings are formal and are intended to protect the juvenile's rights. From careful observation, the system which is composed of the Police, court and correctional institutions, places more emphasis on punishment than on rehabilitation. The institutional treatment efforts are generally not well organized, particularly within the period under review in the region. The lack of effective rehabilitation effort is largely responsible for the poor state of the child penal system. This significantly results from the inability of successive government to articulate sustainable programmes and policy aimed at rehabilitations. Coupled with the breakdown of the extended family system, which had previously influenced the Nigerian nation and control of children the system has remarkably deteriorated.

Notes

Approved Schools. In Lagos to day There are two remand homes and three approved schools in Lagos State, namely: i) The Boys Remand Home, Oregun; ii) The Girls Remand Home, Idi-Araba; iii) The Senior Boys Approved School. Isheri; iv) The Junior Boys Approved School, Birrell Avenue, Yaba; v) The Girls Approved School, Idi-Araba.

Children and Young Persons Act still remains one of the most important legislation in Nigeria dealing with the treatment of juveniles. Particularly when they violate the laws of the land the Act was first enacted as an ordinance in 1934; it has been subsequently amended through several legislations; namely ordinances 44 of 1945;27 of 1947; 16 of 1950 as well as the laws of Nigeria 131 of 1954;47 of 1955 and order in council 22 of 1946.

Encyclopedia Britannica. *Juvenile Justice* Chicago; Encyclopedia Britannica Students and Home Edition.; Also consider; The Child Penal System provides us a set of institutional structures that attempt to treat and rehabilitate children or youngsters who become involve in delinquency. Indeed, there are methods of different categories in which the individual child is processed. The method categorized include; community treatment, residential treatment, non-residential community treatment and institutional. Web. 2001.

Laws of the Federation of Nigeria. (LFN) Section 3(1)(a) of the Borstal Institutions and Remand Centers Act, Cap 38, Laws of the Federation of Nigeria (LFN) 1990); Borstal Institution is a place where offenders who were not less than 16 but under 21 years of age on the day of conviction may be detained; and given training and instruction conducive to their reformation and the prevention of crime for three years. Section 3(1)(b), Borstal Institutions and Remand Centres Act, Cap. B11 (LFN) 2004.

Laws of the Federation of Nigeria. (LFN) Section 3(1)(a) of the Borstal Institutions and Remand Centers Act, Cap 38, Laws of the Federation of Nigeria (LFN) 1990); Borstal Institution is a place where offenders who were not less than 16 but under 21 years of age on the day of conviction may be detained; and given training and instruction conducive to their reformation and the prevention of crime for three years. Section 3(1)(b), Borstal Institutions and Remand Centres Act, Cap. B11 (LFN) 2004.

National Planning Commission, Abuja and UNICEF *Children's and Women's Right in Nigeria: A Wake- Up Call, Situation Assessment and Analysis 2001*. A publication of National Planning Commission, Abuja and UNICEF Nigeria 2001, Pp.230-231; It should be noted that the Borstal facility in Abeokuta, Ogun States, was transferred from the Ikoyi Prison.

Children and Young Persons Act. Section 111(1) of the Children and Young Persons Act (CYPA); Article 30 of the African Charter on the Rights and Welfare of the Child. Section 14 of the CYPA provide equally provide such measures with an inclusion of whipping and other forms of corporal punishment which has been technically expurgated in the Beijing Rules. Web

The term "punishment," in its psychological sense, is most commonly and appropriately applied to a situation in which a deprivation or unpleasant experience is deliberately imposed by one party upon another because of an actual or supposed misdeed which is knowingly and intentionally committed by the latter. The misdeed may be the violation of a rule, a law, a command, or an expectation and may consist either of an act or of inaction when action is called for. It is generally presumed that both parties to the transaction perceive the "punishment" as unpleasant and the provoking act as a misdeed or at least as punishable.

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