

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

The protection of the rights and welfare of children has generated a lot of concern both at international and national levels in view of the vulnerability of the child. Incessant violations and undermining of child's rights thrive in Nigeria. More so, with the prevailing deplorable economic situation in Nigeria which is intensifying the problem of juvenile delinquency and escalating the number of children in need of care and protection; as well as exposing children to exploitation, abuse and violence; adequate protection of child's rights should be of paramount consideration. This concern is captured in the United Nations Declaration of the Rights of the Child, which provided in its preamble that: 'the child by reason of his mental immaturity needs special safeguards and care including appropriate legal protection before as well as after birth.'¹

There are several international efforts aimed at protecting the child, which were necessitated by the devastating effects of the First and Second World Wars on children. The League of Nations which came into existence after the First World War adopted the Geneva Declaration on the Rights of the Child, which declared obligations and duties to children for their protection. Thereafter the United Nations emerged after the Second War World replacing the League of Nations and established United Nations Children's Fund (UNICEF) to assist children affected by war. International instruments such as Universal Declaration of Human Rights of 1948, the United Nations Declaration of the Rights of the Child of 1959, The International Covenant on Civil and Political Rights of 1966 (ICCPR), the International Covenant on Economic and Social Rights 1966 (ICESR) among others, all of which made

¹ Preamble to the Declaration of the Rights of the Child adopted by the General Assembly of the United Nations in 1959.

general provisions for the protection of the child followed. In order to adequately protect the child, a comprehensive law on the rights and welfare of the child, the United Convention on the Rights of the Child, was made.² Nigeria domesticated the Convention as the Child Rights Act (CRA).³ Prior to the enactment of the CRA, the Children and Young Persons Act (CYPA)⁴ existed in Nigeria alongside the provisions of the Constitutions and other extant laws which made provisions for rights, welfare and development of the child. The interpretation and application of these laws is the duty of the court, as provided in the Constitution.⁵

Despite these legal recognitions of the rights of the child at international and national levels, child's rights are undermined. This can be seen in the way and manner at which matters concerning child's rights and welfare are relegated to the background, with little or no genuine commitment from government. This is apparently because; matters relating to children are neither in the exclusive list nor the concurrent list. The economic and cultural concerns, such as recession, lack of employment, lack of education, poverty, urban migration, ill-health and death of parents and guardians, cultural practices, misplaced societal values, conflicts and communal clashes among other factors render children homeless, helpless and hopeless; not catered for; and thus vulnerable. Some of these children are immediately misled by adult deviants and led into delinquency. While some remain beggars on the streets and often times arrested and labelled criminals. These children usually referred to as children in need of care and protection sometimes fall victims of violence and abuse. Meanwhile, the child justice system which is supposed to protect the interest of these children through appropriate measures such as reformation and rehabilitation is not in a good shape to achieve the purpose. Children are mentally and physically immature and should be subjected to formal

²*Ibid*, p 230.

³ Child Rights Act, (CRA)2003.

⁴Initially enacted as an Ordinance in 1943.

⁵Constitution of the Federal Republic of Nigeria 1999(as amended), s 6.

process. This reflects the fundamental rule; that in every action concerning a child, whether undertaken by an individual, public or private body, social welfare institutions or service, courts of law, administrative authorities, or legislative bodies, the best interest of the child shall be the primary consideration.⁶

The above problems and the need to strive for the protection of child's rights in Nigeria through the promotion of these rights by courts and correctional institutions prompted this research. Thus, an examination of the roles of courts and correctional institutions in the promotion of child's right, as well as the constraints impeding the performance of these positive roles is the crux of the discussion herein.

1.2 Statement of Problem

The problems that gave the impetus for this research include: the undermining as well as the violation of the rights of the child in Nigeria despite laudable legislations. The problems of fundamental defects enveloping the Child Justice System, which is of paramount importance considering the vulnerability of children and the deplorable economic situation of Nigeria. Problems of adoption and implementation of laws relating to children, which translate to lack of adequate family courts and correctional institutions, qualified personnel, adequate funding and other measures, lack of proper participation of the child in matters that concern him or her, the pervasive forms of violence and abuse against child victims, and the plight of children in need of care and protection, and other categories of children.

1.3 Research Questions

In view of the above stated problems, and the concern to protect and promote child's right, several questions will be considered in this study. They include:

⁶ CRA, s13.

1. Who is a child in Nigeria?
2. What are the rights and the protection that should be enjoyed by the Nigerian Child?
3. Are children enjoying these legal rights in Nigeria in reality?
4. What roles can the court and correctional institutions play in promoting child's rights and interest in Nigeria?
5. How effective can the roles be with respect to the subject matter?
6. What are the constraints impeding the performance of these roles?
7. What categories of children are involved?
8. Are matters relating to children in Nigeria not important enough to be a national issue?

14. Methodology

The methodology adopted in this research is doctrinal, empirical and comparative approach. This involved analytical examination of extant laws, case law, legal international instruments, textbooks, journal article, internet sources, and periodicals on the roles of the Court and correctional institutions in the promotion of the rights of the child and the impediments hindering performance, and thus gives insights on the way out. References were also made to selected jurisdictions.

1.5 Aims/Objectives of Study

The aim of this research is to seek for effective protection of the rights of the child through the promotion of the rights by the courts and correctional institutions in Nigeria. The objectives of this study include:

1. To examine extant laws to underscore the roles of the court and correctional institutions in promoting child's rights in Nigeria, considering the vulnerability of children in the society, and their obvious peculiarities;

2. To analyse the effect and significance of the roles of the court to child offenders; children in need of care and protection; children beyond parental control; children involved in custody and maintenance cases, disabled children, child witnesses, children in adoption and fostering matters, abused and trafficked children, in view of the position of the court as a guardian of the laws and hope of the common masses;
3. To examine the concept of corrections at the correctional institutions and its role, effect, importance, prompt and adequate intervention on the child offender, children in need of care; children beyond parental control, children born in custody;
4. To lay the plight of these categories of children despite the legal and institutional frameworks available;
5. To examine if the courts and correctional institutions play these roles in the promotion of child rights in Nigeria in accordance with international standards and identify the barriers impeding the roles of courts and correctional institutions thereto;
6. To proffer recommendations as to the measures that should be taken to enhance the veritable roles of court and correctional institutions towards promoting the rights of the child.

1.6 Scope and Limitations of Study

This study examines the extant legal and institutional framework for the protection and enforcement of the rights of the child in Nigeria. It examines the Family Courts, Juvenile Courts and Conventional courts in Nigeria with respect to the subject matter. The work covers also correctional institutions in Nigeria on the subject matter.

1.7 Significance of Study

This study is a significant exercise as it emphasis and brings to the fore the roles of courts and correctional institutions as essential tools in the promotion of the rights of the Nigerian child.

Thus, it will serve as a beacon to judicial officers, child justice personnel, policy makers, executives, legislators, academia, parents, and guardians. The research will also help the masses in carrying out their roles effectively towards the promotion and protection of child's right in Nigeria, and the lives and welfare of children will be better secured.

1.8 Organisational Layout

This work is divided into six chapters. Chapter one contains the general introduction consisting of the background of study, statement of problem, research questions, research methodology, aims and objectives of study, scope and limitations of study, significance of study, literature review, the organisational layout, and definition of relevant terms.

Chapter two discusses the concept of child's rights and legal protection. It traces a brief history of child's rights and human rights. It examines the rights and legal protection of the child in Nigeria.

Chapter three focuses and examines the role of the court in promoting the rights of the child in Nigeria. This chapter deals with the various roles as they apply to the various categories of children. It also discusses the significance of the roles in the promotion and protection of child's right in Nigeria.

Chapter four examines the role of correctional institutions in promoting the rights of a child. It discusses the concept of corrections, types of corrections, goals of corrections and the various correctional institutions for children under the laws. It also discusses impediments to the role of the courts and correctional institutions in the promotion of child's right.

Chapter five discusses what is obtainable in selected jurisdictions such as United States of America, United Kingdom, South Africa, and India, *vis-a-vis* the situation in Nigeria. Chapter six embodies the conclusion and the recommendations.

1.9 Literature Review

A good number of literatures on the area of child's rights and justice exist; however this research will make its own contribution to the area. The works of some of these authors are hereunder reviewed.

Anyua and Okagbue⁷ espoused the rights of the child as provided in different laws and exposed the inadequacies in all the areas and the challenges to attaining the protection of child's right. They argued that child rights are obtainable in theory and not in practice as a result of social, political and economic factors. They however advocate for the ability to match rhetoric with practical initiatives and allocation of resources in the system if the rights of the child are ever to be effectively realised. The study discussed the struggle for the protection of the rights of the child and welfare, prevention of abuse and violence. The study gave an insight to the state of the juvenile justice administration, treatment of juvenile offenders, pre-trial, trial and post-trial procedures, perception of problems and the drive for necessary measures in future. The work under review was done before the enactment of the Child Rights Act, and other international rights laws for the child. While it conceded that there were roles for the court and correctional institutions in the old existing laws, more roles that project the rights of the child in the extant laws would be examined in this present research.

Bynum and Thompson⁸ discussed juvenile delinquency and traced the modern specialised correctional treatment to children and youths to a group of influential social reformers in the late nineteenth century. The Child Savers, as they were called, were convinced that urban slum life exerted a corrupting influence on idle youths. Child Savers insisted that because of

⁷ I A Ayua, I Okagbue, *The Rights Of the Child in Nigeria*(Lagos: N.I.A.L.S, Research Series 1996)pp 60,302-307.

⁸ J E Bynum, W E Thompson, *Juvenile Delinquency, a Sociological Approach* (4th edn, USA: Allyn and Bacon, 1998) p 379.

tender age, delinquent youths could be reclaimed from a criminal life if proper steps were taken. For the Child Savers, their goals for the juvenile justice system personnel were to investigate, diagnose, and prescribe treatment, not to adjudicate guilt or blame. The mutual aim of all was not to contest or object but to determine the treatment plan best for the child. The current work under review examined juvenile delinquency, thus targeting the rights of the child offender alone whereas this present research will discuss other categories of children as well as their specific rights and the roles of court and correctional institutions towards the protection of the rights.

Alemika and Chukwuma, in their work⁹ did a study on the juvenile justice administration in Nigeria, and submitted that Nigeria suffers from several inadequacies: legal, policy, planning, implementation, education and research. They posited that as a matter of fact, there were no well-established and adequately equipped distinct institutions and coherent programmes for dealing with juvenile offenders and preventing juvenile delinquency in the country. The existing legislative and institutional framework according to them, were inherited from the colonial government. Moreover, they further argued that the laws predated the evolution of contemporary international standards in the form of the United Nations Conventions and Charter on the Rights of the child, United Nations Standard Minimum Rules for the Treatment of Offenders; the United Nations Standard Minimum Rules for the Administration of Justice, and the United Nations Guidelines for the Prevention of Juvenile Delinquency. As a result, many of the laws on the treatment of juvenile offenders do not conform to these international standards. They stated that the existing laws do not only violate the rights of the child or young person brought within the criminal justice system, but deny him or her benefits of humane treatment; relevant educational, vocational, social, recreational and religious opportunities for self actualisation. They therefore recommended a critical

⁹ E O Alemika, I. Chukwuma, *Juvenile Justice Administration in Nigeria: Philosophy and Practice* (Lagos: Centre for Law Enforcement Education(CLEEN))2001.

evaluation of the laws, policies, programmes, and an institution dealing with juvenile offenders in Nigeria as is long overdue. The research under review did justice to the condition of the juvenile justice administration. However it was done before the enactment of the Child Rights Act in 2003. The Act therefore may be said to be a manifestation of their recommendations. This present research will go further to examine the condition of things after many years of the domestication of the International Convention of the Rights of the Child, to see if international standards are actually reflected. Again, the research dealt only with the criminal aspects concerning the child, while the present research examines both civil and criminal aspects as it concerns the child, laying particular emphasis on the roles of the court and correctional institutions in promoting the rights of the child

Nwanna and Akpan¹⁰, examined juvenile delinquency and x-rayed corrections and correctional institutions in the juvenile justice administration. They discussed delinquents, theories of corrections, and reviewed legislations and policies of the juvenile justice system, and the genesis of the modern treatment of juvenile offenders. On the issue of representation in court, the authors found out from their research that many juveniles were not represented during the trials neither were they given opportunity to defend themselves nor were any of their relations in court during trials. In the Children and Young Person's Act, parents of the offending juvenile may not be required by the court to attend proceedings. They also found that juveniles were detained in the same place with adults due to lack of correctional institutions, despite the provisions of the Children and Young Person's Act. It was also found from the research, that most juveniles were convicted and committed or sentenced to prisons. The Child Rights Act was not discussed by the above authors, as it was not in existence as at the time of the research was conducted. Recent works are built on the foundation laid in this work to accommodate the recent laws, policies and position. This present research aims at

¹⁰ C R Nwanna, N E N Akpan, *Research Findings of Juvenile Justice Administration in Nigeria* (Constitutional Rights Project, 2003) p21.

espousing other areas under the Child's Rights Act and other relevant laws to address the subject matter extensively.

Ifemeje¹¹ reflected on children involved in matrimonial causes, and assessed the effects of divorce on children, from the legal perspective. She observed that divorce has serious damaging and lasting effects on children. She analysed the issue of custody and welfare of the child in divorce matters and discussed how Nigerian courts and legislators have attempted to reduce all the observed adverse or devastating effects of divorce on children, and suggested how best the welfare of these children could be protected against these adverse effects of divorce. The work dealt extensively on the issue of custody of children of divorce, the challenges and the way forward. The current author however discussed only the role of the court on promoting the rights of children in divorce causes, it is submitted that this is just one out of the roles to be discussed in this present research, as there are roles particular to other categories of the children.

Bella *et al*¹² in their study carried out at the Ibadan remand home, stated that many children in Nigeria face a life of poverty, family instability, inadequate educational opportunities and poor physical and mental health which hinder their ability to develop into health adults, live an improved quality of life or fulfil their life aspirations. They argued that these factors have been associated with juvenile delinquency and there is need for institutional care. They concluded that to address delinquency, Nigeria, according to them should address the economic and social empowerment of families, eradicate poverty, and provide free, compulsory quality education and health care services for child, and the laws protecting children need to be reviewed and implemented so that children's rights are protected both

¹¹ S C Ifemeje, *Contemporary Issues in Nigerian Family Law* (Enugu: Nolix Educational Publications (NIG)2008) pp125-160.

¹² T T Bella, O.Atilola, O.O.Omiogbodun, 'Children within the Juvenile Justice System in Nigeria: Psychopathology and Psychosocial Needs', *ANNALS of Ibadan Postgraduate, Medicine*, (2010) p1.

within the family, and whenever they come in contact with the law. The work focused on juvenile delinquency alone which is an aspect of the scope of this present research.

Tarhule¹³ espoused corrections generally. He traced the evolution of correctional institutions from the 19th century till recently, and he further discussed the theories, types and justifications for corrections. The author analysed the legal regime for the protection of the rights of the child with particular reference on corrections and correctional institutions. He discussed the correctional institutions provided under various laws for child's rights in Nigeria, highlighting the peculiar challenges that may affect child corrections. He also espoused the strategies for reform and the future of institutional corrections and non-institutional corrections in Nigeria. Tarhule's work focused on corrections generally in the criminal justice system; while this present research will go further to establish welfare and rights of all categories of children, as it will also look at the roles of courts alongside corrections.

Bamgbose¹⁴ is of the view that child justice is an aspect of Criminal Law that is not given the attention it ought to receive. The juvenile justice system focuses on the rights and welfare of children and young persons who are vulnerable groups in the society. Children are a special gift from God and the pride of every society. Unfortunately, despite their 'special protection' in the family and the societies as a whole, children have in the course of history been abused, neglected, abandoned and treated unkindly in Nigeria and in other developing and under developed societies. There is therefore an urgent need for the child justice system in Nigeria to be re-evaluated and given more precedence in the Administration of Criminal Justice. She compared the child justice system in some jurisdictions that have similar

¹³ V V Tarhule, *Corrections under Nigerian Law*, (Lagos: Innovative Communications, 2014) pp 224-252.

¹⁴O. Bamgbose, *Re-Evaluating the Juvenile/Child Justice System in Nigeria* (Lagos: N.I.A.L.S, Research Series 2014) p 14.

historical features with Nigeria, and concludes that although the Nigerian Child Justice is undergoing reforms, a lot remains to be done. She noted that there is need to re-evaluate the laws, implement the provisions of the child's rights legislations, re-evaluate the layout of the family court, and position the interest of children over religious and cultural interest and sentiments. Also a proactive action on the part of government will enhance the juvenile justice system. The views of the author are germane; however this present research tends to emphasize the role of the courts and correctional institutions in this struggle.

Ahmed¹⁵ discussed the rights of the child within the ambits of law available in Nigeria. He enumerated the rights of the child, which he said emanated from human rights. The author stressed on the actualisation of child's right in Nigeria and submitted that in order to actualise and enforce the rights of the child provided in various laws some mechanisms have been put in place. These mechanisms include courts of law, national human rights commission, legal aid scheme, remand homes and reformatory schools. He argued that the responsibility of the enforcement of human rights in Nigeria is placed mainly on the judiciary, which is required to entertain cases involving alleged violation of fundamental human rights. He stressed that the Nigerian constitution guarantees access to ordinary courts by means of a simple application, for the enforcement of his guaranteed rights. He went further to state that juvenile justice administration is part of the rights of the child, thus a child accused of committing any crime is to enjoy special rights during the trial and conferment on conviction. He noted that child offenders are special and should not be treated in the same manner as adult offenders, because the mental and intellectual capacity of children should not be equated with that of adults and that States should not expose children to the formal criminal process in order not to foreclose their rehabilitation and reintegration into the society. The writer discussed the laws and institutions for the protection of the rights of the child but did not highlight on the roles of the

¹⁵ A B Ahmed, *The Law and Child Rights in Nigeria* (Lagos: Malthouse Press Limited, 2015) pp 99, 143.

courts and correctional institutions in promoting these rights which this research intends to highlight.

Ogunniran and Nwanna¹⁶ discussed child rights laws within the child justice administration in Lagos State. They adopted the definition of child rights law as the point where the law intersects with a child's life which includes juvenile delinquency, due process for children involved in the criminal justice system, appropriate representation, and effective rehabilitation services; care and protection for children in state care; ensuring education for all children regardless of their race, gender, sexual orientation, gender identity, national origin, religion, disability, colour, ethnicity or characteristics, and; health care advocacy. They analysed the role of the family court to enforce the Child rights Law which consolidates all legislations relating to the protection and welfare of children in Lagos State, and they dealt extensively on child offenders as well as the challenges experienced in implementing the Child Rights Laws in the Family courts. They argued that child's right will be effectively protected if there is symmetry between systems' goals, their structures, functions, capacities, the process of care, governance, accountability and the normative context in which they operate. They posited that more elaborate system structures, e.g. the Child's Rights Laws of Lagos State are required to coordinate the various actors (Judges, Magistrates, Lawyers, Police, and Social welfare) who have been assigned responsibilities within that system. From all indications, their work simply observed the implementation of the Child Rights Law (CLR) in Lagos State as well as the level of impact and development it had on the child. While they examined the rights of the child generally alongside the system under the CRL, but some aspects of child welfare and the place of the court in those aspects were not highlighted. This present research will highlight those specific roles of the courts and

¹⁶I Ogunniran , C R Nwanna, *Child Justice Administration under the Child Rights Law of Lagos State* (Lagos: University of Lagos Press and Bookshop Ltd, 2016) pp 11,13, 93.

correctional institutions for a clear insight of the essence or importance of their roles towards actualising the child's right in Nigeria.

Attah¹⁷, analysed the concept of family welfare in matrimonial causes. He practically discussed every aspect of family welfare under the law which the child is also a beneficiary. He analysed the provisions of the Child Rights Act which establishes the Family Court that has jurisdiction in all child welfare matters under the Act. However, he expressed regrets that this court which would have exercised this role more adequately is restricted because the Child Rights Act is not a universal legislation. While it applies directly in the Federal Capital Territory, each State of the Federation will have to domesticate it by a law of its House of Assembly to be effective in that State, coupled with the fact that implementation is slow. Family welfare matters concerning children and the role of courts thereto got proper examination in Attah's work; however the present research shall incorporate other aspects of child rights and welfare, such as the rights and welfare of disabled children, child witnesses, and trafficked and abused children.

Ifeolu¹⁸ discussed the criminal liability of the child offender, and submitted that child has a right to a separate system of justice system distinct from adults. He argued that the child is immature. He defined immaturity as the state or condition of being under legal age. He posited that when a person is declared by law to be a minor or an infant, he is deemed to be incapable of committing an offence. However this protection can be absolute or qualified depending on the age bracket of the accused, and the child offender will be tried in the family court. He also noted that even though a child under seven years enjoys absolute protection, he is amenable to action by the authorities, for example, the child could be brought before a family court if there is reasonable ground for believing that he or she is in need of care and

¹⁷ M.Attah, *Family Welfare Law in Nigeria* (Benin City: Ambik Press Ltd, 2016))pp 275-278.

¹⁸ J K Ifeolu, *Appreciating Criminal Law in Nigeria*, (2nd edn, Ilorin: Decision Management Consult Limited, 2016)p 110.

protection. Ifeolu's work discussed the child offender and criminal liability, and not strictly on rights and the roles of the court to that effect. It is submitted that there should be a complementary examination of the rights of the delinquent child and other categories of children as will be examined in this present research.

From the foregoing considerations, the rights of child offenders got some attention from some authors in reviewed. Laws on the subject matter, the rights provided therein, and the child justice system was also discussed in the scholarly works reviewed. However, despite these laudable efforts, the actualisation of the rights of children is still far from reality, hence this present research seeks to examine the roles of court and correctional institution in promoting the rights of all categories of children stipulated under the laws discussed.

1.10 Definition of Terms

1.10.1 Child

The question of 'who is a child' has generated a lot of interpretations and descriptions judicially and in legislations, as well as by authors, depending on the context it is used. Hence, the Black Law Dictionary defines a child as 'a person under the age of majority; and at Common Law, a person who has not reached the age of fourteen; a boy or girl; a young person; a son or a daughter'.¹⁹

A Child is also defined as offspring of either sex of human parents, a son or a daughter a young person of either sex at any age less than maturity but most commonly one between infancy and youth.²⁰The Oxford Advanced Dictionary defines a child 'as a young human who

¹⁹B A Garner, *Black's Law Dictionary* (9th edn, USA: Thomas Reuters, 2009)p 271.

²⁰I Allen, *New Webster's Comprehensive Dictionary of English*, at <www.duhaime.org>, accessed on April 10, 2017.

is not yet an adult'.²¹ A child was also defined by Arinze- Umobi, as a boy or girl at any age between infancy and adolescence, a new born infant, a person of any age in relation to his parents.²² While Akaniro, describes a child as a person that has not attained the age of fourteen years and a young person as a person who has attained the age of fourteen years.²³The definitions of a child by these authors did not specify age of maturity, except Akaniru. Other authors merely referred to a child as a person between the age of infancy and adolescence or puberty and an offspring. With these uncertain definitions, uniform treatment might elude some children.

The courts has in *Okoye v the State*²⁴ defined a child as a young person in the formative period of life, and in *Okwueze v Okwueze*²⁵ as a person under the age of fourteen years while a young person is a person who has attained the age of fourteen years and is under the age of seventeen years. Also in *Okon v the State*²⁶ the court held that a child is a person below the age of fourteen. In *Labinjo v Abake*, a child was defined to be a person under the age of twenty one years.²⁷While in *Folata v Dowoma*,²⁸ it was held that under Muslim Law, maturity is determined by physical maturity or a declaration of the youth in question, or failing this by reaching the age of fifteen lunar months. The same trend of lack of uniformity is also established judicially as cases are decided differently based on context.

Statutorily, there are also variations on the definition of a child based on the context and purpose of the legislation. The Child Rights Act defines a child as a person who has not

²¹ A S Hornby, *Oxford Advanced Learner's Dictionary of Current English*, (8th edn,UK: Oxford University Press,2010) p 243.

²² C UArinze-Umeobi, *Domestic Violence against Women in Nigeria* (Onitsha:Folmech Printing & Pub Co. Ltd, 2008)p 76.

²³ E G Akaniro, *Introduction to Nigerian Legal System* (Lagos: Elcon Press Ltd,1998) p 16.

²⁴ (1972) LPELR-2510(SC).

²⁵ (1989) 3 NWLR(Pt. 109) p321 at 348.

²⁶ (1988) 75 SCNJ 45.

²⁷ (1924) 5 NLR 33.

²⁸ (1970) NWLR 105.

attained the age of eighteen years.²⁹ The Children and Young Person's Act promulgated before the CRA defines a child as a person under the age fourteen years, while a young person is a person who has attained the age of fourteen years but under the age of seventeen years.³⁰

The Immigration Act provides that any person under the age of eighteen years is a minor.³¹ The Constitution of the Federal Republic of Nigeria, provides that 'every citizen of Nigeria, who has attained the age of eighteen years residing in Nigeria at the time of the registration of voters for purpose of election to any legislative house shall be entitled to be registered as a voter for that election' as well as for the purposes of citizenship'.³²

Under the Criminal Code, it is defined based on criminal responsibility as follows: 'a person under the age of seven years is not criminally responsible for any act or omission. A person under the age of twelve is not criminally responsible, unless it is proven that such a child at the time of making the omission or committing the act had the capacity to understand his action'.³³ Similar provision was made in the Penal Code as follows , 'no act is an offence which is done by a child under seven years of age or by a child above seven years of age who has not attained sufficient maturity of understanding to judge the nature and consequences of his act'.³⁴

The Electoral Act regards eighteen years as the age of qualification for registration as a voter in Nigeria.³⁵ The Trafficking in Persons (Prohibition) Act provides that a child is a person under the age of eighteen years, and a person under eighteen years should not be taken or enticed out of the custody of the lawful guardian of such a person beyond limits of Nigeria,

²⁹ Child's Right Act, Art. 1.

³⁰ CYPL,1948.

³¹ Immigration (Amendment) Act, 2015, s52.

³² Constitution of the Federal Republic of Nigeria, 1999 (as amended) ss. 29 (4),117(2), 77(2).

³³ Cap C38 LFN, 2004, s 30.

³⁴ Penal Code Act, Cap P3, LFN, 2004, s 50.

³⁵ Electoral Act 2010,s 1(b).

without the consent of someone legally authorised to give consent to such, if done an offence has been committed.³⁶

The Evidence Act³⁷ provides that in any proceeding in which a child who has not attained the age of eighteen years is called as a witness, such child shall not be sworn and shall give evidence otherwise than on oath or affirmation, if in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of his evidence and understands the duty of speaking truth. It further provides that a child who has attained the age of fourteen years shall give sworn evidence in all cases.

The Labour Act defines a child as a young person under the age of twelve years, and further provides that except in the case of contract of apprenticeship, no person under the age of sixteen years shall be capable of entering into a contract of employment under the Act, and no person under sixteen years should be recruited except by a written authority of the minister with the consent of the parents, if it appears to the minister that it will not be injurious to the moral or physical development of the person³⁸.

Under customary law, a child is any person who has not attained puberty, or who is not yet a member of the age grade group. Puberty is not attained at the same time, as there are variations as to when puberty is attained, while for some girls it is at twelve, or as early as nine or ten years or even late at fourteen. While most systems of customary law in Nigeria, do not prescribe a specific age for marriage, some actually regulate the age of customary marriage by legislation. The Eastern part of the Country is regulated by the Age of Marriage law of 1956³⁹ which prescribes the minimum age at sixteen years and for the old Western

³⁶ Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003, ss 82, 19.

³⁷ Evidence Act 2011, s209.

³⁸ Cap L1, LFN, 2004, ss 91(1), 9(3), 27(4).

³⁹ S 4(1) of the law prescribes six months imprisonment or fine of two hundred naira for violation.

States, eighteen is the acceptable age, while in the North age of majority is at puberty in places such as Tiv, fourteen years for Borno State, and thirteen years for some others.

The adoption of various ages for a child in the above legislations is an indication that a child is defined based on the context in which it is used or the purpose or object of the legislation. However, the provisions of some statutes are in conformity with International Conventions which provide eighteen years as the age of majority. In the United Nations Convention on the Rights of a Child (UNCRC) for instance, a child is defined as a person below the age of eighteen unless, under the law that apply to the child, majority is attained earlier.⁴⁰ The African Charter and the Convention on the Elimination of All Forms of Discrimination against Women⁴¹ has eighteen as the age of majority, and the African Charter on the Rights and Welfare of the Child also stipulates that a child is a person below the age of eighteen years.⁴²

In Nigeria, the definition of a child as a person below eighteen years in the Child Rights Act, which is the latest and most comprehensive law on the rights and welfare of the child, towed the line of international Laws mentioned above, and the researcher adopts same. It is therefore logical from the discourse so far, that any person who is below eighteen years is a child for the purposes of this work.

1.10.2 Right

⁴⁰United Nations Convention on the Rights of a Child,1989, Art. 1.

⁴¹Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979.

⁴² African Charter on the Rights & Welfare of the Child 1990, Art. 11.

The word 'right' is derived from the Latin word '*rectus*' which connotes correct and straight.⁴³ According to the definition in the Oxford Advanced Learner's Dictionary of Current English 'right' is defined as a moral or legal claim to have or get something or to behave in a particular way.⁴⁴ The Black's Law Dictionary has right defined as:

That which is proper under the law, morality and ethics. Something that is due to a person by just claim, legal guarantee, or moral principle, like the right to liberty. A power, privilege, or immunity secured to a person by law, like the right to dispose of one's estate. A legally enforceable claim that another will do or will not do a given act; a recognised and protected interest the violation of which is a wrong, that is, a breach of duty that infringes one's right.⁴⁵

The rights as considered in this work is the legally enforceable rights that another will do or will not do a given act; a recognised and protective interest the violation of which is a wrong, which is a breach of duty that infringes one's rights.

The affixing of the word 'human' to right signifies that human beings, the child inclusive are the subject of rights. Accordingly, Anyogu & Arinze- Umobi, states that the addition of human to rights means that every person has it and the subject of human rights is of the community of mankind. These rights are those of every human being anywhere, anytime irrespective of language, sex, race or religion, and when they are fundamental, they touch the basis of the very existence of the individual as a human being.⁴⁶ Thus, human Rights are those rights that every human being has and is free to enjoy by the virtue of being a human being. This is better captured in the definition in the Black's Law Dictionary as 'freedoms, immunities and benefits that, according to modern values all human beings should be able to claim as a matter of

⁴³ O Okpara, 'Nature of Human Rights' in O Okpala (ed), *Human Rights Law and Practice in Nigeria* (Enugu: Chenglo Limited, 2005) p 36.

⁴⁴ A S Hornby, *Oxford Advanced Learner's Dictionary of Current English* (8th edn, New York: Oxford University Press, 2010) p 1273.

⁴⁵ B A Garner, *Black's Law Dictionary* (9th edn, USA: Thomas Reuters, 2009) p 1347.

⁴⁶ F A Anyogu & C Arinze-Umobi, 'Full Realisation of the Rights of the Child Under the Child's Rights Act 2003: A Near Illusion in Nigeria' *Journal* p50.

right in the society in which they live⁴⁷. It is also well expressed by Arinze-Umobi, that human rights are those rights enjoyable by everybody everywhere and all times in equal proportion by the same reason of our humanity. They inhere in human beings by reason of their humanity, and are therefore inalienable to the extent that removal, denial or withdrawal makes the person from whom they are removed less human, sub-human, and incomplete.⁴⁸ She further posited that that the Constitution and other statutes only help to make sure that the rights are declared, preserved, implemented.⁴⁹

The Child Rights Act, also adopts the fundamental rights enshrined in the Constitution of the Federal Republic of Nigeria and all successive constitutional provisions relating to fundamental rights and went ahead to provide other additional rights,⁵⁰ which includes: right to survival and development, freedom from torture, freedom from inhuman or degrading treatment, right to parental care, protection and maintenance, right for the child in need of special protection, right of incapacity to enter into any contract, right not to be used for criminal activities; right not to be abducted, removed and transferred from custody; right not to indulge in buying, selling, hiring, or otherwise dealing in children for purpose of begging, hawking, prostitution, or for unlawful immoral purposes, right not to be trafficked etc.⁵¹ which is also found in some national and international rights instruments.

In summary, human rights apply to adults and children. The human rights of a child are those inalienable, legally enforceable claims and interests protected by law accruing to a person under the age of eighteen.

1.10.3 Corrections

⁴⁷ B A Garner, *Black's Law Dictionary* (9th edn, USA: Thomas Reuters, 2009) p214.

⁴⁸ C Arinze-Umobi, *Domestic Violence against Women in Nigeria: A Legal Anatomy* (Onitsha: Folmech Printing and Publishing Co. Ltd, 2008) p11.

⁴⁹ *Ibid.*

⁵⁰ Child's Right Act, s3.

⁵¹ *Ibid.*, ss 4-29.

The word ‘corrections’ has developed to accommodate several aspects of management of different classes of persons in the justice system. The Black Law Dictionary defines correction as the punishment and treatment of a criminal offender through a program of imprisonment, parole and probation.⁵²

Correction is also defined as the range of community and institutional sanctions, treatment programs, and services for managing criminal offenders. Corrections include functions such as the supervisions and monitoring of offenders in the community, the secure holding of inmates, the provision of treatment for problems such as drug addiction or mental illness, and residential and other services provided to inmates as a transition from prison to the community. Corrections include a wide variety of activities, each with a wide variety of emphases and goals. Corrections forms one of the major pillars of the criminal justice systems.⁵³

According to V V Tarhule, the concept ‘Corrections’ is a generic term signifying any programmed ameliorative exercise, guidance, or instruction afforded to those with a particular disability, such as alcoholics, criminals, and juvenile delinquents to make them better citizens. The purpose of such beneficial treatment is usually anchored on five main premises: to correct the person so that he does not in the future commit the same or similar offences; to exhibit society’s preparedness and ability to deal with anyone who involves in criminality or the act complained of; to incapacitate the offender in such a way that he does not easily commit the same or similar offences; having the offender repay the victim in money or services; and the instilling of positive skills or attitudes in a person to provide him or her with a more contributively and fulfilling role in society.⁵⁴

Wash described ‘Corrections’ as a non-specific term covering a wide variety of functions carried out by the government agencies having to do with the punishment, treatment, supervision,

⁵²B A Garner, *Black Law Dictionary* (9th edn, USA: Thomas Reuters, 2009) p396.

⁵³R P Seiter, *Corrections, an Introduction*, (2nd edn, New Jersey: Pearson Education Inc) p5.

⁵⁴V V Tarhule, *Corrections Under Nigerian Law*, (Lagos: Innovative Communications, 2014) p 3.

and management of individuals who have been convicted of crime. These functions are implemented in the prisons, jails, and other secure environments, as well as in community based agencies such as probation and parole departments (where they exist) the term implies that the whole correctional enterprise exists to correct, amend, or put right the criminal behaviour of the clientele.⁵⁵

According to Wroblewski, Corrections is the final stage in the administration of criminal justice system which implements court orders. It consists of probation, parole system, where it exists, prisons, jails, borstals and other community based programmes aimed at turning around the offenders.⁵⁶ Corrections as described by the various authors are comprehensive and encompassing, having accommodated all the activities and management envisaged, such as punishment, treatment, amendment, training, supervision, monitoring and other measures on affected persons in the justice system. Correction is defined in this work as the punishment as well as treatment and other services rendered at community and institutional levels for the management of criminal offenders, child delinquents or offenders, children in need of care and protection and other categories of people needing institutional help and treatment, in preparation for re-integration into the society as useful citizens.

1.10.4 Correctional Institutions

The Oxford Advanced Learner's Dictionary of Current English defines 'correctional institutions' as institutions concerned with improving the behaviour of criminals.⁵⁷ The Black Law Dictionary defines a correctional Institution as prison, which is a State or federal facility for the confinement of convicted criminals, also termed penal institution or adult correctional institution.⁵⁸ Correctional institution is a place for punishment as well as treatment of the criminal behaviour of

⁵⁵ A Wash, I Yun, 'The Philosophical and Ideological Underpinning of Corrections', in M. Maguire, D. Okada (ed) *Critical Issues in Crime and Justice*, (California: Sage Publication, Inc, 2011) p 296.

⁵⁶ H M Wroblewski, K M Hess, *Introduction to Law Enforcement and Criminal Justice* (4th edn, New York: West Publishing Company, 1993) p 538.

⁵⁷ A.S Hornby, *Oxford Advanced Learner's Dictionary of Current English* (8th edn, New York: Oxford University Press, 2010) p 328.

⁵⁸ B A Garner, *Black Law Dictionary*, *Opcit*, p 396.

a criminal. The focus of this work is on the correctional institutions for children provided in the laws in Nigeria.

1.10.5 Court

The Black Law Dictionary defines a court as:

a governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice. It is a permanently organised body, with independent judicial powers defined by Law, meeting at a time and place fixed by law for the judicial public administration of justice. The judge or judges who sit on such a governmental body. The building where the judge or judges convene to adjudicate disputes and administer justice.⁵⁹

A Court is defined as a place where legal trials take place and where crimes are judged⁶⁰.

The Cambridge Dictionary defines a court as a place where trials and other legal cases happen or the people deciding the cases.⁶¹

A court is also described as a place where trials take place and legal cases are decided, especially in front of a judge and a jury or a magistrate. It is an agency set up by government to define and apply the law, to order its enforcement, and to settle disputed points on which individuals or groups do not agree.⁶²

According to Walker, a court is a tribunal, often as a government institution, with the authority to adjudicate legal disputes between parties and carry out the administration of justice in civil, criminal, and administrative matters in accordance with the rule of law. Court is also used to

⁵⁹B A Garner, *Black Laws Dictionary*, (9th edn, USA: Thomas Reuters, 2009) p404.

⁶⁰ A S Hornby, *Oxford Advanced Learner's Dictionary of Current English* (8th edn, New York: Oxford University Press, 2010) p336.

⁶¹ Cambridge English Dictionary, <www:// Cambridge.org/dictionary/English/court>, Accessed on 4th June, 2017.

⁶²J Hemphil , F Charles, 'Criminal Procedure: The Administration of Justice' in A B Danbazzu, *Criminology and Criminal Justice*(Kaduna: Nigerian Defence Academy Press, 1999)p188.

refer to the presiding officer or officials, usually one or more judges.⁶³ A court is also referred to as a hall or building in which a court is held.⁶⁴

It can be deduced from the above definitions that the meaning of court includes the place of the administration of justice in accordance to the law as well as the judges that administer the justice to citizens and government alike. A court therefore is the place where the laws of the land are interpreted and applied in the determination of the rights and obligations of the citizens, as well as government, in criminal or civil matter and which are administered by judicial officers. The judicial officers can also be referred to as the court.

Under the Constitution, judicial powers are vested in the courts⁶⁵. Courts in Nigeria owe its creation, establishment, composition, power, jurisdiction to a Statute enacted. The Constitution provides for the Supreme Court, Court of Appeal, Federal High Court, High Court of the FCT, Sharia Court of Appeal of the FCT, Customary Court of Appeal of the FCT, State High Courts, Sharia Court of Appeal of (State) and Customary Court of Appeal (State).⁶⁶ Courts also include such other courts that may be authorised by a Federal or State Law on matters within the scope of Federal and State Legislative jurisdictions.⁶⁷ The Court with the power to handle matters concerning children presently in Nigeria is the Family Court established under the Child's Rights Act. The Family Court has two levels, which is at the High Court level and at the Magistrate Court level. The Court has unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim in respect of a child is in issue; and any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a child, against a child or against the interest of a child. The Court at the High Court level shall be duly

⁶³ D Walker, *Oxford Companion to Law* (Oxford: Oxford University Press, 1980) p301.

⁶⁴ E A Martin(ed), *Oxford Dictionary of Law* (4th edn, New York: Oxford University Press, 1977) p144.

⁶⁵ Constitution of the Federal Republic of Nigeria, 1999(As amended), s 6(6).

⁶⁶ CFRN *ibid*, ss 230- 284.

⁶⁷ *Ibid*, s 6(5)(5).

constituted if it consists of a judge; and two assessors, while the court at the Magistrate Court level shall be constituted if it consists of a Magistrate and two assessors.⁶⁸

⁶⁸ Child Rights Act, 2003, ss 149, 150, 151, 152 and 153.

CHAPTER TWO

THE CONCEPT OF RIGHTS OF THE CHILD AND LEGAL PROTECTION

2.1 Concept of Rights /Human Rights

Rights are enjoyed by every human being. In view of this position, a child as a human being has rights which ought to be protected and promoted by government and the judiciary. Unfortunately, these rights are rather violated than protected. Further still, some people are unaware of their rights, and thus can hardly discern when those rights are violated. Again, some people do not know the procedure or required steps to enforce their rights. Rights has been defined in Chapter one of this work.

The affixing of the word 'human' to 'right' signifies that human beings are the objects of rights. Accordingly, Anyogu & Arinze Umobi, stated that the addition of human to rights means that every person has it and the subject of human rights is of the community of mankind. These rights belong to every human being anywhere, anytime irrespective of language, sex, race or religion, and when they are fundamental, they touch the basis of the very existence of the individual as a human being.⁶⁹

Human Rights therefore possessed by every human being are those rights and is free to enjoy by the virtue of being a human being. This position was also captured in the Black's Law Dictionary. The Black Law Dictionary defined right as 'the freedoms, immunities and benefits that, according to modern values all human beings should be able to claim as a matter of right in the society in which they live.'⁷⁰

Carol Arinze-Umobi holds the view, that human rights are those rights enjoyable by everybody everywhere and all times in equal proportion by the same reason of our humanity. They inhere in human beings by reason of their humanity, and are therefore

⁶⁹ F A Anyogu & C Arinze-Umobi, 'Full Realisation of the Rights of the Child Under the Child's Rights Act 2003: A Near Illusion in Nigeria' *Journal* , p50.

⁷⁰ B A Garner, *Black's Law Dictionary* (9th edn, USA: Thomas Reuters, 2009) p214.

inalienable to the extent that removal, denial or withdrawal makes the person from whom they are removed less human, sub-human, and incomplete.⁷¹ She further posited that written laws such as the Constitution and other statutes only help to make sure that the rights are declared, preserved and implemented.⁷²

Also in *Ransome Kuti v Attorney General of the Federation*⁷³ human rights was described as follows:

a right which stands above the ordinary laws of the land, and which in fact is antecedent to political society itself. It is a primary condition to a civilised existence and what has been done by our Constitution since independence is to have these rights enshrined in the Constitution so that the rights could be immutable to the extent of the non-immutability of the Constitution itself.

According to Vasak, human rights are categorised into civil and political rights; economic, social and cultural rights; and group rights. This has been referred to as first, second, and third generation rights respectively.⁷⁴ This categorisation is with respect to the time of recognition at the international level. The civil and political rights were the earliest to be recognised as evidenced in Magna Carter 1215, the American Declaration of Independence 1777, and the French Declaration of the Rights of Man 1789. The second generation emerged in the Constitution of Mexico 1917, Russia Socialist Republic 1918, Weiner (German) Republic 1919, USSR 1936 and Ireland 1937. The third generation of rights received a boost with the reference in the United Nations Charter 1945 to the right of self-determination and subsequent developments. From the reference in the UN Charter to the

⁷¹ C Arinze-Umobi, *Domestic Violence against Women in Nigeria: A Legal Anatomy* (Onitsha: Folmech Printing and Publishing Co. Ltd, 2008) p11.

⁷² *Ibid.*

⁷³ (1985) 2 NWLR (pt 6) 230.

⁷⁴ K Vasak, 'A thirty Year Struggle- the Effect to give Force of Law to the Universal Declaration of Human Rights', UNESCO, Nov. 1977.

further elaboration in the Universal Declaration of Human Rights, economic, social and cultural rights were spelled out in the International Covenant⁷⁵ on Economic, Social and Social Rights 1966. The European incorporated them in the European Social Charter 1961 just as the Inter-Americans had an additional protocol to their Convention-the Protocol of San Salvador 1988.

From the foregoing, it is submitted that human rights inure in humans by virtue of being human, and are simply made enforceable or recognised by their inclusions in the legislations. Human rights apply to all humans both adults and children alike. Therefore the human rights of a child are therefore those inalienable, legally enforceable claims and interests protected by law accruing to a person under the age of eighteen. The recognition and respect of these rights is known to be the foundation of every civilised society. Any derogation will raise fundamental issues.

2.2. Brief History of Human Rights

The development of child's right cannot be fully understood without linking it with the history and development of human rights.

Ikhariale⁷⁶ observed that in spite of the declared universal acceptance of human rights, there has not been consensus among writers and philosophers in relation to the exact origin of the concept of human rights. This is because most of the writings on the concept were influenced by the time and circumstances of the writers and philosophers. Some have argued that the concept originated from Roman law, while some others posit that the concept developed from natural school. Some others are simply of the opinion that the concept

⁷⁵ U O Umezurike, 'The African Charter on Human and Rights and Economic Social and Cultural Rights' *Journal of Economic, Social and Cultural Rights*, vol.1, No 3, January-March, 2002, Shelter Rights Initiatives (SRI) Lagos.

⁷⁶ M Ikhariale, 'The Jurisprudence of Human Rights' *Journal of Human Rights Law & Practice*(1995) vol.5, No 5, p54.

developed from the nature of man as rational being, or from the socio-economic conditions of a given society.

The concept of human rights can be traced to antiquity. Human rights codifications have been dated back to the origin of man and nature; the Code of Hammurabi, the ten commandments of God given to the Israelites;⁷⁷; the Magna Carter of England of 1215; the American Declaration of Independence 1776; the Petition of Rights 1628; the English Declaration of Rights 1689; the French Declaration of the Rights of Man and Citizens 1789; and the Universal Declaration of Rights 1948. The atrocities of war were responsible for early efforts. In the 13th century, Thomas Aquinas used the theory of natural rights to argue that state sovereignty should not be respected when a government is mistreating its subjects. Following the revolution of 1688 in England, Parliament enacted the Declaration of the Rights of Man⁷⁸ to protect citizens from violations by the monarchy.⁷⁹

From 1750 to 1792 B.C, king Hammurabi of Mesopotamia enacted the past known positivist Legal Code, which tried to some extents to protect human rights. The code consisted of nearly three hundred provisions arranged under headings such as family; trade; real property; personal property and labour. Three instances of the provisions of the Code are as follows:

- i. If anyone brings an accusation of any crime before the elders and does not prove what he has charged, he shall, if it is or capital offence charged, be put to death.
- ii. If anyone steals the property of a temple or of the court, he shall be put to death, and also the one who receives the stolen thing from him shall be put to death.

⁷⁷The Ten Commandments were the first known divine law on earth which tried to protect human rights and enhance good relationship between man and his creator.

⁷⁸Declaration of the Rights of Man, 1689.

⁷⁹ D Weissbrodt, *International Human Right Law, Policy and Process* (3rd edn, Ohio: Anderson publishing Co, 2001) p 2.

- iii. If a builder builds a house for someone, and does not construct it properly, and the house which he built fails and kills its owner the builder shall be put to death.⁸⁰

The Code of Hammurabi to a reasonable extent guaranteed human rights protection, but it was not without various infringements of rights, for instance, the code prescribed death penalty to simple offences. Moreover, the rights guaranteed by the Code were restricted only to the upper class, and not for the lower class people and slaves. Henkin's view supported the above view when he stated as follows:

Some have suggested that the idea of human rights can be traced to the ancient Code of Hammurabi which ensures for example certain legal protections against mutilation and torture, but they fail to acknowledge that these exemptions applied only to aristocrats i.e. the lower class people and slaves had no such exemptions'. The structure of the Hammurabi Code indicates that these "rights" such as they were derived entirely from society and not from any intrinsic quality of the individual.⁸¹

After the Code of Hammurabi had been made, some political philosophers worked very assiduously towards demanding for the protection and guarantee of human rights. This prompted the campaign for protection of rights by everybody despite the class. The political philosophers include: Spinoza, Thomas Hobbes, John Locke, Montesquieu, Rousseau, Kant⁸². The proponents of the Natural school expounded the idea of 'Natural Law' and stated that human rights concept is founded on natural law which are God made laws. These are laced into four periods: classical, medieval, renaissance and enlightens as well as the post-

⁸⁰Code of Hammurabi, Articles 3, 6, and 229.

⁸¹ A H Henkin, *Human Dignity: The Internationalisation of human Rights* (New York: Aspen Institute for Humanistic Studies and Ocean Publications, 1979) p2.

⁸² M A Ajomo and I E Okagbue, *Human Rights and the Administration of Criminal Justice in Nigeria*, (Lagos: Nigerian Institute of Advanced Legal Studies, 1991) p1.

world war11 revivalism. They claimed that there were two sets of laws: Natural Laws and Man-made Laws. Natural laws were eternal and unchangeable and applied to the whole world. Man – made laws were valid if only they agreed with Natural laws. Christian Philosophers like Thomas Aquinas furthered the notion of Natural laws. Natural laws were the laws set out in the Ten Commandments and certain other laws of Moses. They are the laws of God. While man-made laws made by men for their good governance⁸³.

According to Ikpeze, the classical era of Natural law gave birth to equality in Greece. The great illustration in Greek literature is the story of Antigone who upon being reproached by Creon the king for disobeying the order not to bury her brother, implied that she acted in accordance with the immutable laws of God. Under the Roman hegemony, the idea of equality within the law universally applied in the form of *Jus gentum*. The stoic's perception was after the breakdown of City States buttressed by Cicero as follows:

True law is right reason in agreement with nature. It is of universal application; unchanging& everlasting. It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it and it is impossible to abolish it entirely. We cannot be free from its obligations by senate or people, and we need not look outside ourselves for an expounder or interprets of it, and there will not be different laws at Rome or at Athens or different law now even in the future, but one eternal and unchangeable law will be valid for all nations and for all times, and there will be one master and one ruler, that is God, over us all, for he is the author of the law, its promulgator and enforcing judge.⁸⁴

⁸³ T Ige and O Lewis, *Human Rights Made Easy* (3rdedn, Lagos, Legal Research and Resources Development Centre) p5.

⁸⁴O V C Ikpeze, 'Human Rights and Fundamental Freedom: A must know' in C Arinze-Umobi and O V C Ikpeze, *Gender Rights in Nigeria* (Onitsha: Folmech Printing and Publishing Press, 2008) p68.

The medieval period saw Natural law as a theological weapon identifying law of God (the eternal law) governing all creation with law of nature made up of rules enacted by human beings through reasoning. Philosophers also founded natural justice. Natural justice are the principles of justice and fairness which imposes obligations on persons who have power to make decisions affecting other people to act fairly, in good faith, without bias and to afford a person the opportunity to be heard adequately and state his case, before decision is made.⁸⁵ Natural justice is usually referred to as the divine law and divine justice. Natural justice has two principles which are ‘*Audi alterem partem*’ which means ‘hear the other party in a case before making a decision’ and ‘*Nemo Judex in causa sua*’ which means ‘no one should be or act as a judge in his own cause or case’.

In 1215, King John granted the barons the English Charter called “Magna Carter” which was later confirmed by Henry 111 and Edward 1. Magna Carter is generally regarded as one of the greatest Common Law documents and as the foundation of constitutional liberties. Magna Carter came to be reckoned as the beginning of English Statute law; it was printed as the first statute of the realm. There are four editions of the Magna Carter which is the 1215, 1216, 1217, 1225 editions and between these editions, are important differences. It has always been the case that it is never enough to refer to magna carter without saying which edition one is referring to. It is noteworthy that Great Britain, even with its unwritten constitution has, as far back as 1215, enacted the Magna Carter on issues of human rights part. Part of it reads thus:

No free man may be taken or imprisoned or deprived of his freehold or liberties, or free customs or to be outlawed or exiled or in any way molested nor judged or condemned except by lawful judgment, or in accordance with the law of the land, nor may justice be sold or denied or

⁸⁵ E Malemi, *The Nigerian Constitutional Law* (Lagos: Princeton Publishing Co, 2006) p226.

delayed to any subject in an arbitrary manner. In future anyone might leave the kingdom and return at will, save war time the exception of prisoners, out laws and aliens enemies.⁸⁶

The Magna Carter set in motion the granting of certain rights by the king to his subjects though in most selective form to his baron, lords, knights and other land owners.

In 1628, The Petition of Rights was passed by both houses in Britain. The Petition of Rights struck hard on the crown, restricting its powers. The Petition of Rights established that, no man should be compelled to make or yield any gift, loan benevolence, tax or such like charge, without common consent by Act of parliament.⁸⁷

Again in December 1689, the Convention parliament of England passed the Bill of Rights in the United Kingdom as a statute of revolution settlement, as well as declaring the rights and liberties of the subject and setting succession to the crown. However, in 1763, the British colonies revolted. They claimed under the natural rights of the May flower contract of 1620, designed to protect the people's natural rights by an agreement between the king of England and the subjects in the colonies. In summary, it meant that they would remain submissive and obedient to the king, if the king by virtue hereof agree to enact, constitute and frame such just equal laws, Ordinances, Acts, Constitutions and offices from time to time, as shall be, though must meet the convenience for the general good of the colony by consultation with the colonists. When the king George II violated this agreement by imposing taxes arbitrary, the colonists revolted. The event later led to the American revolutions (1776) hinged on United Colonies representatives who gathered in Philadelphia on 4th July 1776 and declared as follow:

⁸⁶O V C Ikpeze, 'Human Right and Fundamental Freedoms: a must know', in C Arinze-Umeobi& O V C Ikpeze(eds,) '*Gender Rights Law In Nigeria*(Onitsha: Folmech Printing and Publishing Co. Ltd, 2008)p70.

⁸⁷B A Garner, *The Black's law Dictionary, op cit*, p1182.

We hold these truths to be self-evident; that all men are created equal; that they are endowed by their Creator with certain unalienable rights any of these are life, liberty and the pursuit of happiness. That to secure these right, Governments are instituted among men deriving their just powers from the consent of the people, that whenever any form of government becomes destructive of these ends, it is the duty of the people to alter or abolish it, and institute a new government, laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to affect their safety and happiness.

Despite the above quotation, United States of America up till date still has aversion to full individual's fundamental freedoms and human rights as provided in their Constitution. The several constitutional amendment on issues of rights like the Equality rights (4th amendment), Equal pay for Equal work (15th amendment), and women's right are open to interpretation by the courts, and Lord Marshal stated unequivocally that the issues of rights must be treated as "overbidding" in decision making.⁸⁸

The Sociological school made impact. They viewed rights issues as historically conditioned in accordance with political, social and economic conditions and otherwise. They postulated thus: 'Rights and freedoms of individuals in any state are materially stipulated and depend on the socio economic, political and other conditions in the development of society, its achievements and progress'.⁸⁹

New philosophers emerged in the 19th and 20th century, the great German philosopher Karl Marx, and later Vladimir Lenin who developed Marx view to what became known as 'Marxist ideology on human rights based on economic, social and political advancement of

⁸⁸ C Arinze Umobi & O V C Ikpeze, *Gender Rights law in Nigeria, op cit*, p72.

⁸⁹ V Karel, 'The International Dimensions of Human Rights' UNESCO 1982, P631, cited in C Arinze-Umobi and O V C I kpeze, *Gender Rights Law in Nigeria, op cit*, p 74.

human beings. They postulated that economic inequality gave rise to social inequality, discriminations and abuses of human rights by both man and the State and that gave rise to eventual revolutions. According to them, evolution of human rights stemmed from the 'rights of man'. It then developed to the inclusion of black men despite the slave trade in the concept of equal rights. It was followed by the inclusion of the rights of women. Afterwards there was recognition of the rights of children. It gave rise to the movement for non-discrimination as to colour, race, sex, age, religion, origin etc.⁹⁰

In 1857, the American presidential candidate, Abraham Lincoln in his campaign, indicated his intention to abolish slavery as a step to the implementation of equality of men. To this his opponent, Justice Douglas argued as follows:

The fathers of the American declaration of independence could not possibly have intended to include black people in their concept of equality, taking into account that slavery persisted after the declaration was adopted.⁹¹

While Abraham Lincoln's response often referred to as the 'Credo for human rights endeavour' is as follows:

They (founding fathers) did not mean to assert the obvious untruth that all were then actually enjoying that quality, nor yet, that they were about to confer it immediately upon them. They meant simply to declare the right, so that the enforcement of it could follow as fast as possible. They mean to set up a standard maxim for a free society, which should be familiar to all constantly laboured for, and even though never perfectly attained constantly, and thereby constantly spreading, and deepening the

⁹⁰ M O U Gasiokwu, *Human rights History, Ideology and Law* (F.A.N Annien Nig Ltd, 2003) p 6.

⁹¹ E Asbjorn, R Allan, *Economic, Social and Cultural Right* (quoting Abraham Lincoln's Address of 26th June, 1857(U.S.A: kluwer Academic Publishers, 1995) p 26.

influence, and augmenting the happiness and value of life to all people of all colours everywhere.⁹²

After the world war II, the United Nations was founded in 1945, which now has membership from an overwhelming majority of countries of the world, and each member Nation of the United Nations has pledged to secure progressively, for its inhabitant's rights including life, liberty and freedom of religion, thus each member nation has the duty to fulfil its pledge to protect human rights and that brought about the birth of the United Nations Charter. The Preamble to the Charter reads as follows:

We the people of the United Nations determined to reaffirm in faith in fundamental human rights, in the dignity and worth of the human person, in the equal right of men and women and Nations large and small.

On December 10, 1948, General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights (UDHR), following the adoption of the Universal Declaration, the United Nations Commission on human Rights drafted the International Bill of Human Rights which comprises the most authoritative and comprehensive presumption of human rights obligations that governments undertake in joining the United Nations. The Bill of rights comprises of the Universal Declaration of Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966 and the International Covenant on Civil and Political Right of 1966, and the first optional protocol to the International Convent on Civil and Political Rights.⁹³

⁹²*Ibid.*

⁹³ D Weissbrodt et al, *International Human Rights Law, Policy and Progress* (3rd edn, Ohio: Anderson Publishing Co, 2001) p30.

In addition to the International Bill of Rights, the United Nations has drafted, promulgated and helped to implement many human rights treaties, declarations, and instruments. In conclusion, the current effort for the quest of actualization and protection of human rights sprung from the shocking experiences of the first and second world wars, it became very natural and essential for various countries and even international organisations, to incorporate these rights into their laws, as fundamental human rights. The intensity of these struggles influenced major legal and constitutional developments resulting in the birth and promulgation of several constitutional amendments and international Covenants and conventions on human rights. Nigeria has enshrined these rights in their Constitution as fundamental human rights.

2.3 Development of Human Rights in Nigeria

Human rights and fundamental freedoms were recognised in the customary laws existing in Nigerian societies prior to the coming of the colonial masters. For example: customary values such as right to family life; freedom of thought, speech, belief and association; right to own, acquire and enjoy private property and right to life. Colonialism to a large extent affected some cultural values and political and economic rights were no longer available for the people. However, the Clifford Constitution introduced limited franchise, and the struggle for better political participation by early Nigerian nationalists led to enhanced political rights in the pre-independence Constitutions ending in the Littleton Constitution of 1954. The outcome of the Constitutional Conference which took place in 1957 led to the incorporation of the Fundamental Human Rights in the Constitution.

The 1960 Independence Constitution ushered in the entrenchment of Fundamental human rights in Nigeria. It was also enshrined in subsequent Constitutions: Republican Constitution of 1963, 1979 and the 1999 Constitutions respectively. The fundamental rights consist of the civil and political rights. The Constitution of the Federal Republic of Nigeria

has provisions for Fundamental objectives and directive principles of State policy, which recognised economic, social and cultural Rights.⁹⁴ The entrenchment of human rights provisions in the Nigerian Constitutions was aimed at creating a society which protects political freedom as well as the social and economic well-being of Nigerians. There are other legislations in Nigeria that also provide for the rights of citizens, such as the Child Rights Act 2003 and the Universal Basic Education Act.

In the Constitution of the FRN, the High Courts and the Federal High courts are vested with the jurisdiction for the hearing and determination of all cases of alleged violation of fundamental rights, in the same vein, the courts generally are empowered and discharged with the duty and responsibility to protect and enforce the constitutionally entrenched human rights and freedoms.⁹⁵

2.4 Concept /Development of Child's Rights

Child's rights are rights accruable to the child for his or her protection and development. Child's rights according to history emerged after the actualisation of human rights due to the traditional perception of a child. In other words, the concept of children having particular rights is a relatively new one. A view to this effect is that traditional attitudes towards children tended to consider them as mere extensions of the household and 'owned' by their parents or legal guardian, who exerted absolute parental control. Another view in times past was that most adults and parents in particular, had the best interest of the child at heart, there was thus no necessity to think in terms of children's rights.⁹⁶

These views about children began to change due to a variety of reasons. First, a more child-centred concept of human rights and family life began to emerge from the European Renaissance in the late fifteenth and early sixteenth century. John Locke espoused the

⁹⁴Constitution of the Federal Republic of Nigeria, 1999 (As Amended) ss 13-24.

⁹⁵ Constitution of the Federal Republic of Nigeria, 1999 (as amended)

⁹⁶I A Anyua & I Okagbue, *The Rights of a Child in Nigeria* (Lagos: Nigerian Institute of Advanced Legal Studies, 1996) p3.

contractual nature of marriage and wrote of the value of self-determination. In the enlightenment period in the eighteenth century a strong emphasis was placed on expression of individual freedom and one's rights. And during the American Revolution, sentiments were raised supporting abolition of all types of tyranny, including tyranny of parents over children. All of this set the stage for a new way of thinking about childhood and the rights of children.⁹⁷

The nineteenth century marked the beginning of the attribution of legal personality to children. Subsequent to the various reform movement of the 19th century, concern for the protection of the dignity, equality and basic human rights of children came to the forefront of public consciousness. Children became a recognised group on whose behalf laws have been enacted providing for protection against the abuse, economic exploitation and social neglect. Today, child's right advocacy has moved beyond the simple question of protection to also embrace an element of self-determination on the part of the child to the extent that children are guaranteed a degree of autonomy in the enjoyment of their rights.⁹⁸

According to history, with the Industrial Revolution in the nineteenth century in the west, structural changes were made in the nature of work and the family that further affected how children were raised and how their role in the family was construed. For the first time, the spheres of home and work were separated. The family was no longer the main economic unit and the period of childhood socialization was lengthened. During this time there was also a level of children's rights activity unmatched before. Child saving became a central theme of social reformers who wanted a public policy shift from punishment to education and rehabilitation. Many private, public, and especially progressive religious organizations became involved in efforts to create institutions such as orphanages, houses of refuge, and

⁹⁷ J Rank, 'Children's Rights', available at <[Historical Roots Of The Children's Rights Movement - Family, History, Court, and Parents - JRank Articles](http://family.jrank.org/pages/247/Children-s-Rights-Historical-Roots-Court-and-Parents-JRank-Articles.html#ixzz4dmGz0joQ)<http://family.jrank.org/pages/247/Children-s-Rights-Historical-Roots-Children-s-Rights-Movement.html#ixzz4dmGz0joQ>> accessed on 10 April 2017.

⁹⁸ I A Anyua, I Okagbue, *The Rights of a Child in Nigeria*, *op cit*, p6.

reform schools for abandoned, destitute, delinquent, wayward, and vagrant youths. Societies for the prevention of cruelty to children were established. The first child labour and compulsory schooling laws were enacted, and just before the turn of the twentieth century, new concepts of child protection were institutionalized.⁹⁹

The aftermath of the First World War at the beginning of the 20th century devastated children. The League of Nations was formed after the war. Its aim was to try to protect basic human rights standards. The League of Nations adopted the International Convention for the Suppression of Traffic in Women and Children 1921. [Eglantyne Jebb](#), a British teacher and one of the founding pioneers of the Movement for Children's Right took action. [He helped found Save the Children](#) and drafted the 'Declaration on the Rights of the Child' which was subsequently adopted by the League of Nations. This was designed to put pressure on the post-war governments to protect children's rights. In 1924 the League of Nations adopted the [Geneva Declaration on the Rights of the Child](#).¹⁰⁰ In its preamble, the Declaration affirmed the recognition by men and women of all nations, of the duty owed by mankind to children to give them the best they can offer. Among other things, the Declaration provided that the child must be given the means requisite for its normal material and spiritual development and must be protected against every form of exploitation. It represented the first step towards the development of international norms concerning the global protection of children, as earlier international agreements had merely focused on particular problems affecting children such as working conditions and slavery. The provisions of the Declaration were given in five principles thus: Principle one, stated that each child must be provided with the requisite means for his or her normal development, both materially and spiritually; Principle two, stated that the child that is hungry must be fed and the child that is sick must be nursed; Principle three, stated that the child must be the first to receive relief in time of distress;

⁹⁹ J Rank, '[Children's Rights](#)', *op cit*.

¹⁰⁰ The Declaration of human rights stated in its preamble that 'mankind owes to the child the best that it has to give' and went ahead to define the duties of adults towards children.

Principle four, stated that the child must be enabled to earn a livelihood and must be protected from every form of exploitation and; Principle five, stated that a child must be raised in the consciousness that its talents must be devoted to the service of its fellow men.¹⁰¹This Declaration prepared the ground for the progressive development of the international norms and standards with regards to rights and wellbeing of the child.

However, with the Second World War, millions of children were again left unprotected, killed, gassed or orphaned. The atrocities of the Second World War prompted the international strive for the regulation of human rights. In 1945 the United Nations Organisation was born and the [Universal Declaration of Human Rights](#) adopted. Although the rights of children were implicitly included, many argued that the special needs of children justified an additional separate document.¹⁰²The aftermath of World War II led to the creation of the United Nations Fund for Children in 1946 for victims of the war. UNICEF had its initial mandate to provide relief assistance to children affected by the Second World War. However, in 1953, its mandate was widened and it acquired the status of a permanent international organisation. In 1959 the United Nations General Assembly adopted a second [Declaration of the Rights of the Child](#) utilising the framework of the Geneva Declaration. This document is anchored on the premise that by reason of their physical and mental immaturity, children need special care including appropriate legal protection before as well as after births.¹⁰³

Although these declarations affirmed a strong desire on the part of the international community to bring an end to the suffering of children, they were only statements of principle and not binding documents. In 1978, during the preparations for the international year of the

¹⁰¹ Y Kubota, 'The Protection of Children's Right and the United Nations', *Nordica Journal of International Law*, 1989, vol. 58.

¹⁰² P Veerman, 'The Rights of the Child and the Changing Image of Childhood' (Martins Nijhoff Publishers, 1992) p184 in I A Anyua, I Okagbue, *The Rights of a Child in Nigeria*, *op cit*, p5.

¹⁰³ I A Anyua, I Okagbue, *The Rights of a Child in Nigeria*, *op cit*, p8.

child, which was planned to coincide with the twentieth anniversary of the UN Declaration on the Rights of the Child, Poland proposed that the event should be marked by the treaty giving the force of law to children's right. Subsequently, during the international year of the child in 1979, the General Assembly of the United Nations requested the UN Commission on Human Rights to set a working group to draft a Convention. The efforts of the working group culminated in the adoption of the UN Convention on the Rights of the Child in 1989.¹⁰⁴ But whereas the UN Declaration on the rights of the child had concentrated exclusively on these specific rights, the Convention goes further to encompass the whole range of human rights, i.e. civil, political, economic, social and cultural rights which apply to all children. The Convention recognises the indivisibility of these different types of right and seeks to ensure the full development of the child's physical and mental capacities by establishing, among other things, the child's right to a healthy and safe environment, access to medical care and minimum standards of food, clothing and shelter. As such, issues that had formerly been addressed as 'needs' the fulfilment of which were dependent on government, have now been framed in terms of 'rights' which the government are under an obligation to provide. Further to the Convention on the Rights of the Child, a world summit for children was held in 1990 at the UN Headquarters in New York. The summit was attended by many Sovereign States, a remarkable achievement considering that at the time, world leaders were preoccupied with the Gulf crises.¹⁰⁵ The summit adopted a Declaration on the Survival, Protection and Development of Children. A plan of action for implementing the stated goal of the Declaration to ensure the survival, development and protection of the children through programmes designated to combat malnutrition, preventable diseases and illiteracy was set.¹⁰⁶

¹⁰⁴UN Human Rights Fact Sheet Series No. 10, in I A Anyua, I Okagbue, *The Rights of a Child in Nigeria*, *Ibid*, p 4.

¹⁰⁵P Veerman, 'The Rights of the Child and the Changing Image of Childhood' (Martins Nijhoff Publishers, 1992).

¹⁰⁶ *Ibid*.

At the regional level, efforts were also made to ensure the protection of the rights of the child. The Assembly of the Heads of State and Government adopted a Declaration on the Rights and Welfare of the African Child at its Sixteenth Ordinary Session in 1979. The Organization for African Unity adopted the African Charter for the Rights and Welfare of the Child in 1990. The African Charter to which Nigeria is signatory to is very similar to the UN Convention. It is the second global and first regional binding instrument that identifies the child as a possessor of certain rights and makes it possible for the child to assert those rights in domestic judicial or administrative proceedings. As a follow up to the World Summit on Children of 1990, the OAU convened an International Conference on Assistance to African Children in Dakar, Senegal in 1992 which were attended by over forty African Countries, and the Conference adopted the Dakar Consensus which recognises that action for Africa's women and children must be part of a broader accelerated programme of development and poverty alleviation. The [Worst Forms of Child Labour Convention](#) was adopted in 1999.¹⁰⁷

The welfare of the child in Nigeria was recognised in 1943 through the enactment of the Children and Young Person's Ordinance¹⁰⁸. This was retained as Chapter 32 of the Laws of the Federation of Nigeria and Lagos as revised in 1958. The same was extended to Eastern and Western Regions in 1946 and Northern Nigeria in 1958. With the creation of the States in 1967 many States adopted the Children and Young Person's Law in exactly the same format as the original legislation. This has remained the situation with successive creation of States until the present.¹⁰⁹ In 1979, the protection was specifically enshrined in the Nigerian Constitution of that year which provided to the effect that children and young person should be protected against any exploitation whatsoever and against moral and material

¹⁰⁷ I A Anyua, I Okagbue, *The Rights of a Child in Nigeria, op cit*, p7.

¹⁰⁸ No.41 of 1943 as amended by No. 44 of 1945 and No. 27 of 1947.

¹⁰⁹ A B Ahmed, *The Law and Child Rights in Nigeria* (Lagos: Malthouse Press Limited, 2015) p51.

neglect.¹¹⁰ Further still the Constitution enjoins the government to direct its policy towards ensuring equal and adequate educational opportunities at all levels.¹¹¹

Nigeria became a signatory of the Convention on the Rights of the Child in 1991. Consequently, it was important for Nigeria to ratify same, so that the rights of the child can be adequately protected as required in the Constitution.¹¹² Nigeria ratified the Convention on the Rights of the Child, and domesticated it as part of our national law as the Child Rights Act of 2003. This Act repealed the Children and Young Person's Law in any State that domesticated it. However, one of the problems hindering its implementation is the fact that matters relating to children are neither under the exclusive or concurrent list and States of the Federation will adopt and domesticate legislations before it can apply in any State. Nigeria also signed but did not ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflicts and signed and ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. At the regional level, Nigeria has also ratified the African Charter on the Rights and Welfare of the Child.¹¹³ Nigeria has inaugurated a National Child's Right Implementation Committee among other initiatives to ensure the implementation of the CRA as provided under the Act.¹¹⁴ The pertinent question remains if the committee are living up to their mandate.

2.5 Legal Protection of the Rights of the Child in Nigeria

There are various laws that recognise the rights of a child in Nigeria; however laws that deal with specific rights of the child include:

¹¹⁰ Constitution of the Federal Republic of Nigeria 1979, Cap 62, LFN, 1990, s17 (3(f)).

¹¹¹ *Ibid*, s 18.

¹¹² Constitution of the Federal republic of Nigeria 1999(as amended), s12.

¹¹³ A B Ahmed, *The Law and Child Rights in Nigeria*, *op cit*, p51.

¹¹⁴ I A Anyua, I Okagbue, *The Rights of a Child in Nigeria*, *op cit*, p9.

2.5.1 Constitution of the Federal Republic of Nigeria (1999) (as amended)

The Constitution is the supreme law in Nigeria that binds all persons and authorities in Nigeria, and takes precedence over all laws in the country. The Constitution made provisions guaranteeing and protecting the rights of all citizens, adults and children alike. The Constitution provides for the promotion and protection of the rights of children to the effect that the State shall direct its policy towards ensuring that children and young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect.¹¹⁵The fundamental rights guaranteed in the 1999 Constitution include:

i. **Right to Life**¹¹⁶

The Constitution provides that every person has a right to life, and no one shall be deprived intentionally of his life, except in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. It further provided that a person shall not be regarded as having been deprived of his life, if he dies as a result of the use, to such extent in such circumstance as are permitted by law, of such force as is reasonably necessary for the defence of any person from unlawful violence or for defence of property; in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or for the purpose of suppressing a riot, insurrection or mutiny. The court held that the provision of the Constitution on the right to life makes it unlawful to intentionally deprive a person of his life¹¹⁷, except within the ambits of the law. Similarly, in *Kalu v the State*¹¹⁸, it was held that although the right to life is fully guaranteed under the Constitution, it is nevertheless subject to the execution of a death sentence of a court of law in respect of a criminal offence of which one has been found guilty in Nigeria.

¹¹⁵ CFRN, 1999(as amended) s 17(3)(f).

¹¹⁶ *Ibid*, s 33.

¹¹⁷ *Esabunor v Faweya* (2008)12 NWLR (pt. 102) 798.

¹¹⁸ (1999) 1NWLR (pt 427)713.

According to Rebecca, this provision guarantees the right of the Nigerian child to life. She posited that the obvious reason for the protection of life is because life is sacred, the source and nature of which is beyond human comprehension; and that right to life is the foundation upon which all other rights are predicated and that is why it is usually the first of all rights guaranteed under the Constitution.¹¹⁹ The above view is correct, and it is submitted that right to life guaranteed by the Constitution is a very important right to the child because of the vulnerable nature of the child. It therefore requires by extension, the duty of government to take appropriate steps to protect life by providing good health, eliminate malnutrition and epidemics, provide and promote security, preventing murder or other crimes threatening life such as child trafficking, prevent conflicts, violence and insurrection leading to loss of life. Protection of the right to life is pertinent, because without life the child will not enjoy the other rights guaranteed to him or her.

(ii) Right to Dignity of Human Person¹²⁰

The Constitution provides for the protection of the dignity of the person of the Nigerian child and to that extent provides that the child shall not be subjected to torture or to inhuman or degrading treatment; and shall not be held in slavery or servitude; and not be required to perform forced or compulsory labour. In other words, torture, slavery, servitude, forced or compulsory labour and inhuman and degrading treatment as provided in this section are acts that violate the right to dignity of human person. In *Uzoukwu v Ezeonu*¹²¹ inhuman treatment was held to be a situation of deliberately causing severe pains, suffering, physical or mental which are not justifiable in law.¹²² Accordingly, in line with the above decision, it is submitted that battering a child; subjecting a child to corporal punishment or life imprisonment constitutes inhuman and degrading treatment. The child offender's right to

¹¹⁹ J C Rebecca, 'Human Rights and Infant Survival: A case for Priorities, *Columbian Human Rights Law Review*, (1987) Vol.18 p12.

¹²⁰ CFRN, 1999 (as amended), s 34.

¹²¹ (1991) 6NWLR (pt.200) p704.

¹²² Similar decision was held in *Ezeadukwa v Maduka* (1997) 8 NWLR (Pt. 518)p 635.

dignity of human person includes for example his right to rehabilitation as opposed to punishment.

iii Right to Personal Liberty.¹²³

The Constitution guarantees everybody's right to liberty and as such no person shall be deprived of such liberty except in cases permitted by law. The right to liberty may be lost in the following circumstances: in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty; by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law; for the purposes of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence; in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare; in the case of person suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or for the purposes of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceeding relating thereto, provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.

This provision makes it unlawful to deprive a person of his personal liberty unless such deprivation occurs in the circumstances outlined above. Thus the child should be free from physical restraint, except in justifiable circumstances which are specifically recognised by the law, like restriction for education and welfare.

¹²³CFRN, 1999(as amended) s 35(1).

Subsection (2) provides that a person who has been arrested or detained shall have the right to remain silent or avoid answering questions until such a person has consulted with the legal practitioner or any other person of his own choice. The child offender therefore by virtue of this provision has the right to remain silent, and the right to a legal practitioner, which is geared towards effective legal representation of the child.

Subsection (3) states that any person who is arrested or detained shall be informed in writing within-twenty-four hours and in the language he understands of the facts and grounds for his arrest or detention. This provision has been incorporated in various other Statutes; and requires that the police should contact parents and guardian upon arrest of a child. This will obviously enable the effective preparation of the case of the child.

Subsection (4) provides that any person who is arrested or detained in accordance with subsection (1)(c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or three months from the date of his arrest or detention in the case of a person who has been released on bail, shall without prejudice to any further proceedings that may be brought against him be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date. This provision highlights the rights of a child offender arrested or detained to be brought before the court within a reasonable time and for the subsequent release of the child upon failure to satisfy the required conditions. It is really worrisome that children are kept in custody for a long period of time without arraignment in court, and in most cases kept with adult inmates in the prisons.

Subsection (6) provides for the right of compensation and public apology for persons unlawfully detained. This is even more demanding in the case of a child who must have lost ample time for his or her education and development while in custody.

(iv) Right to Fair Hearing¹²⁴

The Constitution provides that a person shall be entitled to a fair hearing within a reasonable time by a court or a tribunal established by law and constituted in such a manner as to cure its independence and impartiality that in the determination of his civil rights and obligations, including any question or determination by or against any government or authority. The child offender has a right to be accorded fair hearing to ensure justice and protection of his or her best interest; this is more so when the child justice system is anchored on care, concern and reformation of the child offender, rather than punishing the child offender, who may have been lured into delinquency by adults on whom he or she depend. In examining the concept of fair hearing, the court in *Ikeanyi v B.C.A Co. Ltd*¹²⁵, held that fair hearing within this context means trial or investigation conducted according to all rules formulated to ensure that justice is done to all parties. The doctrine of fair hearing therefore envisages that both parties are given ample opportunity of presenting their respective cases without hindrance, right from commencement of such case to its conclusion. Again in *Aliyu v Chairman Rent Tribunal*¹²⁶: it was held thus:

It is a basic principle of law that where a person's legal rights and obligations are called into questions, he should be accorded full opportunity of being heard before any adverse decision is taken against him with regards to such rights or obligations. In other words, it is an indispensable requirement of justice that an adjudicating authority, to be fair and just, shall hear both sides, giving them ample opportunity to present their cases.

¹²⁴ CFRN, 1999(as amended) s 36.

¹²⁵ (2007) 19 W.R. N. 89.

¹²⁶ (2003) 10 NWLR pt 829, p 633 at 644.

Also in *Ajayi v N.U.R.T.W*¹²⁷ the Court stated that the concept of fair hearing is not a mere rhetoric or empty verbalism. Fair hearing is a fundamental right of the individual guaranteed in the Constitution, the breach of which will nullify the proceedings in favour of the victim. The child offender no doubt ought to be accorded fair hearing. This is because the court should be concerned in dispensing justice, but more importantly because the reason for the delinquency of the child should be the focus.

Subsection (2) provides to the effect that a person must be granted right of access to be heard in a duly constituted and impartial court. Consequently, the child should be entertained at the Family Court in accordance with the child justice system.

Subsection (4) provides for the exclusion of the child from public trials for the welfare of the child. This is an exception to the right to public trials in regular courts, which is geared towards the protection of the interest of the child.

Subsection (5) provides that every person charged with a criminal offence shall be presumed to be innocent until proven guilty. This provision applies to the child, and it forbids the remanding of children in prisons as criminals for long period of time without arraigning them in court. This obviously translates to the child serving punishment, even when not proven guilty.

Subsection (6) states that every person who is charged with a criminal offence shall be: entitled to be informed promptly in the language that he understands and in details of the nature of the offence; be given adequate time and facility for the preparation of his defence; defend himself in person or by legal practitioners of his own choice; examine in person or by his legal practitioners, the witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and have without payment the assistance of an interpreter if he cannot understand the language used at

¹²⁷ (2009) 8 NWLR (pt. 1144) 429.

the trial of the offence. The provision guarantees the child's right to legal representation, adequate and full participation in cases involving him or her. The child has the right to be represented in court by the Legal Aid Council, or his or her personnel counsel to ensure that the interest of the child is well presented before the court.

(v) Right to Private and Family Life¹²⁸

The Constitution provides for the protection of privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications. Accordingly, the privacy of the child, his/her home, correspondence, telephone conversation and other communications are guaranteed and protected by the Constitution. This right is however exercised subject to the interest of defence, public safety, public order, public morality, the protection of the rights and freedoms of others.

The family is the first institution for the child, and family values are very important. The family maintains, nurtures and ensures the welfare and development of the child. The role of family as a social unit cannot be overemphasized generally, especially in the treatment of child delinquency and ensuring the wellbeing of the child. The role of parents has long been emphasized, thus in the case of *People v Turner*¹²⁹, the Illinois Supreme Court stated thus:

In our solicitude to form youths for the duties of evil life, we should not forget the rights which inhere both in parents and children. The principle of the absorption of the child is and its complete subjection to the despotism of the State is wholly inadmissible in the modern civilised world. The parent has the right to the care and custody and assistance of his child. The duty to maintain and protect him or her is a principle of natural law.

¹²⁸ CFRN, 1999, s 37.

¹²⁹ (1466) 58 S. Ct. 1019.

This goes to the point that right to family life and privacy for the child is very important for child development and welfare. The deprivation of a child's right to family will surely affect the maintenance and well-being of the child, and render the child in need of care and protection.

(vi) Right to Freedom of Thought, Conscience and Religion¹³⁰

The Constitution guarantees the right of every person to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom to manifest and propagate his religion or belief in worship, teaching, practice and observance. Subsection (3) gives communities or denominations freedom to give religious instructions in institutions maintained wholly for that community. While subsection (4), prohibits forming, joining or taking part in secret societies or their activities. The Constitution ensures the child's right to freedom of thought, conscience and religion. Therefore a child is not to be compelled to attend, or take part in any religious activity not approved by his or her parents or guardian. Thus it is submitted that the kidnapping of children by the Boko Haram sect and compelling them to profess and participate in a religion, other than their own religion constitutes an infringement of their right.

(v) Right to Freedom from of Expression and the Press¹³¹

The Constitution provides that every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. The section also confers on persons, the right to own, establish and operate mediums for the dissemination of information ideas and opinions. The child by this provision has a fundamental right to freedom of expression and the press. For example an oppressed, battered and abused child can exercise his or her right of disclosing or expressing such information that will secure protection for him or her, or other children.

¹³⁰ CFRN, 1999, (as amended) s 38.

¹³¹ CFRN, 1999,(as amended) s 39.

(vii) Right to Peaceful Assembly and Association¹³²

The Constitution provides for entitlement to assemble freely and associate with other persons, and in particular may form or belong to any political party, trade union or any other association for the protection of his interests. Thus a child is entitled to assemble freely and to associate with other persons for the protection of his interest. This right includes the child's right to belong to academic and social clubs, such as Press Club, Red Cross, and Drama Club, as well as religious clubs for his or her development.

(viii) Right to Freedom from Discrimination¹³³

The Constitution provides that a citizen of Nigeria of a particular community ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person be subjected either expressly by, or in practical apply any law in force in Nigeria or any executive or administrative government , to disabilities, or restrictions to which citizens of other communities, ethnic group, places of origin, sex, religious political opinions are not made subject; or accorded either expressly by, or in the practical application any law in force in Nigeria or any such executive or administrative any privilege or advantage that is accorded to citizens of other communities, ethnic groups, places of origin, sex, religious or political opinions. This provision is to the effect that no child shall be discriminated against due to the circumstances of sex, religion, place of origin, or ethnic group. Despite this provision the child encounter discrimination of all sorts in the society on account of sex, especially for the girl child under some cultural practices. Subsection (2) provides to the effect that no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth. Thus it prohibits discrimination on children on the grounds that they were born out of wedlock, disabled, adopted or is an artificially inseminated child. The Court has on some occasions interpreted

¹³² *Ibid*, s 40.

¹³³ *Ibid*, s 42.

this provision in favour of the child. For example in *Anode v Mmeka*,¹³⁴ where a child born out of wedlock was disinherited and prevented from inheriting the estate of his maternal grandfather, it was held that this was a clear violation of the child's rights as laid down by section 42(2) of the Constitution.

In addition to all these fundamental rights of the child enshrined under chapter four of the Constitution, the Constitution in its chapter two, makes provision for Fundamental Objectives and Directive Principles of State Policy, which provisions are, geared towards the promotion and protection of the rights of Nigerian citizens particularly children. The Constitution under this heading imposes a constitutional obligation on all the arms and tiers of government to observe the fundamental objectives relating to the socio-political, economic, educational and environmental issues in Nigeria and that security and welfare of children shall be the primary purpose of government.¹³⁵

The economic objectives of the State includes: the control of the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity and that the economic system is to be operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group; and that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.¹³⁶ The social objectives demand that the policy of the state should be directed towards ensuring that children, young persons and the aged are protected against exploitation whatever and against moral and material neglect. Provision should be made for public assistance in deserving cases or other conditions of needs, and that

¹³⁴ (2008) 10 NWLR(pt 1094) I.

¹³⁵ CFRN, 1999(as amended) ss. 15,16,17, 18, 19, &20.

¹³⁶ CFRN, 1999, (as amended)s 16.

the evolution and promotion of family life is encouraged.¹³⁷ While educational objectives demand that government is required to direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels and to promote science and technology. The government is also under obligation to strive to eradicate illiteracy and to this end the government shall as and when applicable provide free compulsory and universal primary education, free secondary education, and free adult literacy programs¹³⁸.

The provisions under chapter two of the Constitution, directly addresses the rights of children, however cannot be legally enforced in a court of law.¹³⁹ However, the Supreme Court in *AG Ondo State v A G Federation*¹⁴⁰ established that the provisions of chapter two of the Constitution can be enforced by Nigerians, as it can be made justiciable by legislation, once the National Assembly enacts any specific law to meet its provisions. Examples of such legislations are: Child Rights Act 2003, and the Universal Basic Education Act. Again the Court can be proactive while interpreting the Fundamental Human Rights to encompass the rights provided in chapter two.

2.5.2 Labour Act

In Nigeria, the Labour Act¹⁴¹ made provisions for regulating the appointment, conduct and protection of children in employments as follows: no young person must be employed in any employment which will be injurious to his health or which is dangerous or immoral;¹⁴² or in the circumstance in which is not reasonably possible for him or her to return each day to the place of residence of his parents or guardian, except with the approval of an authorised labour

¹³⁷*Ibid*, s 17.

¹³⁸*Ibid*,s 18.

¹³⁹ *Ibid*, s 6(6).

¹⁴⁰ (2002) 9NWLR (Pt. 772) 222.

¹⁴¹ CAP L, LFN, 2004.

¹⁴²*Ibid*, s 59.

officer and on a written contract which conforms with the contract of employment of a worker.¹⁴³

The Act provides to the effect that no child must be employed or work in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural and domestic character approved by the minister. He must not in any case, be required to lift, carry or move anything so heavy as to be likely to injure his physical development.¹⁴⁴

No young person must be employed during the night.¹⁴⁵ Night means a period of at twelve consecutive hours including, in the case of young persons under the age of sixteen years, the interval between ten o'clock in the evening and seven o'clock in the morning and, in the case of young person's over sixteen years a prescribed interval of at least seven consecutive hours falling between ten o'clock in the evening and seven o'clock in the morning.¹⁴⁶

In the case of young person's over sixteen years the Minister may prescribe different intervals of different areas, industries, undertakings or branches of industries or undertakings but he must consult the employers' and workers' associations or organizations concerned before prescribing an interval beginning after eleven o'clock in the evening.¹⁴⁷

No young person must be employed in a vessel as a trimmer or stoker except where the vessel is a school or training vessel and the work on which the young person is employed is work of a kind approved by the minister and supervised by a public officer or by public department or is work on which only members of the family of the young person are employed¹⁴⁸. There must be included in every agreement with the crew of a vessel a list of

¹⁴³ *Ibid*, s 59(4).

¹⁴⁴ s 59(1)(b).

¹⁴⁵ s 60(1).

¹⁴⁶ s 60(4).

¹⁴⁷ s 60(5).

¹⁴⁸ *Ibid*, s 61.

young persons who are members of the crew together with particulars of the dates of their births. But in the case of a vessel in which there is no such agreement the master must keep a register, which must at all times be open to inspection by any authorised labour officer, or customs officer, of such young person's as may be employed in the vessel with particulars of the dates of their births and the dates on which they become or cease to be members of the crew. The Act mandates every employer of young persons in an industrial undertaking to keep a register of all young persons in his employment with particulars of their ages; the date of employment and such other particulars as may be prescribed and required by an authorised labour officer.¹⁴⁹

The minister may make regulations: exempting any occupation which forms part of an industrial undertaking from all or any of the provisions on employment of young persons or from any regulations made by him under this sections; providing for the registration and identification of young person's; prescribing the records to be kept and the returns to be made by employers of young person's; further restricting the employment of young persons in specific occupations; prescribing additional conditions upon which young persons may be engaged or employed; and making further provision for the care of young person's by employers; regulations providing for the engagement, repatriation or supervision of domestic servants, the employment of women and young person's as domestic servants and the conditions of domestic service generally.¹⁵⁰

These provisions are made to protect children from involving in labour especially when they should be in school; unfortunately due to the deplorable economic situation in the country, and lack of monitoring and supervision by designated authorities and institutions, children are engaged in all manners of labour to survive. Child labour affects child's development and welfare, and is prohibited by laws, yet it is yet to be abated in Nigeria.

¹⁴⁹ s 62.
¹⁵⁰ s 65.

2.5.3 Criminal Code Act and Penal Code Act

The two major sources of Criminal law in Nigeria are the Criminal Code¹⁵¹ which applies in the Southern States, and the Penal Code¹⁵² applying in the Northern States. Criminal law is intended for the maintenance of law and order in the society; to protect the life, liberty and property of the citizens within the given community by making rules that govern the conduct of the members of the community and also prescribing sanctions for the breach of such rules. In doing this, some exceptions are provided to take care of special circumstances, which are executable by the law. These are technically called defences to criminal liability and they apply to both adults and children alike.¹⁵³

In addition to these defences, the criminal law makes special provisions concerning children either as offenders or as victims. The basis of these special provisions or treatment of children is the immaturity of a child, which naturally deprives the child the ability to make rational decisions. As an offender it is provided that a child under the age of seven years is not criminally responsible for any act or omission and a child under the age of twelve years is not criminally responsible for any act or omission unless it is provided that at the time of doing the act or making the omission he had the capacity to know that he ought not to do the act or make the omission, and a child above twelve is liable for his acts and omissions that amount to crime.¹⁵⁴ This last category of children, which are referred to as child offender are to be tried at the Family Court and are entitled to all the principles of fair hearing.

As a victim of an offence, several sections of both the Criminal Code and the Penal Code protect the child. In fact a child is protected right from the moment of conception for it is an offence to procure the miscarriage of a woman.¹⁵⁵ And if a child dies as a result of an act done or omitted to be done by any person before or during birth, the person who did or

¹⁵¹Criminal Code (CC) Act, Cap C 38, *LFN*, 2004.

¹⁵²Penal Code (PC) Act, Cap P 3, *LFN*, 2004.

¹⁵³ CC, *op cit*, ss 22-36.

¹⁵⁴ CC, s 30 & PC, s 232.

¹⁵⁵ CC, s 228 & PC, s 232.

omitted to do such act is deemed to have killed the child.¹⁵⁶ Concealment of the birth of a child after delivery by a secret disposition of its dead body is an offence punishable with imprisonment for two years.¹⁵⁷ All these are meant to protect the child before its delivery or immediately after delivery, so that any person who is under any obligation to the child shall be legally liable if, for any reason he does or refuses to do anything which negatively affects the child. Charges are rarely brought on this provision, because of the cultural perception that the child is the property of the parent, who chooses to deal with the child as he or she wills, especially when the child is unborn. This is a wrong perception, more so a crime since it is designated as such in a written law. To this effect, it is necessary that institutions empowered to address issues of child victims do their work effectively, if the actualisation of rights of the child is to be realised.

A person who unlawfully abandons or exposes a child less than seven years of age, in such a manner that grievous harm is likely to be caused to it commits an offence and is liable to imprisonment for five years.¹⁵⁸ Again it is the duty of every person who, as head of the family, has charge of a child under the age of fourteen years, being a member of his household, to provide the necessaries of life for the child. He is held to have caused any consequence which results to the life or health of the child by reason of any omission to perform that duty, whether the child is helpless or not.¹⁵⁹ Similar duty is imposed on every person having charge of another who is unable by reason of age, sickness, unsoundness of mind, detention or any other cause to withdraw himself from such charge, and who is unable to provide himself with necessaries of life, whether the charge is undertaken under a contract, or is imposed by law, or arises by reason of any act, whether lawful or unlawful, of the person who has such charge, to provide for that other person the necessaries of life; and

¹⁵⁶ CC, s 309 & PC, s 234.

¹⁵⁷ CC, s 329 & PC, s 239.

¹⁵⁸ CC, s 341 and PC, s 237.

¹⁵⁹ CC, s 301.

he is held to have caused any consequences which result to the life or health of the other person by reason of any omission to perform that duty.¹⁶⁰ It is also a duty of every master or mistress who has contracted to provide necessary food, clothing, or lodging, for any servant or apprentice under the age of sixteen years to provide the same; and he is held to have caused any consequences which result to the life or health of the child by reason of any omission to perform that duty, whether the child is helpless or not.¹⁶¹ This is meant to protect the child from any form of deprivation, so that the parent, guardian or any responsible will be committing an offence for not providing the child with the necessities of life like food, clothing or shelter.

The Code provides for sexual offences against the child. Thus any person who has unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a felony, and is liable to imprisonment for life.¹⁶² There are other provisions on defilement and indecent treatment of boys under fourteen years, girls under sixteen years, causing or encouraging the seduction or prostitution of a girl under sixteen, allowing a person under sixteen to be in brothels, procurement of girls to have unlawful carnal knowledge with a man, and abduction of girls under eighteen with intent to have carnal knowledge.¹⁶³

Further more, parents, guardians, teachers and masters are permitted under the law to correct their children; however it has to be done within the limits permitted by law as follows: a parent may correct his child under the age of sixteen years, or any guardian or person acting as a guardian, his ward, being under sixteen years of age, for misconduct or disobedience to any lawful command; a master may correct his servant or apprentice under the age of sixteen years for misconduct or default in his duty as such servant or apprentice; guardian or teacher acting in that capacity over a child under the age of sixteen years for misconduct or

¹⁶⁰ CC, s 300.

¹⁶¹ CC, s 302.

¹⁶² CC, s 218.

¹⁶³ *Ibid*, ss 216-225.

disobedience for any lawful command; the a parent or guardian or a person so acting may delegate to any person whom he or she entrusts permanently or temporarily with the governance or custody of his or child or ward all his or her own authority for correction, including the power to determine in what cases correction ought to be inflicted; and such a delegation shall be presumed, except in so far as it may be expressly withheld, in the case of a school master or a person acting as a schoolmaster, in respect of a child or ward.¹⁶⁴ Chastisement is also permitted under the penal code for persons below eighteen years, as long as it does not cause grievous harm.

2.5.4 Children and Young Person's Law

Children and Young Person's Law¹⁶⁵ which is the first legislation dealing with child offenders, children in need of care and protection and children beyond parental control, was initially enacted as ordinance in 1943. It was subsequently amended through several legislations and provisions made for its adoption as regional law and subsequently, State laws. The Act provided for the welfare of the child and treatment of young offenders and established the juvenile justice system with the juvenile courts to try juvenile offenders, and provided among other measures for only the presence of officers of the court, parties and their legal practitioners during proceedings to ensure privacy and protection of the interest of the child.¹⁶⁶

The provision of the Act was geared towards protecting the juvenile from excessive punishment. It thus provided for the rights of the child to be granted bail after arrest; prohibition of association of child offenders with adults while in custody; protection of juveniles involved in court proceedings, remand or committal to custody; conditions under

¹⁶⁴ CC, s 295.

¹⁶⁵ Cap C4, LFN, 2004. Enacted as the Children and Young Person's Ordinance in 1943, later provision was made for its adoption as a regional law, when Nigeria was divided into regions. Different States adopted it as laws in their State, in the Northern Nigeria, the States of the old Northern region enacted its law which was Children and Young Persons Law Cap 21 of the Laws of Northern Nigeria 1963, and with the creation of more States in the North, each State enacted its own laws.

¹⁶⁶ *Ibid*, ss 4&6.

which a parent or guardian may attend court; method of dealing with juvenile charged with offences; restrictions of punishment; detention in the case of certain crimes committed by juveniles, and place for detention.¹⁶⁷ It also made provisions for approved institutions, establishment, functions and powers of approved institutions, mandates and functions of court in relation to juveniles, limitation of age, duties of manager of an approved institution and person to whom a juvenile is sent under a mandate, sufficient authority to person acting on the mandate, legal custody, procedure in case of unruly or depraved juvenile, committal orders.¹⁶⁸

The Act further provided for juveniles in need of care and protection, power to bring juvenile before a court in certain cases, issuance of mandate where parents or guardians are unable to exercise control, contribution by parents or guardians towards maintenance of juvenile, the power of the court to order contributions, possession and custody of juveniles, neglect of children, prohibition of political activities of juveniles, prohibition of the use of juveniles in begging and hawking at night, and power to make regulations under the law.¹⁶⁹ The Act made provisions aimed at welfare of the child, especially the child offender. However, the Child Rights Act, which was enacted much later, has more elaborated provisions on the welfare and interest of the child.

2.5.5 Child's Rights Act, 2003

Child Rights Act (CRA) is a domestication of the Convention of the Rights of a Child and the African Charter on the Rights and Welfare of the Child which Nigeria. The CRA retains all the rights of the child under the various legislations and goes further to provide additional rights to the Nigerian child. The Act is a comprehensive legislation on the welfare and treatment of children under the child justice system. It recognises all the rights of children as

¹⁶⁷ ss 1-13.

¹⁶⁸ *Ibid*, ss 16-23.

¹⁶⁹ *Ibid*, ss 24-31,

fundamental, and demands that in all matters concerning children, the best interest, welfare and wellbeing of the child must be the paramount consideration.¹⁷⁰

The CRA is specific to the child, and addresses the peculiar needs of the child. It incorporates all the rights and duties of children. It consolidates all laws relating to children, as well as specifying the duties and obligations of government, authorities, organisations and parents towards the child. The CRA defines a child to be a person below eighteen years.¹⁷¹ The Act adopted all the fundamental rights provided under the Constitution and any successive constitutional provisions relating to fundamental rights, as if they are expressly provided for by the Act.¹⁷² In addition to the fundamental rights, the Act made provisions for other specific rights of the child that should also be protected and promoted. The Act provides that every child has a right to survival and development, thus the child is entitled to associate freely though in accordance with the law and under the necessary guidance and directions of his or her parents or guardian, freedom of thought, rest and leisure, participate in cultural and artistic activities, enjoy best attainable state of physical, mental and spiritual health, adequate nutrition and safe drinking water, good hygiene and environmental sanitation, parental care and maintenance, free, compulsory and universal basic education.¹⁷³ The Act made provision for the right to name, thus every child has a right to a name and accordingly, shall be given a name on his birth or on such other date as is dictated by the culture of his parents or guardian. The birth of the child shall be registered in accordance with the provisions of the birth, death laws.¹⁷⁴ Every Government, parent, guardian, institution, service, agency, organisation, or body responsible for the care of a child shall endeavour to provide these entitlements. The Act also provides that a female child who becomes pregnant, before completing her education shall be given the opportunity, after delivery, to continue

¹⁷⁰ Child Rights Act, 2003, s 1.

¹⁷¹ *Ibid*, s.2 & 277.

¹⁷² Child Rights Act, 2003, s 3.

¹⁷³ Child Rights Act, 2003, ss 4-15.

¹⁷⁴ Child Rights Act, 2003, ss 4 & 5.

with education , on the basis of her individual ability. Where a parent, guardian or person who has care and custody of a child fails in this duty, he commits an offence.¹⁷⁵

Other rights include, right to respect for the dignity of his or her person, and accordingly, no child shall be subjected to physical, mental or emotional injury, degrading treatment or punishment; subjected to attacks upon his honour or reputation; or held in slavery or servitude, while in the care of a parent, legal guardian or school authority or any other person or authority having the care of the child,¹⁷⁶ a child shall not be subjected to any form of discrimination merely by reason of his belonging to a particular community or ethnic group or by reason of his place of origin, sex, religion or political opinion. No child shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth,¹⁷⁷ every child is entitled to freedom of movement subject to parental control which is not harmful to the child. However the parents, and where applicable the legal guardian or other appropriate authority have a right to exercise control over the movement of the child in the interest of the education, safety and welfare of the child.¹⁷⁸ The Act also provides that no child shall enter into a contract, except a contract of necessities; any contract entered into by a child for repayment of money lent or for payment of goods supplied to the child, shall be void.¹⁷⁹

The Act provides for adequate protection of children. A child shall be given such protection and care as is necessary for the wellbeing of the child, taking into account the rights and the duties of the child's parents, legal guardians, or other individual, institutions, services, agencies, organisations or bodies legally responsible for the child. Every person, institution, service, agency, organisation and body responsible for the care of protection of children shall conform to the standards established by the appropriate, particularly in the

¹⁷⁵ Child Rights Act, s15.

¹⁷⁶ *Ibid*, s11.

¹⁷⁷ *Ibid*, s 10.

¹⁷⁸ *Ibid*, s9.

¹⁷⁹ *Ibid*,s118.

arrears of safety, health, welfare, number and suitability of their staff and competent supervision.¹⁸⁰The Act provides that every parent, guardian, institution, person and authority responsible for the care, maintenance, upbringing, education, training, socialization, employment and rehabilitation of a child has the duty to provide the necessary guidance, discipline, education, and training for the child in his or its care such as will equip the child to secure his assimilation, appreciation and observance of the responsibilities. The Act provides for the protection of the child from all forms of maltreatment, exploitation and wide ranges of abuses. A person under the age of eighteen years is not capable of contracting a valid marriage, and any such marriage contracted is null and void and of no effect.¹⁸¹

The Act provides for prohibition of child betrothal, prohibition of tattoos and skin marks on the child, exposure of the child to use, production and trafficking of narcotic drugs; use of children in criminal activities, abduction, removal and transfer from lawful custody; prohibition of exploitative labour, prohibition of sexual abuse and exploitation, prohibition of recruitment of children in the armed forces.¹⁸²

The Act goes further to provide that every child has a right to the child justice system at the Family Court which will operate at the high court and magistrate court levels, with civil and criminal jurisdiction on all matters concerning children.¹⁸³ 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, and the right to privacy specified in the Act, shall be respected at all stages of the child justice administration.¹⁸⁴

It further provides that a court should always consider a non-institutional measure. Where institutional measure is mandatory, it should be in the approved institutions, also an

¹⁸⁰ s 2.

¹⁸¹ s 21.

¹⁸² CRA, 2003, ss 18-32.

¹⁸³ *Ibid*, ss 149-153.

¹⁸⁴ ss 204 & 206.

expectant and nursing mother shall be detained at a Special Mother's Centre for a period not longer than the time the child would have attained the age of six years, and that a mother must not under any circumstance be imprisoned with the child. The Act provides that the State government should support children and families, including the provision of a range of services appropriate to the welfare and upbringing needs of children. It makes provisions for the maintenance of a child where the parents or other care givers are unable or refuse to provide the necessary care. The affected child would be placed under protection or under the care of the person responsible for his or her maintenance. In cases where the person is able to maintain the child but had wilfully refused to do so, the court can order such a person responsible for the child to pay a specified monthly sum for the child's maintenance while under placement.¹⁸⁵

The Act provides for the adoption of children, with the establishment of adoption services and specifications for the mechanisms and procedure for adoption, including a well-articulated inbuilt monitoring mechanism and restrictions on intestate adoption. These set of children are therefore covered with the full rights of biological children including inheritance rights. A child whose parents consents to adoption, abandoned, neglected, or persistently abused or ill-treated may be adopted.¹⁸⁶

The Act also provides for the right of a child in need of special protection. Every child who is need of special protection measures has the right to such measure of protection as is appropriate to his physical, social, economic, emotional and mental needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the affairs of the community. Every person , authority, body or institution that has the care or the responsibility for ensuring the care of a child in need of special protection measures shall endeavour, within the available resources, to provide the child with such assistance and

¹⁸⁵ ss. 171-185.

¹⁸⁶ CRA, 2003, s. 125.

facilities which are necessary for his education, training , preparation for employment, rehabilitation, an recreational opportunities in a manner conducive to his achieving the fullest possible social integration and individual development and his cultural and moral development.¹⁸⁷

The CRA provides for the right of the child to participate in all proceedings, matters and issues concerning his or her welfare.¹⁸⁸This participatory right provided by the Act, is grounded in the idea that children, like any other human being, have the right to participate in taking decisions that affect them directly or indirectly. It also provided that the dignity of the child shall be protected at all times. The CRA recognises the continued application of all criminal law provisions securing the protection of the child.¹⁸⁹There are other Child's rights national and State Laws that deal with the rights of child, such as: the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2005(as amended), the African Charter on Human and People's Rights (AHPRE) (Ratification and Enforcement)Act.¹⁹⁰

International instruments such as: Universal Declaration of Human Rights, 1948, International Covenant on Economic, Social and Cultural Rights 1966, International Covenant on Civil and Political Rights 1966, Optional Protocol to the International Covenant on Civil and Political Rights 1966, Second Optional Protocol to the International Covenant on Civil and Political Rights,1989, Minimum Age Convention, 1973, Convention on the Rights of the Child , 1989, Worst Forms of Child Labour Conventions on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000, Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflicts, 2000, African Charter on Human and People's Rights, 1981, African Charter on the Rights and Welfare of the Child, 1990, Protocol to the African Charter on

¹⁸⁷ *Ibid*, s 16.

¹⁸⁸ s 214.

¹⁸⁹ s 40.

¹⁹⁰ Cap 10, *LFN*, 2004

Human and People's Right, 2003, reflect children as human beings and as subjects of rights. These Charters outlined the human rights of the child which should be protected and respected for every person below the age of eighteen. Member States are required under the charters to ensure that the rights are implemented.

The Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, are two international instruments that make special provision for the rights of the child, from which the CRA is modelled. The role of the court and correctional institutions in the promotion of these rights shall form the crux of our discussion in subsequent chapters.

CHAPTER THREE

THE ROLE OF THE COURT IN PROMOTING THE RIGHTS OF THE CHILD

Judiciary is believed to be the last hope of the common man including the child. Thus, Nnamani stated as follows:

It has been generally acknowledged that the judiciary is the guardian of our Constitution, the protector of our cherished governance under the rule of law, the guardian of our fundamental rights, the enforcer of all laws without which the stability of society can be threatened, the maintainer of public order and security, the guarantee against arbitrariness and generally the only insurance for a just and happy society.¹⁹¹

The above view is anchored on the Constitution which vested judicial powers of the Federation and the State on the Courts.¹⁹² The essential powers extend notwithstanding anything to the contrary, to all inherent powers and sanctions of a court of law. The judicial powers also extend to all matters between government and authority and any person in Nigeria, and to all actions and proceedings relating thereto for the determination of any question as to the civil rights and obligations of that person.¹⁹³ According to Ahmed,¹⁹⁴ in order to actualise and enforce the rights of the child provided by various laws in Nigeria some mechanisms have been put in place, and those mechanisms include Courts of Law, National

¹⁹¹ E Nnamani, 'The Judiciary in the 1990's: Expectations and Challenges' A Journal of Contemporary Legal Problems, Vol. 1, No.3 (1990)27.

¹⁹² Constitution of the Federal Republic of Nigeria, 1999 (CFRN) (as amended) ss 6(1) &(2).

¹⁹³ *Ibid*,s 6(6)b.

¹⁹⁴ A B Ahmed, *The Law and Child Rights in Nigeria* (Lagos: Malthouse Press Limited, 2015) p99.

Human Rights Commission, Legal Aid Scheme, Remand Homes and Reformatory Schools.

Similarly, the Court in *Zekeri v Alhassan*¹⁹⁵, declared the fact that:

In a democratic society as ours, where the rule of law prevails, the court is the hope of the common man. It plays an important role in the interpretation of the Constitution, protects the rights of citizens from encroachment by any organ of the government, and generally has the inherent jurisdiction to determine cases between persons and persons and government.

The courts play a primeval role in the dispensation of justice. The court is one of the basic institutions with the role of promoting the rights of citizens, which the child is inclusive. In doing so for the child, the best interest of the child, as provided in United Nations Convention on the Rights of the Child (CRA)¹⁹⁶, African Charter on the Rights and Welfare of the Child (ACRWC)¹⁹⁷ and the Child Rights Act (CRA)¹⁹⁸, shall be the guiding principle. According to the CRA,

In every action concerning the child, whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority, the best interest of the child shall be the paramount consideration.

The best interest of the child describes the well being of the child. This is determined by a variety of individual circumstances: age, the level of maturity of the child, the presence or absence of parents, the child's environment and experience. The Committee on the Rights

¹⁹⁵ (2009) 52 W.R.N 119(CA) at 141.

¹⁹⁶ UN CRC 1989, Article 3.

¹⁹⁷ ACRWC 1990, Article 4.

¹⁹⁸ CRA 2003, Article 1.

of the Child insists that the best interest principle requires active measures by the Government, Parliament and the Judiciary as follows:

Every legislative, administrative and judicial body or institution is required to apply the best interest principle by systematically considering how child's rights and interests are or will be affected by their decisions and actions-for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but directly affect children.¹⁹⁹

The Guidelines set up for determining the best interest of the child by the United Nations Committee on the Convention of the Rights of the Child provides for a 'best interest assessment', which is an assessment of individual children by staff with required expertise and which requires the participation of the child. In compliance to the guidelines, some countries such as Norway and Sweden have made some efforts. For example, child impact analysis are included and documented in relevant decision making, such as impact on national budget and introducing the best interest principle into relevant legislations. In Belgium, the Flemish Parliament has passed legislation requiring that all proposed decree when laid before the Parliament shall be accompanied by a report on their impact on children, to the extent that the proposed decision directly affects the rights of the child.²⁰⁰ It is hereby suggested that Nigeria should take an insight from these jurisdictions and inculcate the best interest of the child in our policies and decisions.

In view of the foregoing, the roles of the Court towards promoting the rights of the child will be discussed under the following headings-

¹⁹⁹ General Committee No. 5 (CRC/GC/2003/5 para. 45-47.

²⁰⁰ M U Peter-Odili, *Principles and Applications of the Best Interest of the Child Under the Law* (Lagos: Nigerian Institute of Advanced Legal Studies, 2013) p8.

3.1 Role of Courts in Promoting the Enforcement of Fundamental Human Rights of the Child

The child just like adults is a human being and is entitled to respect to his or her fundamental human rights and to seek redress for breaches of the rights. The responsibility of the enforcement of human rights in Nigeria is placed mainly on the judiciary, which is required to entertain cases involving alleged violation of fundamental human rights.²⁰¹ Accordingly the Nigerian Constitution²⁰² provides for access to high courts on application for the enforcement of the guaranteed human rights. The Constitution provides that ‘any person who alleges that any of the provisions of this chapter²⁰³ has been is being or likely to be contravened in any State in relation to him may apply to high Court in that State for redress’.²⁰⁴ This provision is discretionary, and places the decision to seek for a redress or not on the person whose fundamental rights has been infringed. The decision is usually determined by various factors. Glaring examples are socio-economic factors such as poverty, illiteracy and ignorance.

On the issue of jurisdiction, the Constitution provides that:

Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made pursuant to the provisions of this section and make such orders, such writs and give such directions as it may consider appropriate for purpose of enforcing or securing the enforcement within that State of any to

²⁰¹ A B Ahmed, *The Law and Child Rights in Nigeria* (Lagos: Malthouse Press Limited, 2015) p 99.

²⁰² Constitution of the Federal Republic of Nigeria, 1999 (as amended).

²⁰³ *Ibid*, Chapter Four which embodies the Fundamental Human Rights.

²⁰⁴ *Ibid*, s 46(1).

which the person who makes the application may be entitled under this Chapter.²⁰⁵

To this end, the Chief Judge of the Federation was empowered to make rules with respect to the practice and procedure of a High Court for the purpose of the enforcement of fundamental rights. Pursuant to this provision the Chief Justice of Nigeria made the Fundamental Rights (Enforcement Procedure) Rules.²⁰⁶

In the same vein, the National Assembly may confer upon a high court such powers in addition to the one conferred by the section as may appear to the National Assembly necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon. It further provides for the rendering of financial assistance to any indigent citizen of Nigeria in the enforcement of breaches of fundamental rights.²⁰⁷ Implicit in this provision is that whoever alleges that any of his fundamental rights has been contravened or infringed upon by any person or authority, has a burden to take every necessary and lawful to seek enforcement and remedy for the infringement. In *A.G Adamawa State v A.G Fed*²⁰⁸ the Supreme Court affirmed the above position as follows:

Where a party considered that his fundamental rights have been breached, that party can quite properly seek the innovation of the court's powers to protect the invasion of such rights. If the constitution is to be upheld and undoubtedly it must be, then a breach of it or the likelihood of its being breached must be capable not only of being vindicated but also of being prevented.

²⁰⁵ *Ibid*, s 46(2).

²⁰⁶ *Ibid*, s 46(3).

²⁰⁷ *Ibid*.

²⁰⁸ (2005) 18 NWLR Pt 958, p. 581 at 609.

It is pertinent to point out that in enforcement of breach of fundamental rights, only the fundamental human rights are enforceable. The other rights provided under chapter two designated ‘Fundamental Objectives and Directive Principles of State Policy’ are not enforceable rights. In other words, infringements of such rights cannot be enforced in court. Nonetheless the Supreme Court in *AG Ondo State v A G Federation*²⁰⁹ established that the provisions of chapter two of the Constitution can be enforced, once the National Assembly enacts any specific law to meet its provisions. Typical examples of such legislations are: Child Rights Act 2003, and the Universal Basic Education Act. Beside this, the need to provoke and promote socio-economic justice in Nigeria cannot be overemphasized. Thus the Court can become proactive by drawing insights from other jurisdictions in interpreting fundamental human rights provisions to include the rights provided in chapter two. In India, for instance the Constitution does not make express provision for a right to shelter, but the court in *Shanti Star Builders v Narayan K Totame*²¹⁰ held the right to life to include right to food and a reasonable accommodation. This intriguing step taken in India is a good way to address the plight of poor and vulnerable members of the society, such as the child.

On the commencement of enforcement of fundamental rights in the court, legal capacity to sue is a vital requirement in Law. The court in *Agboola v Agbodemu & Ors*²¹¹ held that *locus standi* denotes the legal capacity based upon sufficient interest in a subject matter to institute proceedings in a court of law to pursue a specified cause. It is a constitutional requirement to enable a person to maintain an action and it is limited to the prosecution of matters relating to the civil rights and obligations of the plaintiff. *Locus standi* entails the legal capacity for instituting, initiating or commencing an action in a competent court of law or tribunal without any inhibition, obstruction or hindrance from any person or

²⁰⁹ (2002) 9NWLR (Pt. 772) 222.

²¹⁰ (1990) 1 SCC 520.

²¹¹ (2008) LPELR- 8461(CA).

body whatsoever, including the provision of any existing law. In the same vein, the court in *Pam & Anor v Mohammed & Anor*²¹² describes *locus standi* as follows:

The term *locus standi* denotes legal capacity to institute proceedings in a court of law. It is used interchangeably with the terms like standing or title to sue. It is the right of a party to appear and be heard on a question before any court or tribunal.

The court further held that:

It is the law that to have *locus standi* to sue, the plaintiff must show sufficient interest in the suit or matter. One criterion of sufficient interest is whether the party could have been joined as a party in the suit. Another criterion is whether the party seeking the redress or remedy will suffer some injury or hardship arising from the litigation if the judge is satisfied that he will so suffer, then he must be heard as he is entitled to be heard.²¹³

Remarkably, in enforcement of fundamental rights, the strict legal position on the issue of *locus standi* has been whittled down. The present liberal position in the context of human rights litigation is that the court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of *locus standi*.²¹⁴ In Particular, human rights activists, advocates or groups as well as any non-governmental organisations, may institute human rights application on behalf of any potential applicant. In human rights litigation, the applicant may include any of the following: anyone

²¹² (2008) LPELR- 2895(SC).

²¹³ Same was held in the cases of *Adefulu & v Oyesile & ors* (1989) LPELR- 91(CA), *A G Kaduna State v Hassan* (1985) LPELR- 617(SC), and *Ojukwu v Ojukwu & Anor* (2008) LPELR – 2401(SC).

²¹⁴ Fundamental Rights (Enforcement Procedure) Rules, 2009, Preamble 3(e).

acting in his own interest; anyone acting on behalf of another person; anyone acting as a member of, or in the interest of a group or class of persons; anyone acting in the public interest, and association acting in the interest of its members or other individuals or groups. The court shall in a manner calculated to advance Nigerian democracy, good governance, human rights and culture, pursue the speedy and efficient enforcement and realisation of human rights.²¹⁵ This liberalisation exhibited in this provision is commendable; in view of the benefit public interest litigation will be to the child who usually sues through another. Again, The Fundamental Rights (Enforcement Procedure) Rules, provides that the court shall proactively pursue enhanced access to justice for all classes of litigants, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated, and the unrepresented.²¹⁶ Against this backdrop, the court can promote the rights of the child through public interest litigations and enhanced access to justice. Enforcements of the breach of the rights of a children can be done through some organisations such as National Human Rights Commission, the Legal Aid Council of Nigeria, and the Civil Liberties Organisation.

The National Human Rights Commission²¹⁷ for example has the following mandates to deal with all matters relating to the protection of human rights as guaranteed by the Constitution of the Federal Republic of Nigeria, the African Charter, the United Nations Charter and the Universal Declaration of Human Rights and other International treaties on human rights to which Nigeria is signatory. The Commission is to monitor and investigate all alleged cases of human rights violation in Nigeria and make appropriate recommendations to the Federal Government for the prosecution and such other actions deemed expedient in each circumstances. The Commission will assist victims of human rights violations and seek appropriate redress and remedies on their behalf; undertake studies on all matters relating to

²¹⁵ *Ibid.*

²¹⁶ Fundamental Rights (Enforcement Procedure) Rules, 2009, Preamble 3(d).

²¹⁷ This was established by the National Human Rights Act, 1995.

human rights and assist the Federal Government in the formulation of appropriate policies on the guarantee of human rights; publish regularly reports on the state of human rights protection in Nigeria; organise local and international seminars, workshops, and conferences on human rights issues for public enlightenment. The Commission will also liaise and cooperate with local and international organisations on human rights for the purpose of advancing the promotion and protection of human rights; participate in all international activities relating to the promotion and protection of human rights; maintain a library, collect data and disseminate information and materials on human rights generally. The establishing Act requires an interested person to make a written complaint to the Commission. The problem in Nigeria is not the establishment of institutions and assignment of mandates and vision, but that of supervision and monitoring of the institutions to ensure they live up to expectations. However, lack of awareness of the existence and functions of the Commission, and enlightenment on the procedure or medium through which the masses can get their services remains a problem. Without these measures, there will be lapses in the activities of the commission.

Similarly the Legal Aid Council of Nigeria,²¹⁸ is to provide free legal services for the deserving people. The Council is to provide free legal services in all fields of the law whether criminal litigation or civil litigation for any indigent person that presents a case to them. The mandate of the Commission and Council are very good. It is also a step in the right direction in ensuring that violations of human rights are curtailed and addressed. They go a long way to promote the roles of the court towards the enforcement of fundamental rights. However, the Nigerian factor of setting up institutions without effective monitoring and supervisions, poor funding, inadequate staff and provision of other logistics for the facilitation of their mandate is the problem as rightly observed. Ojukwu *et al* encapsulates that although the

²¹⁸ Established by the Legal Aid Decree No. 56 of 1976(now Legal Aid Act).

Constitution of the Federal Republic of Nigeria and other laws make provisions for free legal services or financial assistance for the poor.²¹⁹ There is a consensus that the existing legal aid system in the country is grossly underfunded and consequently unable to cope with the demand for legal services in the country.²²⁰ Ojukwu further stated that great majority of the poor and disadvantaged people have no means of accessing the formal justice systems or of enjoying human rights provisions in the Constitution and International instruments which are meant to protect them.

It is submitted that in furtherance to the above view, the court should be liberal like the Indian court discussed earlier, in the interpretation of fundamental rights provisions especially when it involves children. Amazingly, the Court of Appeal in the case of *Minister for Internal Affairs v Alhaji Shugaba*²²¹ per Hon Justice Karibi Whyte JCA held that ‘provisions protecting fundamental rights should be given a construction as would expand rather than restrict the enforcement of rights’. This means that the court should be proactive and give wide interpretations to the fundamental rights. The court must also not allow rules to defeat the aim of justice in the enforcement of fundamental rights. This is supported by the court in *Fidelity Bank Plc v Andrew Monye & Ors*²²², per Bode Rhodes –Vivour JSC, where the court held that matters that affect or concern children and inalienable rights of man must at all times be treated with dispatch, and rules must never be a stumbling block in achieving that purpose. Rules must never be interpreted to defeat the course of justice. It is convenient to say the court can through enforcement of the fundamental rights of the child promote such rights. Furthermore, the court can also make pronouncements that will promote the rights of the child through liberal interpretations of the fundamental rights.

²¹⁹ CFRN 1999(as amended), s 36(6)b and the Legal Aid Act 2011.

²²⁰ E Ojukwu *et al*, *Handbook on Prison Pre-Trial Detainee Law Clinic* (Abuja, Network of University Legal Aid Institutions, 2018) p129.

²²¹ (1981)2 NCLR p 459.

²²² (2012) MRSCJ vol 1, p 48.

3.2 Role of Courts in Promoting the Rights of the Child in Matrimonial and Custody Matters

According to Ifemeje,

Researches, all over the world, have consistently shown that children of failed marriages are often the worse-hit in the event of divorce. This may be attributable to their vulnerable nature; consequently, when divorce occurs unexpectedly, they feel the impact more than their parents. Their once secured lives are literally shattered into pieces. Their divorcing parents may decide to re-marry in the near future, and put their awful marriage experiences behind them, but their children are never in a position to choose to join a more stable family. Children, no doubt, are the main or ultimate victims of divorce. They are the actual casualties.²²³

The researcher is in agreement with this view, because children in failed marriages experience a lot of violations of their rights due to several factors surrounding their parent's marital issues. This is usually as a result of the fact that they depend on their parents for welfare and care. It is common place that children in this category may end up becoming children in need of care and protection, and their rights denied in several cases. It could therefore be right to hold that divorce has its negative effects on children, and the need to look into how the courts in interpreting the law have eased the undesirable and devastating effects of divorce on children is trite.

²²³ S C Ifemeje, *Contemporary Issues in Nigerian Family Law* (Enugu: Nolix Educational Publications (NIG)2008) p 125.

Custody and maintenance of children is an aspect of the matrimonial causes instituted by divorcing parents. In the proceedings for the determination of custody, parents are usually represented by counsel, while the children are not. Oversight on the needs and welfare of the child may occur, since the parties will be engrossed in the tussle. On this issue, Ifemeje holds the view that it is an open secret that parents often forget or neglect the interests of their children as they slug it out in our courts, forgetting that where elephants fight, it is the grasses that suffer. She further stated that it would appear recently that social researchers, family law expert, legislators and judges, are fast becoming conscious of the predicaments of these children.²²⁴ According to Montgomery, historically the basis of custody was the existence of parental rights. He posited that the primary justification for the existence of parental rights is to be found in terms of child protection. Children are viewed as being incapacitated in law because they do not have the maturity required to order their own lives. This was warranted by reference to lack of rationality and capacity to form coherent purposes or lack of understanding and experience. As a result, children were regarded as being in such a state as to require being taken care of by others and must therefore be protected against their own actions as well as external injury. He further posited that in other than children may be so protected and nurtured out of their state of disability, custody and rights are given to parents. However, presently welfare of the child is the first and paramount consideration before courts in cases concerning custody of the child.²²⁵

Hence in recent times, the courts have promoted the rights of children in failed marriages by interpreting relevant sections of the law in divorce proceedings to buttress the principle of best interest and welfare of the child when awarding custody. Custody is an important issue in divorce proceedings because it is a category of, and an aspect of child

²²⁴S C Ifemeje, *Contemporary Issues in Nigerian Family Law, Opcit*, p 132.

²²⁵J Montgomery, 'Children as Property', *The Modern Law Review* 51, (1988): 323.

welfare. The researcher holds the view that custody should be accorded importance in divorce proceeding, since it revolves around the development and welfare of the child. This can be seen in the meaning of custody which according to Attah is ‘keeping and guarding’.²²⁶ According to Attah, custody of children as a legal relation arises not from contract but by operation of law or by order of court. The obligation which the custodian of a child owes is not merely to preserve the child in life and keep him from harm but more positively, to care for him and promote his wellbeing.²²⁷ Custody is also defined as the care, control, and the maintenance of a child awarded by a court to a responsible adult.²²⁸ The Court in *Ott i v Otti*²²⁹, describes custody also follows; ‘as essentially concerning control and the preservation and care of the child’s person, physically, food, clothing, instruction and the like’. Ifemeje holds the view that custody matters are very crucial to the children of divorced parents. The courts are duty bound to ensure that the custody of the children in the event of divorce is granted to the parent, who would be in a better position to play down some, if not all, the observed consequences of divorce, instead of aggravating it.²³⁰ It therefore follows that, any error made by the Court in awarding custody of a child will obviously aggravate the plight of the child, already battling with the marriage crises between the parents. It will amount to denial of welfare and will affect the moral, psychological and physical balance of the child. The best interest of the child, which is the guiding principle for the award of custody, is the well being of the child. It should conform to international and national standard. The Court in determining the best interest of the child ought to put certain factors such as, age of the child; status of the child; home and school environment and experiences of the child into consideration.

²²⁶ M Attah, *Family Welfare Law in Nigeria* (Benin: Ambik Press Ltd, 2016) p45.

²²⁷ *Ibid.*

²²⁸ B A Garner, *Black’s Law Dictionary* (9th edn, USA: Thomas Reuters, 2009) p441.

²²⁹ (1992) 2 NWLR (pt 252) 187 at 210.

²³⁰ S C Ifemeje, *op cit*, p136.

A look at some of the provisions of the law on this issue will drive home the point. Section 71(1) of the Matrimonial Causes Act²³¹ contains the powers of the court in custody proceedings and it provides as follows:

In proceedings with respect to the custody, guardianship, welfare, advancement, or education of children of a marriage, the court shall regard the interest of those children as the paramount consideration and subject thereto, the court may make such order in respect to those matters as it thinks proper.

Accordingly, the court in *Afonjo v Afonjo*²³² stated that the court without doubt from the above provision is conferred with a very wide discretion and its decision will be reversed only in rare cases. The researcher holds the same view, since the efficacy of the promotion of the rights of the child in custody cases by the court is embodied in the above provision. Ploscowe posits that in Nigeria, matters regarding custody of children are generally addressed in the litigious context of the High Court System, and this puts judges in a tight corner. He stated that a Jurist once remarked that ‘a judge agonises more about reaching the right result in a contested issue (of custody) than about any type of decision he renders’.²³³ The Matrimonial Causes Act confers on the court the opportunity and leverage to promote the rights of a child of divorcing parents. The courts have interpreted this provision in various proceedings for custody of children. For instance, in *Nanna v Nanna*²³⁴ the court stated that the paramount consideration of the court in awarding custody of children to a party is the best interest of the child. The court further stated that the importance of custody of the children of marriage in a matrimonial proceeding need not be over emphasised. Hence, throughout the

²³¹ Matrimonial Causes Act, *op cit*, s 71(1).

²³² *Afonja v Afonja* (1971) 1 UILR 105.

²³³ M Ploscowe, H H Foster, and D J Freed, *Family Law Cases and Materials* (2nd edn, Boston: Little Brown, 1972) p899.

²³⁴ (2006) 3 NWLR (Pt 966) 1.

gamut of the matrimonial proceedings, the interest of the child of the marriage as to the custody and welfare is held paramount.²³⁵ In *Alabi v Alabi*²³⁶, the court in examining the principles governing grant of custody of children in matrimonial causes, stated thus:

Award of custody of the *children* of a marriage that has broken down irretrievably is governed by section 71(1) of the Matrimonial Causes Act, 1990, which enjoins the court in proceedings relating to custody, guardianship, welfare, advancement or education of children of the marriage, to take the interest of the children as paramount consideration and the court in this regard is given wide discretionary powers which it can exercise according to the peculiar circumstances of each case. The welfare of the instance is not only the paramount consideration but a condition precedent. The award of custody should therefore not be granted as a punitive measure on a party guilty of matrimonial offences nor as a reward for the rival party.

The court further held that custody of a child connotes not only the control of the child, but carries with it the concomitant implication of the preservation and adequate care of the child's personality, physically, mentally and morally. In other words, this responsibility includes his/ her needs in terms of food, shelter, clothing and the like.

In the case of *Williams v Williams*²³⁷, the court described the interest of children in divorce as provided for in section 71(1) of the Act as follows:

²³⁵ Same position was also held in *Anyaso v Anyaso*(1998) 9 NWLR (Pt 564)150, and *Oyelowo v Oyelowo* (1987) 2 NWLR (Pt 56) 239.

²³⁶ (2008) All FWLR (Pt 418) 245 at 258 -2644, see also *Afonja v Afonja* (1971) 1 ULR 105, *Otti v Otti* (1992) 7 NWLR (Pt 252) 187 at 210.

²³⁷ (1987) 2 NWLR (pt 54) 66 at 74.

As the determination of the welfare of a child is a composite of many factors for consideration, such as the emotional attachment to a particular parent, mother or father, the adequacies of the facilities, such as educational, religious or opportunities for proper upbringing, are matters which may affect the determination of who should have custody. What the court deals with is the lives of human beings and ought not to be regulated by rigid formulae. All the relevant factors ought to be considered and the paramount consideration being the welfare of the child. By paramount consideration, I mean pre-eminent and superior consideration.

Similarly, the court in *Hayes v Hayes*²³⁸ made the following observation on the importance of the welfare of a child as follows:

I am to state that the law makers and the courts which have decreed, as in Section 71 of the children of the marriage must be paramount when determining issues which pertain to the child in matrimonial proceedings. This has been guided by the highest principles of public policy. In my respectful view, its essence is to ensure that no parent or party dares trifle with or politicises the interest and welfare of any child, no matter what personal interest or personal hurt of the parent or party; for invariably, the child is never responsible for any of the hurtful feud which leads to Matrimonial Causes. Happily, therefore, no child is ever to be allowed to be a victim of such a feud by our laws and legal systems, as typified by Section 25 of the Act.

²³⁸ (2002) NWLR (pt 648) p. 276.

The Court in *Eluwa v Eluwa*²³⁹ in the determination of the issue of custody of children in matrimonial proceedings observed as follows:

In determining the issue of custody of children in matrimonial proceedings, the welfare of children is of paramount importance and a vital factor, though not alone. In deciding what the welfare of a child is, factors considered relevant by the court include: degree of familiarity between the child and each of the parents respectively; the amount of affection between the child and each of the parents; the respective income and position in life of each of the parents; the arrangements made by the parties for the education of the child; the fact that one of the parents now lives as man and wife with a third party who may not welcome the presence of the child; the fact that the young children as far as practicable, live and grow up together; the fact that in cases of children of tender ages should unless other facts and circumstances make it undesirable, be put under the care of the mother; the fact that one of the parents is still young and may wish to marry and the child may become an impediment²⁴⁰.

A consideration of these cases, demonstrate that the courts now hold custody as child's welfare and protection. Consequently, whatever factors the court decides to take into consideration in making custody orders must rotate around what is in the best interest of the child and promote child's welfare. Section 71 of the Matrimonial Causes Act bestows on the court the function to discover which aspect of the child's welfare needs to be taken into

²³⁹ (2013) LPELR- 22 120(CA).

²⁴⁰ Same observations were made in *Odogwu v Odogwu* (1992) 2 NWLR (225) 539.

consideration, and the best way to promote the child's interest with respect to those aspects of his or her welfare; and finally to make consequent orders that accord with the interest. The court indeed no doubt has wide discretionary powers, and in the exercising of this discretion, can promote the rights of the child. The letters of the law are clear and placed the exercise of this discretion exclusively on the court. The court may in exercise of its discretion obtain certain information from the parents while adopting independent methods of assessing what is in the child's best interest.

Nevertheless, in divorce proceedings in Nigeria parents play very dominant roles in the determination of custody. The views of the child who is actually the subject of the matter are called for on few occasions or not heard at all. The truth remains that the role of the court is made more efficient to the effect that the court can obtain information about the child's welfare through a welfare report.²⁴¹ The welfare report will help the court to have a full knowledge of the circumstances of the child, which include: the needs of the child for his or her welfare; the most efficient and effective way to provide the needs; and which of the parent is the ideal person to be awarded custody. Welfare report is crucial and one of the effective means of getting independent and useful information about the child. It helps the court to make a more elaborate decision and not merely making orders on what parties said. The child welfare report is thus very useful if requested by the court. The provision of Section 71(2) of the MCA is on point and it provides as follows:

The court may adjourn the proceedings with respect to custody, guardianship, welfare, advancement or education of children of a marriage until a report has been obtained from a welfare officer on such matters relevant to the proceedings as the court considers desirable and any such report may thereafter be received in evidence.

²⁴¹ Marriage Act, Cap M7, LFN, 2004, s 25

The word 'may' in this provision is undesirable, meaning that it is at the discretion of the court and may not be requested in every case. It is submitted that the court ought not to dispense with this report considering the benefits, rather should ensure that the right procedure is followed in obtaining the report.

According to Nwaogugu, child welfare report considers issues of the child welfare over which the parties may be disputing; the options that are available to the court; and provides appropriate recommendations on a course of action. It is expected to cover all aspects of the life of the child in question. It also deals with the relationship of the child with the parents, and other arrangements for the welfare and education of the child.²⁴² The welfare report often records the child's wishes. However, in addition to the welfare report, there is increasing recognition of the desirability of the court to hear the child's voice directly as required in the United Nations Convention on the Rights of a Child and the Child Rights Act.²⁴³ There is a concern that bringing the element of the 'voice' of the child into divorce proceedings might be injurious to the general welfare of the child. This is because; the child might run the risk of offending any of the parents by his statements, thereby putting his welfare in jeopardy. Despite all odds, the court has the discretion to hear the voice of the child in custody case if it will help the court to arrive at the best interest of the child. It is the view of the researcher that the court should endeavour to involve the child in custody proceedings, for it will go a long way to assist the court in its decision.

The Child Rights Act²⁴⁴ is apt on the issue of custody. This is because every child is entitled to enjoy the best attainable state of physical, mental and spiritual health, and every child has the right to parental care and maintenance by his or her parents or guardians in

²⁴² I E Nwaogugu, *Family Law in Nigeria*, (3rd edn, Ibadan: Heineman, 2014) p268.

²⁴³ Article 21(1) & s75 respectively.

²⁴⁴ CRA, ss 13 & 14.

accordance with the extent of their means, and the child has the right, in appropriate circumstances, to enforce this right in the court. For example, the Act provides that

Every parent, guardian or persons having the care and custody of a child under the age of two years shall ensure that the child is provided with full immunization, and any person who fails in this duty commits an offence, and liable on conviction to fine and imprisonment as the case may be or the court may make, in substitution for fines and imprisonment an order compelling the parents or guardian to get the child immunized.

The court can promote these rights through its judicial actions, since the Child's Rights Act²⁴⁵ provides that in every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of law or administrative or legislative authority, the best interest of the child shall be of primary consideration. This provision of the law places a mandate on the courts with respect to any issue before them involving the child or the welfare of the child to ensure the best interest of the child.

The courts in determining the paramount interest of the child may have to take a number of factors into consideration in the award of custody as observed by the court in the cases reviewed earlier. These factors include but limited to: the desire of the child, the age of the child, the arrangements made for the welfare of the child by the parties, the ability of the party to care for the child, and other factors that may arise in the circumstance. Ifemeje holds the view that ascertainable wishes of the child, the ages of the children, the adequacy of arrangements made for their education, welfare and general upbringing, as well as the conduct of the claimant, and length of duration of stay with one parent, problems or religious

²⁴⁵ CRA, s 1.

up-bringing, and sex of children amongst other considerations will certainly help the court in ruling in the best interest of the child.²⁴⁶ The reason for this is that custody matters are decided on the circumstance of each case. Thus, Odumosu J observed in *Obayemi v Obayemi*²⁴⁷ that ‘an overall consideration of decided cases show that precedents are of very little assistance, and that each case has to be decided according to its facts and circumstances. The court in *Nanna*’s case,²⁴⁸ rightly observed as follows:

The importance of custody is such that it has been held that a decree shall not be made absolute until the court is satisfied as to arrangements made for the care and upbringing of the child of the marriage, and a decree absolute made on inadvertent non-compliance with the custody and maintenance of the child shall be declared void. What is paramount in all matters relating to custody and welfare of the child of marriage, and dominant issue that calls for careful examination and consideration is what is in the absolute interest of that child or those children.

In view of the foregoing discourse, what constitutes the best interest of the child is dependent on each child and the peculiar circumstance of the child. The court in exercising its powers is required to focus on the rights of the child, and ensure the promotion of those rights in the interest of the child. In USA, the best interest concept gained momentum in the case of *Common Wealth v Addicks*²⁴⁹ where the custody of the children were considered to be of best interest of the child despite the mother’s adultery. This principle of best interest was culminated in the case of *Re Gault*.²⁵⁰ This is in consonance with Article 3 of the UNCRC

²⁴⁶ S.C. Ifemeje, ‘Custody of Children in Matrimonial Causes Proceedings: A Review of Guiding Laws and Principles’: *Unizik Law Journal* vol. 41 p 129.

²⁴⁷ (Unreported) Judgement of the High Court of Western States, Suit No. AK/4/65 delivered 14th November 1969.

²⁴⁸ *Supra*.

²⁴⁹ 5 Binn. 520(Pa. 1815).

²⁵⁰ 387 U.S. 1.71-72.

and Article 4 of the ACRWC which provides for best interest as well as Article 12, which provides for the views of the child to be heard in matters concerning him or her.

Apart from the provisions of the Marriage Act and Matrimonial Causes Act, the Child Rights Act also provides for child custody. Thus Section 68(1) of the CRA²⁵¹ provides:

That the Family Court may on the application of the father or mother order that he or she shall have parental responsibility for the child or the father and mother may by agreement have joint parental responsibility for the child. While in the custody of parents or guardians, liberty is given to children to make an application with leave of court and the court can grant leave where the child is about to be used as a slave, or for practices similar to slavery or trafficking the child, debt bondage and forced or compulsory labour, if the court is satisfied that the child has sufficient understanding to make the proposed application.

The above provision of the CRA also envisages children about to be trafficked or abused. Thus, since the court can entertain direct application from the child under such condition if the court is satisfied that the child has sufficient understanding to make the application. It is therefore submitted that if the child can bring an application for custody, the child should as well be allowed to participate fully in the proceeding. The issue of participation of children in custody matters is a pertinent issue, and this include his or her right to be represented by a legal practitioner in the hearing and determination of any matter concerning the child in the court as provided in the Child Rights Act²⁵². The CRA in order to ensure child participation, provides that the proceedings in the Family Court shall be conducive to the best interest of

²⁵¹ *Ibid*, s 68(1).

²⁵² *Ibid*, s 155.

the child and shall be conducted in an atmosphere of understanding; allowing the child to express himself and participate in the proceedings.²⁵³

At the International level, the General comment on Article 12 by the United Nations Committee on the Convention of Rights of the Child²⁵⁴ recognises the obligation to implement the right of participation in the context of divorce proceedings: ‘all legislation on separation and divorce has to include the right of the child to be heard by decision makers and in mediation processes’.²⁵⁵ Participation is thus conceptualised in the UNCRC as ‘a procedural right through which children can act to protect and promote the realisation of other rights’. Children’s participation is postulated as something important, and which should be taken cognisance of and seriously too in the child’s best interest. Article 9(2) of the Convention²⁵⁶ provides that ‘all interested parties’ shall have the opportunity to participate and be heard in legal proceedings pertaining to child custody. According to Taylor , Children’s participation in family law decision-making processes is currently undergoing significant change in many Countries. He posited that children are no longer objects of the law, but are increasingly considered as subjects in the determination of decisions made on their behalf. Children’s participation rights are now understood as an important principle of family law decision-making, as evidenced in policy, legislation and case law internationally. Considerable emphasis is being placed on the use of child-centred family law decision-making processes in both contested and non-contested matters.²⁵⁷

It is submitted that child participation is beneficial in cases where children are the subjects of the matter such as custody proceedings for the following reasons: the child is the

²⁵³ CRA,s 158.

²⁵⁴ In 2009.

²⁵⁵ . Para. 52.

²⁵⁶ United Nations Convention on the Rights of the Child, 1989.

²⁵⁷ N Taylor, R Fitzgerald, T Morgan, A Bajpai & A Graham, ‘International Models Child Participation in Family Law Proceedings Following Parental Separation/Divorce’, *International Journal of Children’s Right* 20(2012) 645 – 673.

subject of the matter and thus a necessary party; the parents of the child may in the heat of divorce fail to represent the needs of the child well, hence the need for the child especially a child of rational age to have separate and independent representation; the evidence of the parents may not contain every detail, thus some positions can be brought to the knowledge of the court through the child or his or her legal representation or through a welfare report. Where the child participates in custody matters for example, the court will have more elaborate opportunities to discover the needs and circumstances of the child, and the appropriate parent or person to grant custody. Put differently, since the child is now recognised as being entitled to personal rights and no longer seen as object attached to rights of parents, then the child should be able to exercise his rights to participation in matters where the cause of action centres around him or her. It presupposes that in determining the child's best interest, child participation in the proceeding is essential. From the foregoing discourse it is clear that the challenge facing provisions for child participation in matters concerning the child in Nigeria is implementation of the Child Rights Act. There is therefore every need to support child participation through ensuring effective implementation of the CRA. In addition, rules of court should accord with this new trend, thus giving the child the opportunity to realise and exercise his rights. Educating the child on his or her rights and the procedure for the realisation of his rights is another requirement.

3.3 Role of Courts in Promoting the Rights of Adopted and Fostered Children

The court has a role in the promotion of the rights of the adopted child and the fostered child as a legal child of the adoptive parents. The Black Law's dictionary defines adoption as the creation of a parent-child relationship by judicial order between two parties who are

unrelated; the relation of parents and child created by law between persons who are not in fact parent and child.²⁵⁸

Adoption order can only be made in respect of a child where the parents of a child, or where there is no surviving parent, the guardian of the child consents to the adoption; or the child is abandoned, neglected or persistently abused or ill- treated, and there are compelling reasons in the interest of the child why he should be adopted. Persons who may apply for adoption include: a married couple where each of them has attained the age of twenty-five years, and there is an order authorising them jointly to adopt a child; or a married person if he has obtained consent of his spouse; a single person if he has attained the age of thirty-five years, provided that the child to be adopted is of the same sex as the person adopting; or in all cases; or a person found suitable to adopt the child in question by the appropriate investigating officers.²⁵⁹

On receipt of an application for adoption, the court is required to order an investigation to be conducted by a child development officer; a supervision officer; and such other persons as the court may determine to enable the court to assess the suitability of the applicant as an adopter and of the child to be adopted.²⁶⁰ The court shall in reaching a decision relating to the adoption of a child, have regard to the following circumstances: consider the need to safeguard and promote the welfare and the best interest of the child throughout the childhood of that child, and ascertaining as far as practicable, the wishes and feeling of the child regarding the decision and giving due consideration to those wishes and feelings, having regard to the age and understanding of the child.²⁶¹ The court shall also, in

²⁵⁸ B A Garner, *Black's Law Dictionary* (9th edn, USA: Thomas Reuters, 2009) p55.

²⁵⁹ Child Rights Act, 2003, ss. 128 & 129.

²⁶⁰ *Ibid*, s. 126(2).

²⁶¹ *Ibid*, s. 126(3).

placing a child for adoption, have regard to, as far as is practicable, the wishes, if any of the parents or guardian of the child as to the religious upbringing of the child.²⁶²

The role of the court is indispensable in the promotion of the rights of the adopted child in Nigeria, through interpretation of the extant law and in the exercise of discretionary powers in the interest of the child.²⁶³ First, the court plays a role by making adoption orders in respect of a child after satisfying itself of the basic requirements. The provision of the Child Rights Act is clear on this role. The court shall before making an adoption order, satisfy itself that: (a) Every consent required where a married person is the sole applicant for an adoption order, the court may, if it thinks fit, refuse to make the order if the consent of the spouse of the applicant to the making of the order is not first obtained; (b) every person who has given his consent understands the nature and effect of the adoption order for which the application is made and for this purpose the relevant adoption service shall provide adequate counselling for the parties involved in the adoption; (c) the order, if made, shall be for the welfare and best interest of the child, due consideration for this purpose being given to the wishes of the child giving regard to his age and understanding; and (d) the applicant has not received or agreed to receive; and no person has made, given or agreed to make or given to the applicant any payment or other reward in consideration of the adoption other than what they may approve.²⁶⁴ In effect, the court has the powers to refuse to make adoption orders if any of these conditions are not met.

Secondly, the court plays a role in the declaration of the welfare of the adopted child. The law provides that in making the adoption order, the court may exercise the power to impose such terms and conditions as the Court may think fit, and in particular, may require

²⁶² *Ibid*, s. 127.

²⁶³ Child Rights Act, 2003; Adoption Law, CAP A25 of Lagos State.

²⁶⁴ Child Rights Act, 2003, s 133.

the adopter, by bond or otherwise, to make for the child such provisions, if any as in the option of the court, are just and expedient.²⁶⁵

Third, the court plays the role in pronouncing the status of the adopted child. For the example, the court can pronounce the rights of an adopted child in matters of inheritance. Thus, the court in the case of *Duru v Duru*²⁶⁶ in examining the rights of an adopted child to the estate of the adopting parent held to the effect that the situation of application of adoption law by which a parent adopts and integrates a child adopted into his/ her family, the child is entitled to all rights, privileges and obligations in the estate of the adopter, including the right to inherit or share in inheritance of the adopting parent. Furthermore, the court recognised the right to non- discrimination in *Igbozuruike v Onuador*²⁶⁷ where it was held thus:

The 1999 Constitution of the Federal Republic of Nigeria must have had the likes of the plaintiff/Appellant in contemplation, when it enacted in Section 42(1)(a) and (2) as follows: (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex religion or political opinion shall not, by reason only that he is such a person- (a) Be subjected either expressly by or in the practical application of any law..... to disabilities or restriction to which citizens of Nigeria or other community's ethnic groups, places of origin, circumstances of birth, sex, religious or political opinions are not made subject, or (b)(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

²⁶⁵ Child's Right Act 2003, s 134.

²⁶⁶ (2016) LPELR -40444(CA).

²⁶⁷ 2015) LPELR -25530(CA).

The above decision establishes the position and the status of the adopted child as a legal child of the adopters and is entitled to share in the estate of the parents. The female adopted child is not left out, having been covered by the decision in *Ukeje v Ukeje*²⁶⁸ where the Supreme Court nullified the Igbo customary law which discriminates against and denies female children of rights to the estate of their parents. On this issue, the Child Rights Act²⁶⁹, provides that in cases where husband and wife are joint adopters, the court will make orders as to the custody and maintenance of the rights of access to the children. It provides that the husband and wife will stand to each other and to the child in the same relationship as they would have stood if the child were their natural child, and in respect of those matters, the child shall stand to them in relationship of a child born to the adopters. And for the purposes of the devolution of the property of the intestacy of the adopter, an adopted child shall be treated as a child born to the adopter. Upon an adoption order being made, all rights, duties, obligations and liabilities, includes any other under the personal law applicable to the parents of the child or any other person in relation to the future custody, maintenance, supervision and education of the child. All religious rights, rights to appoint a guardian and rights to give consent for marriage shall vest in and be exercisable by and enforceable against the adopter. Furthermore, all rights, duties, obligations and liabilities in respect of the future custody, maintenance, supervision and education of the child will vest in the adopter as if the child were a natural child of the adopter, and the child shall stand to the adopter in the relationship of a child born to the adopter.²⁷⁰

The court has a role to play to uphold these rights in the best interest of the child. In view of the proactive judgements of courts in recent times especially in property and inheritance cases as discussed earlier, it can be inferred that the court to a large extent is

²⁶⁸ (2014) LPELR -42.

²⁶⁹ CRA, s 141(2 & 3).

²⁷⁰ *Ibid*, s 141(1)(a& b).

exercising this role in the best interest of the child especially in maintenance cases. The court should continue to be liberal and proactive to evolving family issues in order to ensure the enhancement of the implementation of the rights of the adopted child and other children in general. In furtherance to that, the court should ensure that the adopted child enjoys equal status as the natural child of the adopter. To this effect, the Act requires that no payment or reward or consideration should be received or agreed to be received for the facilitation of the adoption of a child by any person and the contravention of which is an offence.²⁷¹ The effect of this provision is to discredit the perception that the child is bought, and thus not treated as the biological child of the adopter. It is unfortunate that in practice, payments are made for the facilitation of the adoption processes in some cases. Proper public enlightenment of the relevant provisions of the law and implementation of the law can save the situation. The court therefore while upholding the legal status of the adopted child in any relevant case before it will promote the rights of the child.

Child Fostering on the other hand is defined as giving parental care to a child who is not one's natural or legally adopted child.²⁷² A foster child is a child whose care and upbringing are entrusted to an adult other than the child's natural or adoptive parents usually by an Agency.²⁷³ The Child Rights Act provides that a person may foster a child by making an application to the court within the jurisdiction in which the person and the child resides, and the court on receipt of the application for fostering make an order authorising the application to the foster the child.²⁷⁴

From the above provision, the court makes a fostering order. The categories of children that can be fostered include: (a) a child who is abandoned by his parents; or (b) is an

²⁷¹ *Ibid*, s 143(1).

²⁷² B A Garner, *op cit*, p727.

²⁷³ *Ibid*, p271.

²⁷⁴ CRA, ss 100&102.

orphan and is deserted by his relatives, or voluntarily presented by his relatives for fostering, where no relatives of his can be found; or (c) has been abused, neglected or ill-treated by the person having care and custody of him; or (d) has a parent or guardian who does not or cannot exercise proper guidance over him; or (e) is found destitute; or (f) is found wandering, has no home or settled place of abode, is on the street or other public place, or has no visible means of subsistence; or (g) is voluntarily presented by his parents for fostering.²⁷⁵

The court can refuse to grant a fostering order if it is not satisfied that: (a) every consent required under the Act by the party or parties applying, which has not been dispensed with, had been obtained and every person who has given his consent understands the nature and effect of the fostering order for which the application is made; (b) the order, if made, will be for the maintenance, care, education and general welfare and the best interest of the child; and (c) the applicant has not received or agreed to receive and no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the fostering. The court can also like in the case of adoption uphold the rights of the foster child, the court may, in fostering order, impose such terms and conditions as it may think fit and in particular, may require the foster parent by bond or otherwise to make for the child such provisions as in the opinion of the court is just and expedient.²⁷⁶ Upon making a fostering order, (a) all rights, duties, obligations and liabilities, including any arising under customary law applicable to the parents of the child, or any other person or persons in relation to the custody, maintenance and education of the child, and all rights to appoint a guardian and to consent or give notice of consent or marriage, shall be suspended ; and (b) they shall vest in and exercisable by and enforceable against the foster parents, all such rights, duties, obligations and liabilities in relation to custody, maintenance and education of the child as if the child were a child born to the foster parent in lawful marriage. A child shall, in respect of

²⁷⁵ *Ibid*, s 101.

²⁷⁶ *Ibid*, s 106(1) and (2).

his custody, maintenance, education; stand to the foster parents exactly in the position of a child born to the foster parent in lawful marriage. Where a husband and wife are joint foster parents, they shall, in respect of the custody, maintenance and education of the child, and for the purpose of the jurisdiction of any court to make orders as to the custody and maintenance of a right of access to the child, stand to each other and to the child in the same relationship as they would stand if the child were a child born to them in lawful marriage²⁷⁷. The court can also revoke a fostering order in the interest of the child, thus on the revocation of a fostering order, the court shall cause the fact of the revocation to be communicated to the Chief Registrar and the appropriate child development service who shall cancel or cause to be cancelled the entering in the Fostered Children Register relating to the fostered child.²⁷⁸

Though, child adoption is a permanent arrangement while fostering is a temporary arrangement for a child's care and upbringing, the court has a role to play in promoting the rights of both the adopted and fostered child. Consequently, in the exercise of these roles, the court ought to be proactive in evolving issues that bother on the welfare of the child.

3.4 The Role of the Court in Promoting the Rights of the Child Offender

The rights of a child offender are guaranteed in many laws in Nigeria, and the court to which a child offender is brought has a role to promote such rights in the best interest of the child. Statutorily, an offence is defined under the Criminal Code as an act or omission which renders the person doing the act or making the omission liable to punishment under the Code or under any Act or Law.²⁷⁹ The Penal Code²⁸⁰ provides in section 3, that every person shall be liable to punishment for every act or omission contrary to the provisions thereof of which he shall be guilty within the State. The court in interpreting the statutes, in *R V Tyler* defined

²⁷⁷ CRA, s 101 (2)& (3).

²⁷⁸ *Ibid*, s 112(10).

²⁷⁹ Criminal Code, Cap C38, *LFN*, 2004, s 2.

²⁸⁰ Penal Code Law, Cap P3, *LFN*, 2004, s 3.

the word 'crime' which is used interchangeable with an offence as an act committed or omitted in violation of public law either forbidding or commanding it. From the definitions of a child and an offence, a child offender can be described as a person under the age of eighteen years whose acts or omission renders him or her liable to punishment under the Law.

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

A person under the age of seven is not criminally responsible for any act or omission. A person under the age of twelve is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had the capacity to know that he ought not to do the act or make the omission. A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.

The effect of the above provision is that a child under the age of seven cannot be held criminally responsible for any act or omission. However, such a child can be brought to the Family Court as a child in need of care and protection. Similarly, a person under the age of twelve is not criminally responsible for any act or omission that amounts to a crime except the prosecution can prove that he or she had the capacity to know that he or she ought not to make the act or omission. A summary of the foregoing is that there is an age limit to which the child can never be held guilty of a crime. However, when a child is twelve and above, he becomes fully responsible for his or her acts or omission that amounts to an offence except any of the general offences provided under the law avails him. A Child offender who is responsible for his acts or omission is however also entitled to rights provided under the law

for all persons facing criminal trials, and the court has a role to protect and promote the rights of the child offender.

The rights of the child offender before, and during trial as provided in the Constitution and other human rights instruments should be respected. The Constitution is the supreme law in Nigeria. It takes precedence over all laws in the country. Any law which contravenes the provisions of the Constitution is to that extent null and void. The provisions of the Constitution apply to all persons irrespective of whether the person is an adult or a child. Specifically, provisions on the fundamental rights in Chapter four refer to all Nigerians irrespective of age, status, sex, religion. The CRA also provides for the rights of the child offender.

The rights applicable to an offender include: Right to be informed of the cause of arrest, Right of silence during arrest, Right to be brought before a court of Law within a reasonable time, Right to life and human dignity, Right to be tried before a court of competent jurisdiction, Right to be tried for an offence that is known to law, Right to legal representation, Right to the presence of parents, Right to speedy trial, Right to presumption of innocence , Right not to be tried in public and in the case of the child, right to not to be tried in public in a separate system of justice, Right to Fair Hearing, Right to be given adequate time and opportunity to defend himself or herself.

i. Right to be informed of the Cause of Arrest

The Constitution provides under Section 35(3) that a person under an arrest has a right to be informed of the reason for his arrest by the police officer, except where he is arrested in the actual course of committing the offence. The Administration of Criminal Justice Act

2015²⁸¹ which has similar provision requires the police officer or other persons making the arrest to inform the suspect immediately of the reason for the arrest. In the case of a child, by the provisions of section 211 of the CRA, his or her parents should be notified immediately of the offence and apprehension of the child and where immediate notification is not possible, be notified within the shortest time possible after the apprehension.

The CRA also requires that the police and/or court shall consider without delay the issue of release. Contacts between the police and the child shall be managed in such a way as to respect the legal status of the child, promote the best interest of the child, and avoid harm to the child.²⁸² This is in consonance with the international standards in the UNCRC, which provides that a child arrested should be informed promptly and directly through his parents or legal guardian, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence.²⁸³ Lack of notification to parents of the arrest of a child, will amount to a breach of his or her constitutional right. This is because the child legally sues and defends through his parents or guardian, and next friends. The court therefore is under a duty to promote this right through ensuring the presence of parents of the child standing trial.

ii. Right of Silence During Arrest

Section 35(2) of the Constitution provides that any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice. Similarly, section 6(2) of the Administration of Criminal Justice Act requires the officer making the arrest to inform the suspect of his rights to remain silent or avoid answering any question until after consultation

²⁸¹ s 6.

²⁸² CRA, s. 211.

²⁸³ UNCRC, *op cit*, Article 40.

with a legal practitioner or any other person of his own choice. This right also applies to the child offender as also provided under section 210(c) of the Child Rights Act. Children may be ignorant of this right. The police at the pre-trial stage and the court during trial are under a duty to ensure that the child is informed of the right.

iii. Right to be brought before a Court of Law within a Reasonable Time

Sections 35(4 & 5 & 6) of the Constitution provides that a person arrested must be charged to court within a reasonable time, and any person unlawfully arrested or detained shall be entitled to compensation and apology from the appropriate authority or person, who committed the unlawful act.²⁸⁴ This is reflected in the earlier mentioned provision of the CRA, which is to the effect that after arrest, the court or police without delay should consider the issue of release.²⁸⁵

The UN CRC mandates State parties to ensure that no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used as a measure of last resort and for the shortest possible time. Every child deprived of his or her liberty shall have right to prompt access to legal and other appropriate assistance as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.

These provisions notwithstanding, child offenders often stay in police custody for a long period of time before they are charged to court. The number of children in prison custody without trials is alarming yet; they have a right to be brought before a court within a

²⁸⁴ UNCRC, *op cit*, Article 37.

²⁸⁵ CRA,s 211(1).

reasonable time after arrest.²⁸⁶ It was reported that Justice Olufunmilayo Atilade, the chief judge of Lagos State in August, 2017, discovered and released over eighty children in prison custody for minor offences. The same report had it that police prosecutors inflate their ages on the charge sheet to have them tried at the regular court.²⁸⁷ The Child Rights Act provides for a specialised children police unit to handle child offender, and family court to handle cases concerning children. It further provides that effort should be made by the police prosecutor or the Family Court to dispose of cases of child offenders without resorting to formal investigation, trial or disposition, and other means of settlement, such as: conciliation, supervision, guidance, restitution, compensation, and adjudication before the court should be used as measure of last resort. By the same provision, if institutional correction is needed, it should be at the children correctional institutions.²⁸⁸

It constitutes violations of rights of children to have them remanded in prisons alongside adults without trials, or to face delayed trials when brought to court, have trials in regular adult courts and undergo inhumane and degrading treatment. These child offenders go through the rigours of the procedures in the regular courts, which culminate in imprisonment. From the fore going, it is a fact that children are imprisoned and in some cases without trial. The Criminal Code,²⁸⁹ provides that any person who having arrested another upon a charge of an offence, wilfully delays to take him before a court to be dealt with according to Law is guilty of a misdemeanour and is liable to imprisonment for two years.

²⁸⁶ Information from Prisons in Anambra State, Lagos State and FCT in May 2018 by the researcher. Also the release of many children in 2017 from prisons by the Lagos State Chief Judge.

²⁸⁷ Vanguard News, August 16, 2017 reported by Dele Akinsola for News Agency of Nigeria <<https://www.vanguard.com/2017/08/tears-joy-Lagos-Chief-Judge-Frees-209-underage-prisoners>>. Daily Trust, August 20, 2017, reported by Chuks Azu <<https://www.Dailytrust.com.ng/news/general/how-kids-are-hooked-up-with-adults-in-Nigeria-prisons/210783html>>.

²⁸⁸ Child's Rights Act, ss 207- 213.

²⁸⁹ Criminal Code, *opcit*, s130.

iv. Right to Life and Human Dignity

Section 33 of the Constitution provides that every person has a right to life and Section 34 provides that every individual is entitled to respect for the dignity of human person, and no person shall be subjected to torture or to inhuman or degrading treatment. Section 11 of the Child Rights Act has similar provision. Furthermore, section 211(1), (2) provides that on apprehension of the child, the police should avoid harming the child, having due regard to the situation of the child and the circumstances of the case. Harm defined to include use of harsh language, physical violence, exposure to the environment and any consequential physical, psychological or emotional injury or hurt. Section 212 provides that detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time, and that can be replaced where possible, by alternative measures, including close supervision, and placement in an education setting or home. It further provides that while in detention, a child be given care and protection and all necessary individual assistance, including social, educational, vocational, psychological, medical and physical assistance that he may require having regard to the age, sex and personality of the child.

The UNCRC provides that no child should be subjected to torture or other cruel, inhuman or degrading treatment.²⁹⁰ Furthermore, the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)²⁹¹ provides that no child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions. Despite these legal framework, children go through all sorts of inhuman and degrading treatments from the police during arrest and afterwards.

According to Alemika *et al*, in a study conducted, two-thirds of the juveniles in police custody reported being verbally abused (66.5%); physically assaulted (64.7%) and threatened

²⁹⁰ UNCRC 1989, s 37.

²⁹¹ Adopted and Proclaimed by General Assembly resolution 45/112 of 14 December 1990, Article 54.

with beating (68.5%). They were therefore overwhelmingly subjected to verbal, physical and psychological abuse by the police. They were also subjected to mental torture by means of threat of denial of food and long detention. More than three fifths of the juveniles reported being denied access to parents and friends (61%) and opportunity to defend themselves (64%). The children also reported that they were forced to confess to a crime, were ill-treated by police, not fed well in police cells, and were not provided with adequate materials for personal hygiene. There were also reports of maltreatment of juvenile suspects and offenders at the correctional institutions, though it is lower than those reported against the police. Alemike concluded that in view of their findings, the overall interest, rights and welfare of juvenile suspects and offenders are not adequately protected within the juvenile justice system.²⁹² The situation observed above is not far from what is presently obtainable in the police. Observation by the researcher was that many children go through inhuman and degrading treatments in the hands of the police during and after arrest. It is our view that first experience in the justice system encountered by child suspects and offenders in the hands of the police may affect the rehabilitation and reformation of the child offender. The fact remains that there are no specialised police and police units for handling of matters relating to children in many States, as provided in the CRA. Delinquent children are handled by the same police as adults and in the same manner. The prisons are not left out, as it was reported that the children released by the Chief Justice of Lagos from prisons in 2017 mentioned earlier in this work, were all looking very sick, malnourished and manhandled. Visits by the researcher to police stations and prisons in Anambra State, Lagos State and Abuja confirm the above information. The court can exercise its powers and discretion, especially when it appears that the rights of the child to life and human dignity are violated or likely to be violated.

²⁹² E E E Alemika , I Chukwuma, *Juvenile Justice Administration in Nigeria: Philosophy and Practice*(Lagos: Centre for Law Enforcement Education(CLEEN)p52-54

v. Right to be tried before a Court of Competent Jurisdiction

The CRA which recognises all the rights of children as fundamental, improves their status and provides that in all actions concerning the child, his or her best interest, welfare and well being must be the paramount consideration, provides in section 154 that 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.²⁹³ In section 149, the CRA provides as follows:

There will be the establishment of a Court to be known as the Family Court²⁹⁴ for the purposes of hearing and determining matters relating to children whether civil or criminal. It entertains criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a child, against a child or against the interest of a child.

The CRA also provides that:

in the determination of the cases the court shall be guided by the principle of conciliation, and shall encourage and facilitate the settlement of the matter in an amicable manner between the parties involved or likely to be affected by the result of the proceedings, such as the child or parents or guardians of the child or any other person having parental or other responsibility for the child. The court shall be properly constituted of a judge and two assessors at the high court level and a

²⁹³ CRA, s 154 .

²⁹⁴ *Ibid*, s 149.

magistrate and two assessors at the magistrate Court level. Under this special system, a child is not to be subjected to the regular criminal justice process. It provides that the personnel of the court shall be afforded professional education and constant training on matters relating to children.²⁹⁵

The CRA prohibits the use of the terms ‘conviction’ and ‘sentence’ and also the avoidance of the use of detention, at the trial, trial and post-trial stages, except as a means of the last resort, in which case, it must be for a short period of time, and in all cases there must be the use of social inquiry report which must contain information about the background of the child, including the social and family background and school career and educational experience, the circumstances in which the child is living and conditions under which offence was committed.²⁹⁶

The measures provided to be adopted by the court for the child under the Act consist of dismissing the allegation or discharging the child offenders upon his undertaking to be of good behaviour, or placing him under the supervision of a supervision officer or ordering the child offender to participate in group counselling and similar activities, pay a fine, damages, compensation or cost or undertake community service under supervision of a relative or other fit person, or making an order concerning foster care, guardianship or living in a community or other educational setting.²⁹⁷

The court under the CRA is empowered to make and vary corrective orders on child offenders, and the role of the court here is very important. The court has the power to order

²⁹⁵ *Ibid*, s 154.

²⁹⁶ CRA ss 213& 219.

²⁹⁷ *Ibid*,s 223(1& 2).

parents or guardian where the parents have not carried out their parental roles effectively; this will motivate parents to exercise their parental role to provision of necessities and care.

Furthermore, section 220 provides that where a child is brought before the court for an offence, and the court decides that the case would be best disposed of by: the imposition of a fine, damages, compensation or costs, whether with or without any other measure, the court shall order that the fine, damages, compensation or costs whether with or without any other measure, the court shall order that it be paid by the parents or guardian of the child, unless the court is satisfied that the parents or guardian of the child cannot be found; or the parents or guardian has not condoned the commission of the offence by neglecting to exercise due care, guidance of and control over the child. It further provided that where a child is charged with an offence, the court may order his parents or guardian to give security for his or her good behaviour. Also where the court thinks that a charge against a child is proved, the court may make an order on the parents or guardian under the section for the payment of damages or costs or requiring him to give security for good behaviour, without proceeding to find out that the child committed the act.²⁹⁸ The Act further provides that placing a child in an approved accommodation or an approved institution must be a disposition of last resort, which must not be ordered unless there is no other way of dealing with the child. The court must be satisfied that there is a vacancy in an approved institution before it can make an order. The court is completely forbidden from imposing capital punishment such as death penalty or imprisonment or corporal punishment.²⁹⁹

The right of the child offender to child justice administration in the Family Court in are not accorded them in Nigeria. These children are apprehended and kept in police custody, arraigned and tried in regular courts. After trial, the child offenders are sent to prison. The

²⁹⁸ CRA, s 220(2&3).

²⁹⁹ *Ibid*, s 221(1).

incarceration of child offenders with adults in prison forecloses their right to rehabilitation/reformation and forms them into recidivists.

The violation of the right of the child offender to a court of competent jurisdiction, which in the case of the child is the Family Court, is common. The role of the court in promoting the rights of the child offender can only be achieved at the Family Court through the implementation of the Child Rights Act in various States and enlightenment on the rights. It is therefore submitted that the Family Court should be established in every State to save the child from trials at the regular court. In many States especially in the Southern Nigeria, the Child Rights Act have been adopted, while the reverse is the case in some States in the North. However even in those States that adopted the CRA, such as Anambra State, Lagos State, and even the FCT Abuja where the CRA apply directly; there is a problem of implementation.³⁰⁰ Proceedings at the Family Court are required to be conducive for the child, and in the best interest of the child, and encourage child participation. The Magistrates and Judges in many Family Courts have challenges with the structure of the court and usually sit in chambers to provide privacy and conducive environment for the child.

vii. Right to be tried for an Offence that is known to Law

The right to be tried for an offence that is known to law is entrenched in section 36(6)(12) of the 1999 Constitution as follows:

Subject as otherwise provided by this Constitution, a person will not be convicted of a criminal offence unless that offence is defined and a penalty therefore is prescribed in a written law; and in this subsection, a

³⁰⁰ A visit by the Researcher to the Family Court at Nnewi, Onitsha and Ekwulobia in Anambra State, revealed that family court sitting are done at the regular court environment on designated days in the chambers of the magistrate and the judge. The same situation is applicable in Abuja. In Lagos State, there are Family Courts both at the High Court and Magistrate Court Level, but the court setting has the look of regular adult courts.

law refers to an Act of the National Assembly or a law of a State, any subsidiary legislation or instrument under the provisions of a law.

It is therefore clear by this definition that any act or omission that is not criminalised by the Criminal Code or any Act or Law is not an offence. An act or omission may be harmful, sinful or considered to be same by the public or some persons, but as long as it is not stated as an offence by a written law, no criminal responsibility will be attached to it. Similarly, the Penal Code provides that every person shall be liable to punishment under the Penal Code for every act or omission contrary to the provisions thereof of which he shall be guilty within the State. It is therefore certain that a person can only be punished for his acts or omissions that are declared by the law to be an offence, and it shall be so as at the time the offence was committed.³⁰¹ In some jurisdictions, acts such as truancy in school, running away from home, being beyond parental control is regarded as statute offences. These acts arise as a result of the status of being a child that would not have been sanctioned if done by adults. The UNCRC frowns at that and provides that no child shall be alleged as, be accused of, or recognised as having infringed the penal law by reason of acts or omission which were not prohibited by national or international law at the time they were committed. A child should therefore have the same right with other citizen, to be charged for a crime that is known to law and not otherwise.

Viii Right to Legal Representation

A person shall have a right to be adequately represented in matters involving him or her. Thus, section 36(5)(c) of the 1999 Constitution provides that every person who is charged with a criminal offence shall be entitled to defend himself in person or by a legal Practitioner of his own choice. This is one of the requirements of fair hearing, since an

³⁰¹ Criminal Code , *op cit*, s11.

accused person is accorded the right to a legal practitioner to take all appropriate steps known to law to represent him or her before the court.³⁰² An accused person including a child offender is accorded the right to legal practitioner of his choice who is to take all appropriate steps known to law to represent him or her before the court. Both section 6(2) of the Administration of Criminal Justice Act sections 155 and 210 of the CRA provide that the child has the right to be represented by a legal practitioner and to free legal aid in the hearing and determination of any matter concerning the child in the court. Akin to this right is the right of the child under section 210 of the CRA to the presence of the parents or guardian of the child offender during the proceedings.

However in practice, in most proceedings concerning the child in Nigeria there are usually no legal representation. Under the CYP, there is no provision for free legal aid where parents are indigent. In matrimonial causes at the regular court, the child is also not legally represented. However, the Family Court under the CRA is mandated to appoint free legal services for the child to ensure proper participation of the child. The right to participation is very vital. It is therefore important that the CRA which promotes legal representation and free legal services for the child should be implemented. This will enable the court have an overview of the position of the child, and exercise its role in the best interest of the child.

ix Right to Presence of Parents in Court Proceedings

The Child Rights Act³⁰³ provides that the court may order parents, guardians or the child concerned to attend court proceedings, and section 210 provides for the right to the presence of the parents or guardian of the child offender during the proceedings. In other words, the court has the discretion to order that the parents of the child be present at his or

³⁰²Same was held in the case of *Ogboh V F.R.N.and Uzodimma v C.O.P.*

³⁰³ CRA, s 159.

trial. This is important because children are dependent on parents and other adults and their presence will be beneficial and useful at the proceedings. There is need for the court to exercise this discretion judiciously and effectively in the best interest of the child.

x. Right to Presumption of Innocence

The Constitution³⁰⁴ provides that every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty. This is inclusive of a child offender. This is based on the law which places the general burden of proving the guilt of an accused person standing trial for an offence on the prosecution. The accused person is therefore presumed to be innocent of any charge against him, until proved otherwise by the prosecution. The defendant must be set free by the court if the prosecution fail to do so. In *Adeyemi v the State*, the court explained the principle as follows:

Under the Constitution, there is no onus on an accused person to establish his innocence. Hence where at the close of the case of the prosecution, no case has been made out against the accused, asking him to answer any charge connected with the offence which he has been discharged, it is a reversal of the constitutional presumption of innocence by asking him to establish his innocence. No court has such a jurisdiction. Consequently, every proceeding subsequent to the violation of the provision of section 33(5) of the 1979 Constitution is void having been conducted without competence. It follows that the conviction of the appellant for the offence of manslaughter is void and of no effect.

³⁰⁴ Constitution of the *FRN*, 1999 (as amended), s 36(5).

xii. Right not to be tried in Public

Under section 36(4) of the 1999 Constitution, whenever any person is charged with a criminal offence, he shall unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time. However, there are exceptions to this rule. Considering the nature and immaturity of children, the special procedure for child offender prohibits public trials. It is the law that in a juvenile court, no person other than the members and officers of the court and the parties to the case shall be allowed to attend. The publication of the name, address, school, photograph or anything that is likely to lead to the identification of the child or young person before a juvenile court is highly prohibited and attracts criminal liability for defaulters. Child Rights Act³⁰⁵ provides that no other person, other than the members and officers of the court, the parties to the case, their solicitors and counsel, parents or guardian of the child and others directly concerned in the case, shall be allowed to attend the court, and, accordingly, members of the press are excluded from attending a court. Section 157 of the same Act provides that names, addresses, school, photograph, or anything likely to lead to the identification of a child whose matter is before the court, and a person who contravenes commits an offence. Similarly, section 205 provides that records of a child offender shall be kept strictly confidential and closed to third parties; made accessible only to persons directly concerned with the disposition of the case at hand or other duly authorised persons; and not used in adult proceedings in subsequent cases involving the same child offender. All these measures are geared towards maintain privacy and protecting the interest of the child. It is pertinent therefore for every State in Nigeria to adopt the Child Rights Act. Furthermore, States which has adopted the CRA should endeavour to implement the provisions of the Act by establishing the Family Courts and its personnel, and making it functional as well.

³⁰⁵ CRA,s 156.

xiii. Right to Fair Hearing

The Constitution³⁰⁶ provides that an accused person standing trial for an offence has a right to fair hearing within a reasonable time. The Child Rights Act provides in section 214 that in the trial of a child, there should be observance to the right of the child to fair hearing, observance of due process, and respect to the legal status of the child. Section 215 of the same Act provides that the proceedings in the Family court shall be conducive to the best interest of the child and shall be conducted in an atmosphere of understanding; allowing the child to express himself and participate in the proceedings and the reaction taken should always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and needs of the child and the society.

From the foregoing provisions, it is the role of the court to ensure that all the cardinals of fair hearing is followed in the proceedings of the child. It is a fundamental right of a child facing trial and such rights ought to be dispensed with both rather protected and promoted by the court. If in any event there is a violation of such rights, it should be addressed on appeal in the best interest of the child.

xiv. Right to be Given Adequate Time and Opportunity of Defence

The 1999 Constitution³⁰⁷ provides that an accused person who is charged with a criminal offence shall be entitled to be given adequate time and facilities for the preparation of his defence. This constitutional right includes, securing legal practitioner of his choice, preparing evidence, assistance of an interpreter if needed as provided in section 36(6)(e) of the 1999 Constitution, which states that every person who is charged with a criminal offence shall be entitled to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

³⁰⁶ CFRN 1999(as amended), s 36(4).

³⁰⁷ *Ibid*, s 36(6)(c).

A child offender is obviously entitled like every other citizen of Nigeria adequate time to prepare for his or her case, and legal representation. In some proceedings, such as in divorce proceedings and custody matters, parents are usually represented by counsel, while the child who is the subject of the matter is left without legal representation. This should be addressed, because there is a growing concern on the issue of what constitutes the welfare and best interest of a particular child in every peculiar case.

xv. Right not to be compelled to give Evidence at his Trial

A child is not to be compelled to give evidence at his or her trial. The 1999 Constitution³⁰⁸ provides that no person who is tried for a criminal offence shall be compelled to give evidence at the trial. A suspect is presumed innocent and has a right to remain silent when accused of an offence. This is similar to his or her right not to be compelled to give evidence at trial; otherwise will violate the right and lead to unjust and unfair trial. Accordingly, the law requires that the accused will be informed of his right to keep silent and equally a choice to lead evidence either by himself or through counsel of his choice. A child should be guided by his counsel as a defendant who elects not to give evidence at his trial, being a very sensitive decision ought to exercise this right with caution. Section 158 of the CRA provides that the proceeding in the court shall be conducive to the best interest of the child and shall be conducted in atmosphere of understanding, allowing the child to express himself and participate in the proceedings.

xvi. Right to Speedy Trial

The Child Rights Act³⁰⁹ provides that the Family Court shall handle each case brought before it expeditiously without unnecessary delay. This is very important, because long and

³⁰⁸ CFRN 1999(as amended), s 36(11).

³⁰⁹ CRA, s 215(1)(3).

delayed trial is unjustified and not in accordance with the rights of the accused person to have his trial within reasonable time. The court should grant speedy trials to litigants, especially vulnerable people such as children, for justice delayed is justice denied.

xvii. Right to Child justice System and Rehabilitation

Child justice system which is very beneficial to the child offender is geared towards rehabilitation and reformation. Section 221 of the CRA provides that no child will be imprisoned, subjected to corporal punishment or to death penalty or have death penalty recorded for him rather, if he or she is tried and the court is satisfied that the child committed the offence, the court can adopt measures such as dismissing the charge, dismissing the child on his entering recognisance or placing the child under the care, supervision, guidance, placing the child under a supervision by a supervision order, committing the child by means of corrective order to the care of a guardian and supervisor of a relative or any other fit person, sending the child for correction to an approved institution among other measures as provided under section 233. This is due to the fact that it is easy to rehabilitate the child and re-integrate him or her into the society because of the nature and immaturity of the child.

Many children in Nigeria are not accorded these rights; they are rather apprehended and kept in police custody for long period of time. Some children are charged to regular courts and tried with adults and sometimes denied fair hearing. Some are sent to prison with adults and they end up having bad influence from adult inmates, thus foreclosing their right to rehabilitation/ reformation. Under the CYPA, it is the duty of all police officers and prison officers to make arrangements for preventing, so far as is practicable a juvenile while in custody from associating with an adult charged with or convicted of an offence. While the CRA prohibits imprisonment for children and made provisions with respect to the duties of the specialised children police unit towards an apprehended child. The criminal justice

system needs to be monitored and checked to ensure that children are saved from this mess in order to have a better generation of Nigerians. Children's right to child justice system provided under the law should not be overlooked. Strict adherence to the laws protecting the rights of children will enable them have fair trial, free from fear and intimidation, and the child offender will turn out a reformed person for the overall good of the nation.

It is submitted that one of the problems encountered under the child justice system revolves around lack of required institutions. There are no ideal Family courts as well as adequate correctional institutions in many States. In Anambra State for example, the only existing newly built government correctional institution located at Abagana for boys and girls do not harbour child offenders presently. The inmates are mostly children in need of care and protection found on the streets hawking, begging and roaming without help. The social welfare worker in charge of the rehabilitation department stated that counselling and skill acquisition such as tailoring, bead making, soap making, confectionaries, leather works, ICT, phone repairs and other skills are available for the inmates of the institution. Other inmates include children beyond parental control, drug addicts and children in homes with serious marital crises. Information gathered is that the facility has care givers, social welfare workers, and other staff drawn from the children department of the Ministry of Women, social welfare and children. The Ministry also run a model community orphanage home for the orphans and motherless babies, which is located in three different towns in the State. Further information obtained from staff of the Children Department includes: that the staff collaborate with the Nawfia Psychiatric Centre, Government owned hospitals in the State, and other facilities owned by individuals, churches and non-governmental organisations.³¹⁰ There were no child offenders awaiting trial or standing trial found in the facility. Further enquires at the Prisons

³¹⁰ Information obtained by the researcher during the researcher's visit to the Ministry of women, social welfare and children affairs Awka, and Temporary Shelter Social Welfare Center located in Abagana, all in Anambra State.

and courts revealed that child offenders are in some cases sent to correctional institutions in other States, while some with minor offences are released at the police station and those charged with serious offences are remanded in prison custody. These child offenders are often charged along with adults, while their ages are inflated by the police in some cases to bring them within the jurisdiction of the regular courts and prisons as well.³¹¹

3.5 Child Witnessing in Court

Every person is a competent witness, except in cases provided under the law. Thus, Evidence Act³¹² provides that every person shall be a competent witness unless the court considers that the person is prevented from understanding the questions put forward to him or her or from giving rational answers to them, by reason of tender years, extreme old age, disease, whether of body or mind, any course of the same kind. The Act further provides³¹³ that in any proceeding in which a child who has not attained the age of fourteen years is tendered as a witness, such a child shall not be sworn and shall give evidence otherwise than on oath or affirmation, if in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of his evidence and understands the duty of speaking the truth. Furthermore, the Act provides that a child who has attained the age of fourteen years shall give sworn evidence in all cases except on the basis of religious belief and other factors. Children with disability are also protected under the Act. Thus the Evidence Act³¹⁴, provides that a witness who is unable to speak may give his evidence in any manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in the court, and the evidence so given shall be deemed to be oral evidence.

³¹¹ A visit by the Researcher to Awka Prison, Magistrate and High Court Registry in Awka.

³¹² Evidence Act, 2011, ss.175.

³¹³ *Ibid*, s 209.

³¹⁴ *Ibid* s. 176.

3.5.1. Corroboration of the Evidence of a Child Witness

In *Ofoke Nwambe v the State*³¹⁵, the Court defined corroboration as a confirmation of witness's evidence by independent testimony. According to the Court in *Amadi v the State*³¹⁶ Corroborative evidence is evidence given by an independent witness which confirmed in some material particular not only that a crime has been committed but also that it was committed by the accused person. The pertinent question is, when can corroboration be necessary? The general rule is that no particular number of witnesses shall be required for the proof of any fact in issue.³¹⁷ The imaginary scale of justice used in assessing judicial evidence concerns itself with cogent, credible and convincing facts. Therefore the testimony of a single witness that is relevant and admissible can secure a conviction in a criminal trial or establish the fact in issue in a civil trial.³¹⁸

In *Ogbodu v the State*³¹⁹ it was held that what is important to the court is the quality and not the quantity of evidence adduced. The court of law cannot take into account the number of witnesses that have given evidence for each side as a relevant factor in deciding which side should succeed. There is however exceptions to the general rule and the unsworn evidence of a child constitute one of the exceptions. Accordingly, the Evidence Act provides that unsworn evidence of the child witness will be corroborated. It states that a person shall not be liable to be convicted for an offence unless the unsworn testimony of a child admitted and given on behalf of the prosecution is corroborated by some other material evidence in

³¹⁵ (1995) 3 SCNJ 77 at 97.

³¹⁶ (1993) 8 NWLR (pt.314)644 SC.

³¹⁷ Evidence Act, s200.

³¹⁸ *Salisu Bubguga v The State* (1996) 7SCNJ 217.

³¹⁹ (1986) 5NWLR 294.

support of such testimony implicating the defendant.³²⁰ However, corroboration does not apply to a sworn evidence of a child witness, since the child is a competent witness.

In the Child's Right Act³²¹, in civil proceedings, if the child witness is in the opinion of the court incapable of understanding the nature of an oath, his evidence may be heard provided he understands that it is his or her duty to speak the truth. The Child Rights Act further provides³²² that in any proceedings, whether civil or criminal, the evidence of a child may be given unsworn. A deposition of a Child's sworn evidence shall be taken for the purposes of any proceedings, whether civil or criminal, as if that evidence had been given on oath. A child can therefore give evidence on oath or not depending on the age of the child and his or her ability to understand the duty of speaking the truth. It is pertinent therefore that the child witness is protected when giving sworn evidence or unsworn evidence.

3.5.2. Protection given to Child Witness

Protecting a witness refers to a range of measures, which can be applied at any stage in any proceedings, to ensure the safety of the witness to gain their cooperation in providing testimony in court or any judicial proceedings. Protecting the witness is an important step in obtaining credible evidence and ultimately attaining justice. Simply put, measures ought to be put in place to protect a witness for the purpose of administering justice. This can be achieved through an effective witness protection scheme. Witnesses are usually better composed to give evidence in court if they are afforded proper protection and prepared well for the case. It is even more ideal with child witness. Children due to their immaturity usually appear without appreciating or understanding the court proceedings, rules, and the role they have come to play. The question remains, what protection can be offered to a child to enable

³²⁰Evidence Act, s 209(3).

³²¹ Child's Rights Act, s96.

³²²*Ibid*, s160.

him or her give credible and admissible evidence. The preamble to the Child rights Act, states that in all cases concerning children whether undertaken by public or private welfare, institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be the primary consideration. Thus it follows that the best interest of the child witness should be envisaged.

There are certain provisions of laws in Nigeria that confer roles on the court on the protection of the child witness. They include: establishment of the Family Court for hearing matters involving children. The Child's Right Act makes provision for the establishment for each State of the Federation and the Federal Capital Territory, Abuja, a Court known as the Family Court for the purposes of hearing and determining matters relating to children³²³. This provision will grant protection to a child witness who happens to also be a victim. The setting of a Family Court is less formal than that of a regular court, thus the child witness will feel free and relaxed and less exposed. However, this provision protects only the child witness in the Family Court and does not protect a child witness testifying in a regular court. The same Act provides³²⁴ that no person other than the members and officers of the Court, the parties to the case, their solicitors and counsel, parents or guardians of the child and other persons directly concerned in the case, shall be allowed to attend the court, members of the press are equally excluded from attending court proceedings. This provision serves the same purpose with the earlier mentioned provision, and gives the child witness privacy. The Child's Act also provides that; no person shall publish the name, address, school, photograph, or anything likely to lead to the identification of a child whose matter is before the court, except in so far as is required by the provision of this Act. This provision offers protection to the child witness who appears in the Family Court to the extent that his identity is banned from publication. The rights of the child to privacy are to be respected at all stages of child justice

³²³ Child Right's Act, s 149.

³²⁴ Child's Rights Act, s 156.

administration in order to avoid harm being caused to the child by undue publicity. The CRA further provides³²⁵ that the proceedings in the court shall be conducive to the best interest of the child and shall be conducted in an atmosphere of understanding, allowing the child to express himself and participate in the proceedings. The above provisions are geared towards protecting the child witness. The role of the court is obvious in promoting the rights of the child to child justice system and basic protection when testifying in other courts. Though many States have adopted the CRA, the Family courts existing in those States are not as intended in the CRA in terms of structure and personnel.

The Administration of Criminal Justice Act³²⁶ provides that with respect to rape, defilement, incest, unnatural or indecent offences against a person, offences under the terrorism(Prevention)(Amendment) Act, offences relating to Economic and Financial Crimes, Trafficking in Persons and related Offences and any other offence in respect of which an Act of the National Assembly permits the use of such protective measures or as the judge may consider appropriate in the circumstances; the names, addresses, telephone numbers and identity of the victims of such offences or witnesses shall not be disclosed in any record or report of the proceedings and it shall be sufficient to designate the names of the victims or witnesses with a combination of alphabets.³²⁷ The Act further provides that where in any proceedings the court deems it necessary to protect the identity of the victim or a witness, the court may take any or all of the following measures: receive evidence through video link; permit the witness to be screened or masked; receive written deposition of expert evidence; and any other measure that the court considers appropriate in the circumstance. The Law certainly has more elaborate provision on protection measures for witnesses, since it provides for certain new measures not mentioned in other aforementioned law. The effect of this

³²⁵ *Ibid*, ss. 157 and 158.

³²⁶ The Administration of Justice Act, 2015.

³²⁷ *Ibid*, s. 232(1-2).

provision is that the court is given wide powers and discretion to make orders for the protection of the child witness. However since it is not mandatory for the court to do so, such measures may not be taken and the interest of the child would be jeopardized. The court should in such criminal cases exercise its role in the best interest of the child, and in doing so promote and protect the rights of the child witness.

The major challenge to the protection of the child witness is the establishment of the Family court. Amid all the States that incorporated the CRA, only Lagos State has the semblance of the Family court as intended in the Act, though there are a lot of gaps. Family courts, such as High Court Ikeja Family Courts, Magistrate Courts Ikeja Family Courts, High Court Igbochere Family courts exists in Lagos State, though they do not conform entirely with the Family Court structure under the CRA. The Courts handle more of custody, adoption, fostering and guardianship, child protection cases and very few criminal cases. Criminal cases involving children are still tried at the regular court. Furthermore, though the courts send child offenders and victims to correctional institutions in Oregun, Idi Araba and Adigbe in Ogun State among others, many child offenders are still put in prisons.³²⁸ There are inadequate specialised personnel. The assessors are not always available, because of their dual work at the court and the government ministry respectively. The settings of the Family courts are same with the regular courts as opposed to the special features provided under the Act, and most times the matters are done in chambers to ensure privacy. There are some compliance to the rules, for instance the press are not allowed during court proceedings, privacy is maintained to a reasonable extent, and the social welfare officers work with the courts especially at the magistrate court level. In the Federal Capital Territory, Abuja, the Family courts entertain mostly civil cases involving the child, and most criminal cases are

³²⁸ For example in an ongoing case in one of the Family courts visited in Lagos- Logos State v *Chinemerem Benjamin* with suit number LD/2749C/2016, involving a seventeen years old girl, she comes to court from Kirikiri Prison .

handled by the police and or at the regular courts. Though child offenders and children in need of care and protection are put in the Kaduna remand homes, some child offenders are also sent to prisons. In Anambra State, the Admin Magistrate of every judicial division is a Family Court, the same position applies at the High Court level. These judicial officers sit as judicial officers at regular courts and at the Family Court as well. There are no separate courts designated as the Family Courts, the same regular court is used for the two purposes. Matters relating to children are mostly held in the chambers of the magistrates and are mostly custody, adoption, fostering, guardianship, child care, and in rare case criminal matters. The bulk of the criminal matters are dealt with in the regular courts. The courts sit with assessors from the Ministry of Women and Children Affairs, and also work with the social welfare staff from the government Ministry. There is only one government owned correctional institutions known as Temporary Shelter Social Welfare Centre situate at Abagana, harbouring child in need of care ad protection and children beyond parental control, though there are other private owned facilities for rehabilitating drug addicts, children in marital crises and disabled children. It is very pertinent for the CRA be implemented in States, to ensure functional Family Courts and specialised personnel for the protection of the child witness and other categories of children.³²⁹

3.6 The Role of Court in Promoting the Rights of Children in Need of Care and Protection

The Child's Right Act, made an elaborate provision on who can be a child in need of care. Thus it empowers certain persons, such as a child development officer, a police officer or any person authorised by the Minister to bring children in need of care and protection before a Family Court. The Act provides that:

³²⁹ Information obtained by the researcher during visits by the researcher to the mentioned Courts.

any child reasonably believed to be in the following situation is deemed a child in need of care: a child who is an orphan or is deserted by his relatives; has been neglected or ill-treated or battered by the person having care and custody of the child; has parents or guardian who does not exercise proper guidance and control over the child; found destitute, has both parents or surviving parent, undergoing imprisonment or mentally disordered, or otherwise severely incapacitated; under the care of parents or guardian who, by reason of criminal or drunken habits, is unfit to have the care of the child; is the daughter of a father who has been convicted of the offence of defilement or indecent treatment of any of his daughters; is found wandering and has no home or settled place of abode, is on the street or other public place with no visible means of subsistence; is found begging or receiving alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale or is found in the street, premises, or place for the purpose of so begging or receiving alms; accompanies any person when that person is begging or receiving alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise; frequents the company of a reputed thief or common reputed prostitute; is lodging or residing in a house or the part of a house used by a prostitute for the purpose of prostitution, or is otherwise living in circumstances calculated to cause, encourage or favour the seduction or prostitution of the child; is a child in relation to whom an offence against morality has been committed or attempted; is otherwise exposed to moral or physical

danger; is otherwise in need of care, protection or control; is beyond the control of his parents or guardians.³³⁰

A child has a right to survival and development, and should not be subjected to lack of care and protection and exposure to moral and physical risk. Thus the fact that a child is found destitute or wandering, without any settled place of abode and without visible means of subsistence; begging or receiving alms, whether or not there is any pretence of singing, playing, performing or offering anything for sale of otherwise; loitering for the purpose of begging or received alms; hawking or street trading; or living in the street, under bridges, in market places, in motor parks or in other public places, is evidence that the child is exposed to moral danger.³³¹

At first, the role of the court to children in need of care and protection is the making of proper order for the wellbeing of the child. The person making the application for the child before the court shall before the hearing of the application, take such steps as are reasonably practicable to ensure that notice of the application is given to the parents of the child; or a person who, though not a parent of the child, has parental responsibility for the child; or any other person who has the care of the child; and the child concerned, if he has sufficient understanding.

Next, if the court is satisfied that a child brought before it is a child in need of care, should make appropriate orders in the best interest of the child which include : to cause the parent or guardian of the child to enter into a recognisance to exercise proper care and guardianship over the child; or make a corrective order committing the child to the care of any fit person whether a relative or not who is willing to undertake the care of the child; or send the child to an approved institution, in exceptional circumstances where a non-

³³⁰ Child Right's Act, s 50.

³³¹ *Ibid*, s. 50(5).

institutional measures is impractical or inappropriate. The court without making any other, or in addition to making an order mentioned earlier, may make an order placing the child for a specified period not exceeding three years under the supervision of a supervision officer, or of some other person appointed for the purposes by the court.³³²

It can be deduced from the foregoing that the court has wide powers to make determination and orders with respect to children who are deemed to be in need of care and protection. The court ought to be proactive since the pronouncements of the court to address the issues of these children will go a long way to protect the rights and interest of the child and constitute a check and deterrence for violation of the rights of the child in the society. This will also reform the child and put the child in a good and proper condition in the society. It is pertinent to point out that the court referred to in the Act for hearing of issues about children is the Family Court. What then will be the fate of children in need of care and protection in a State without a functional Family court? Some States in Nigeria have not adopted the Child Rights Act, and have no established Family Court. The effect is that children from such States are not protected by the provisions of the CRA. A similar situation occurs where the Family Court is yet to be established in accordance to the provisions of the law in some States which adopted the Act due to non-compliance.

Another issue is with respect to those authorised to bring the child in need of care to the court. What happens to the Nigerian child who is in need of care and protection, where the police and the child welfare and development officers and others appointed by the Minister to so act hardly carry out their legal duty in this respect? The Nigerian police take some of these issues as family/ domestic issues and do not take the necessary legal action or steps expected of them.

³³² CRA,s 50(2) &(3).

Furthermore, dearth of welfare officers; poor funding and inadequate trained social workers also affect the protection of children in need of protection under the CRA. There also problems of re-trainings for the specialised personnel. With the challenges of inadequate personnel, a child in need of care may not come before the Family Court except it is done by those legally authorised persons. These factors increase the number of children in need of care and protection left without being attended to.

It is submitted that since a child is competent to give evidence in court as a witness, and the court believes that he or she understands the question put to him and can give rational answers, the law could also permit the child of certain age who is in need of care and protection to bring an application before the court in such circumstances through any person of his or her choice.

The large number of children in need of care in Nigeria, especially in the urban areas is worrisome. This is because children are supposed to be nurtured and protected, yet several factors impede the realisation of these goals. These children in need of care and protection sometimes end up as child offenders, having been lured into delinquency by adults. On this point, Bella *et al* states that many children in Nigeria face a life of poverty, family instability, inadequate educational opportunities and poor physical and mental health which hinder their ability to develop into healthy adults, live an improved quality of life or fulfil their life aspirations. These factors have also been associated with juvenile delinquency and need for institutional care. In their study of a total of fifty-nine children assessed over a one-year period at Ibadan remand home, revealed that majority were in need of care and protection. All of them had significant psychological needs presenting as difficulty with their primary support, economic, social environment, or educational system.³³³ The researchers suggested

³³³ T T Bella, O Atilola and O O Omigbodun, 'Children within the Juvenile Justice System in Nigeria: Psychopathology and Psychosocial Needs' *Annals Of Ibadan Postgraduate Medicine*, 2010 Jun; 8(1): 34- 39.

that possible explanations for this could be the widespread cultural beliefs, which encourage abandonment of children with mental disabilities, congenital abnormalities or epilepsy as their results showed that about 10% of inmates had mental retardation while 8% suffered epilepsy. This view may not be the true position in many of the customs, because children are valued in many customs in Nigeria, irrespective of the condition of the child. Though, in some extreme cases, for example after the death of parents, some relatives may find it difficult to care for the disabled orphan. According to Bella, another possible explanation for the high rates of children in need of care and protection according to them could be the rapid migration from rural poor to urban areas in Nigeria without adequate provisions for the children. They posited that ensuing poverty and lack of social support may have led to the disintegration of families thus, producing more abandoned children. They observed that there are many children in need of care, not under institutional care. Some of these children are orphans and street children who as a result of dysfunctional family background coupled with poverty and poor educational backgrounds have taken to substance abuse, stealing, prostitution, school truancy, and are able to avoid arrest and survive economically on the streets.³³⁴ The researcher holds the view that some parents and guardian have hidden under economic crisis in Nigeria and parental control over children to subject children to child labour, such as hawking, bus conducting, domestic service, street trading, hired manual labour in farms and building sites during school hours, when the Child Rights Act prohibits child labour and exploitative use of children of any form?

Strictly speaking, regardless of numerous provisions in the Child Rights Act, and other related legislations on the rights of the child, there is a big disparity between theory and practice in Nigeria. Social welfare workers, child administrators, organisations, institutions, parents, government and all stake holders in child welfare should take insights from the

³³⁴*Ibid.*p 5.

practice in some jurisdictions, such as United States of America, Canada, United Kingdom where child labour is reduced at all or to the barest minimum.

3.7 Role of the Court in Promoting the Rights of Disabled Children

The word disability is defined as physical or mental condition that limits a person's movements, senses, or activities. The Black Laws Dictionary defines disability as an objectively measurable condition of impairment, physical or mental.³³⁵ Curson defined disabled person as a person who is blind, deaf or dumb or who is substantially and permanently handicapped by illness, injury or congenital deformity or any other disability for the time being.³³⁶ A disabled person was also described as a person who has mental or physical impairment.³³⁷

The United Nations Convention on the Rights of Person with Disabilities in its Preamble, states that 'Disability is an evolving concept, and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder full and effective participation in society on an equal basis with others. It goes further to state that persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society or an equal basis with others.'³³⁸

According to World Health Organisation (WHO), disability is any restriction or lack of ability to perform an activity in the manner or within the range considered normal for human being due to impairment. It provided further that the disabled include persons with physical or other dysfunction, which may be acquired, congenital, even hereditary, consequentially affecting their full participation in the society, and the performance of social

³³⁵ B A Garner, *op cit*, p528.

³³⁶ L B Curson, *A Dictionary of Law* (2nd edn, England: Macdonald & Evans, 1983) p112.

³³⁷ B A Garner, *op cit*, p1257.

³³⁸ United Nations Convention on the Rights of Persons with Disabilities, Article 1.

roles. In this work therefore, a disabled child is a person under the age of eighteen having a physical or mental disability. People with disability are usually very vulnerable, due to their condition, and it cuts across every age, class or gender. According to Doma-Kutigi, disability exists throughout the world without respect for national, ethnic or cultural boundaries. The systematic exclusion and marginalization of people with disabilities from equal participation in all the major segments of society is a well-documented global phenomenon. In all societies, there has been a clear historical tendency to perceive people with disability in negative light as people that are basically incomplete and imperfect. They often face significant levels of discrimination and stigma in their everyday lives. As a result, many are not visible in the society, and hardly participate in community and family activities.³³⁹

Disabled people are often subjected to social, cultural and economic barriers which impede their access to health care, education, vocational training and employment. Thus Awah stated that the history of disabled people has been a miserable one. He further argued that the disabled has often been despised, discriminated against and more often than not maltreated, which stemmed from all sorts of beliefs regarding them as undesirable and evil. He however noted that as we enter into realm of human rights these conceptions are fading and there is now a conscious attempt by governments and institutions globally to reverse the trend and protect the lives and lot of the disabled. Also the disabled are also struggling to break out of their limitation and exclusion and are seeking access to education, health care, participation in economic, social and political life. He concluded that the law remains the veritable instrument for the reversal of the limitations on the part of the disabled.³⁴⁰

³³⁹ H Doma-Kutigi, 'Perceptions as an Obstacle to the Protection of the Rights of Persons with Disability in Nigeria' vol. 19, No. 1. (2016) 160.

³⁴⁰ A Awah, 'Legislating for the Disabled' in E Azinge, and C Ani (eds), *The Rights of Persons with Disabilities*, (Lagos: Nigerian Institute of Advanced Legal Studies, 2011), p 233.

One of the most vulnerable groups among persons with disabilities is children. This is because, they suffer double jeopardy. They are vulnerable as children and more vulnerable as disabled persons. Disabled children are more vulnerable to wars, child labour as beggars, malnutrition, physical and psychological ill-treatment, traffic in children's organ, and as many as one and fifty (150) million children throughout the world are disabled.³⁴¹ Consequently, Lansdown described lives of disabled children as follows:

They cease to be valued as equal to other children. They are widely disregarded as both capable of, and needing, love, affection, humour, friendship, cultural and artistic expression and intellectual stimulus. They are segregated, marginalised and isolated. It means that they are subjected to physical and sexual violence with relative impunity. It means that they are defined by what they lack rather than what they have. It means that their talents, beauty, vigour and love are ignored. The cumulative impact is to deny disabled children respect for the dignity, their individuality, even their rights to life itself. The process dehumanises children. But it also dehumanises society. No society can claim to civilisation, humanity and justice when it continues to subject a significant minority of its people to such abuse and neglect³⁴². The causes of the rejection of disabled people lie deep in the social, economic, cultural and psychological roots of all cultures, dislike of or hostility to difference, belief that disability derive from curses or

³⁴¹Compilation of International Norms and Standards relating to disability, www.un.org/esa/socdev/enable/discom001.htm in E Azinge, C Ani (eds), *The Rights of Persons with Disabilities*, (Lagos: Nigerian Institute of Advanced Legal Studies ,2011) p57.

³⁴²G Lansdown, 'It is our World Too, A Report on the Lives of Disabled Children, Disability Awareness in Action', 2001 in E N Okereke, 'Protecting and Promoting the Rights of Disabled Children', in E Azinge, C Ani (eds), *The Rights of Persons with Disabilities*, *op cit* p58.

punishment, guilt, fear of contamination, reluctance to accept the responsibility for caring. Discrimination against disabled children has existed in every community throughout history.³⁴³

Naturally disabled people depend on other persons for help and the case is worse with children, who ordinarily are dependent even without any physical disability. Many disabled children's rights are violated because of their incapacitations. At the international level, disabled children were given specific recognition. The United Nations Convention on the Rights of the Child specifically recognised the rights of disabled children as follows:³⁴⁴ States parties should recognise that a mentally or physically disabled child should enjoy a full and decent life in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. State parties should recognise the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application for which application is made and which is appropriate to the child's condition, and to the circumstances of the parents or others caring for the child. States are to ensure that the disabled child has effective access to and receives education, training, healthcare services, rehabilitation services, and recreation opportunities in a manner conducive to the child's achievement of the fullest possible social integration and individual development, including his or her cultural and spiritual development. It also provides that State parties shall promote in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the

³⁴³ *Ibid.*

³⁴⁴ UNCRC, Article 23(1-4).

aim of enabling States parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

The Convention was widely accepted and ratified by many nations, Nigeria, inclusive. It is an indication that there is an international recognition that all children, including disabled children are subjects of rights and that government have obvious and complete obligations to protect, promote and fulfil those rights. Nigeria has also domesticated the Convention as the Child Rights Act, 2003, however without the relevant sections on disabled children.

Another basic international human rights instrument for the protection of the rights of persons with disabilities is the United Nations Convention on the Rights of Persons with Disabilities.³⁴⁵ It has a comprehensive provision for the protection of the rights of persons with disabilities. Article 1 provides that the purpose is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disability, and to promote respect for their inherent dignity. The Convention restated the general principle of universality, indivisibility, interdependence, and interrelatedness of human rights and provisions of specific rights such as; right to accessibility including information technology, the right to live independently, and be included in the community, right to personal mobility, right to rehabilitation, right to participation in political and public life, and cultural life, right to recreation and sports, right to liberty, right to freedom of exploitation, violence and abuse, right to freedom from torture or cruel, inhuman or degrading treatment or punishment, right to equal recognition before the law etc.³⁴⁶ The Convention specifically mandates States Parties to take all necessary measures to ensure full enjoyment of all human rights and fundamental freedoms by disabled children on an equal

³⁴⁵ United Nations Convention on the Rights of Persons with Disabilities, adopted by the UN General Assembly Resolution A/RES/611, 2006, entered into force in 2008.

³⁴⁶ *Ibid*, Articles, 12, 14, 15, 16, 19, 20, 26, 29, 30.

basis with other children. In all actions concerning children with disabilities, the best interest of the child shall be the primary consideration. It further provides that State parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realise that right.³⁴⁷ It further provides for effective access to justice for persons with disabilities on an equal basis with others through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including witnesses in all legal proceedings. Furthermore, in order to ensure effective access to justice for persons with disabilities, it provides that State parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.³⁴⁸ The general obligation of State parties under the Convention as provided in Article 4 is an undertaking to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, State parties are required to adopt all appropriate legislative, administrative and other measure for the implementation of the rights recognised in the Convention; take all appropriate measure including legislation measures to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disability; take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes; refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the Convention; take all appropriate measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise; undertake or promote research

³⁴⁷*Ibid*, Article 7.

³⁴⁸*Ibid*, Article 13.

and development of universally designed goods, services, equipment's and facilities which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, promote their availability and use, and to promote universal design in the development of standards and guidelines. Member States should also understand or promote research and development of and promote the availability and use of new technologies at an affordable cost; provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, as well as other forms of assistance, support services and facilities; and promote the training of professionals and staff working with persons with disabilities so as to better provide the assistance and services guaranteed.

The Convention provides that in the development and implementation of legislation and policies to implement the present Convention, and in other decision making processes concerning issues relating to persons with disabilities, State parties shall closely consult with and actively involve persons with disabilities through their representative organisations. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognised or existing in any State Party to the present Convention pursuant to law, Conventions, regulation or custom on the pretext that the present Convention does not recognise such rights or freedoms or that it recognises such rights or freedoms or that it recognises them to a lesser extent. State Parties are required to extend the provisions of the Convention to all parts of the State without any limitation or exceptions.³⁴⁹ In other words, the obligation inuring under the Convention will not be discharged by the mere passage of a federal law that has no effect in some of the federating States. The Convention and its optional Protocol has been signed and ratified by Nigeria but has not been domesticated. It is submitted that these provisions will to a large extent give specific protection and dignity to

³⁴⁹ *Ibid*, Article 4(2),(4) and (5).

children and other persons with disabilities in Nigeria if the needful is done. This is because; the provisions of the Convention not only gives universal recognition to the dignity of persons with disabilities, it created a positive change in attitudes and approaches to persons with disabilities. Thus, there is a departure from the approach where persons with disabilities were considered objects of charity to where they are making decisions and claiming rights on their own behalf.

The United Nation Declaration on the Rights of the Disabled is another relevant instrument. This Declaration is based on principles of the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Declaration of the Rights of the Child, and the Declaration on the Rights of Mentally Retarded Persons, as well as the standards already set for social progress in the Constitutions, Conventions, recommendations and resolutions of the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organisation, the World Health Organisation, the United Nations Children's fund and other organisations concerned. The United Nation Declaration on the Rights of the Disabled calls for national and international action to ensure that it will be used as a common basis and frame of reference for the protection of the rights of the disabled. Thus the disabled are entitled to enjoy all the rights set out in the declaration without any exception whatsoever and without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, state of wealth, birth or any other situation applying either to the disabled person himself or herself or to his or her family. The most important of these rights is the inherent right to life and dignity of human person to enjoy and live life to the fullest. They should be entitled to measures designed to enable them enjoy life and become as self-reliant as possible.

At the regional level, the African Charter on the Rights and Welfare of the Child also has a collection of articles for the protection of disabled children. For instance, Article 13³⁵⁰ provides for handicapped children as follows:

Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community. State parties to the present Charter shall ensure, subject to available resources, to a disabled child and to those responsible for his care, of assistance for which application is made and which is appropriate to the child's condition and in particular shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his cultural and moral development.

It further provides thus:

The State Parties to the present Charter shall use their available resources with a view to achieving progressively the full convenience of the mentally and physically disabled person to movement and access to public highway buildings and other places to which the disabled may legitimately want to have access to.

³⁵⁰ The African Charter on the Rights and Welfare of the Child, 1990.

Despite the fact that Nigeria is signatory to this Charter, the provisions are not made available for disabled children in Nigeria. The Charter has not been domesticated, and the provisions were not reflected in the CRA.

The African Charter on Human and People's Rights provided in its Article 18(4) that the aged and the disabled shall also have the rights to special measures of protection in keeping with their physical or moral needs. This in the researcher's view can be interpreted to mean, access to services, education, healthcare, employment, public highways and facilities. However, the aged and disabled in Nigeria do not have access to these special measure of protection for so many reasons, which include lack of commitment by government to provide basic amenities for citizens and negative social perceptions associated with disabled persons.

In the United States of America (USA)³⁵¹ the US Americans with Disability Act (ADA) 1990, is an Act that established a clear and comprehensive prohibition of discrimination on the basis of disability. The law defines disability as physical or mental impairments that substantially limit one or more major life activities of such individual. Major life activity is defined as activities including, but not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. The law makes it illegal to discriminate against a qualified person with a disability in the private sector and in State and local governments, and to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business. The Act mandated for

³⁵¹ Subsequently referred to as USA.

the elimination of discrimination. It was found that individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion; and the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practises, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities.³⁵²

In the United Kingdom (UK)³⁵³ the extant law for the protection of the disabled is the Equality Act 2010. It defined a disabled as a person who have a physical or mental impairment that has a substantial and long term negative effect on his ability to do normal daily activities. It aims at protecting disabled people and preventing disability discrimination. The Act provides legal rights to protect the disabled people in the area of employment; education; access to goods; buying and renting land or property; and dealing with the police. The Act also protects people from discrimination on the basis of association with the disabled people; for instance, a person who takes care of a disabled person, or the parents, guardian and siblings of a disabled person. The Act also prohibits a school or other education provider to treat disabled students unfavourably, and it includes direct discrimination, indirect discrimination, and discrimination arising from disability, harassment and victimisation. A person in police custody, undergoing interview or being questioned has rights depending on his or her particular impairments.

In Nigeria, besides the Constitution which guarantees the human rights of every citizen including disabled people, no law guarantees the specific rights of the disabled. Some of the fundamental human rights beneficial to disabled children include: section 42(1) which guarantees the right to freedom from discrimination in all its forms against any person on

³⁵² USA ADA, 1990, s. 2 (a) and(b).

³⁵³ Subsequently referred to as UK.

grounds of sex, race and circumstances of birth. Despite, the absence of the word ‘disability’ as one of the prohibited grounds of discrimination, it will amount to discrimination if it is done on grounds of disability. To that end, in the enforcement of fundamental rights of a disabled child, the court can promote the rights of the disabled child through proper and liberal interpretation of the Constitutional provisions. In furtherance to that, section 17 of the Constitution under Fundamental Objective and Directive Principles of State Policy, affirms equal rights, obligations and opportunities for every person including the disabled before the law.

The Child Rights Act, in addition to the fundamental rights provisions in the Constitution which it affirmed in its section 3, provides for more specific rights for the child, which include: Right to survival and development³⁵⁴ right to name³⁵⁵, right to freedom of association and peaceful Assembly³⁵⁶, Right to freedom of thought, conscience and religion³⁵⁷, Right to Private and Family Life³⁵⁸, Right to Freedom of Movement³⁵⁹, Right to Freedom from Discrimination³⁶⁰, Right to Dignity of the Child³⁶¹, Right to leisure, recreation, and cultural Activities³⁶², Right to Health and Health Services³⁶³, Right to Parental Care, Protection and Maintenance³⁶⁴, Right of Parental care, protection and maintenance, Right of a child to free compulsory and universal primary education³⁶⁵, Right of a child in need of special protection measure³⁶⁶, Right of the unborn child to protection against harm³⁶⁷,

³⁵⁴ Child’s Rights Act, s4.

³⁵⁵ S 5.

³⁵⁶ S 6.

³⁵⁷ S 7.

³⁵⁸ S 8.

³⁵⁹ S 9.

³⁶⁰ S 10.

³⁶¹ S 11.

³⁶² S 12.

³⁶³ S 13.

³⁶⁴ S 14.

³⁶⁵ S 15.

³⁶⁶ S 16.

³⁶⁷ S 17.

Contractual Rights of a child ³⁶⁸. The CRA, unlike the United Nations Convention on the Rights of the Child did not make specific provision for the disabled child. However, in providing for children in need of care and protection,³⁶⁹ provides that every child in need of special protection has the right to such measure of protection as is appropriate to his physical, social, economic, emotional and mental needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the affairs of the community. It went further to provide that every person, authority, body or institution that has the care or the responsibility for ensuring the care of a child in need of special protection measures shall endeavour, within the available resources, to provide the child with such assistance and facilities which are necessary for his education, training, preparation for employment, rehabilitation, and recreational opportunities in a manner conducive to his achieving the fullest possible social integration and individual development and his cultural and moral development. Furthermore, Section 178(8) provides that where a State Government provides for accommodation for a disabled child under its care, it shall, so far as is reasonably practicable, ensure that the accommodation is suitable for his particular needs. The interpretation section did not give a definite definition of disabled child, but merely referred to the above provision. It is submitted that the provisions of Article 23 of the UN Convention on the Rights of the Child that made provisions for the disabled child, should be incorporated in the CRA, since it may be beneficial to the disabled child in some peculiar circumstances in view of his or her incapacitation.

The pending Discrimination against Person's Bill in Nigeria made ample provisions for the protection of human rights of persons with disabilities. Section 1 sets out the purpose of the Bill as follows: to provide a clear and comprehensive legal protection and security for Nigerians with disability as well as establish standard for enforcement of the rights and

³⁶⁸ S 18.

³⁶⁹ s 16.

privileges guaranteed under this Decrees and other laws applicable to the disabled in the Federal Republic of Nigeria. It further provides³⁷⁰ that disabled persons shall be guaranteed treatment as equals to other Nigerians for all purposes in the Federal Republic of Nigeria. It provides that it shall be the duty and responsibility of organs of government and of all authorities and persons to adopt and promote policies that will ensure full integration of the disabled into the mainstream of the society. Government shall ensure within the context of economic, political and social idea and objectives to Nigerians that disabled persons are fully integrated into the national economy, and shall have equal rights, privileges, obligations and opportunities before the law, and are provided equal and adequate education.³⁷¹ The Bill made provision for the disabled to have access to health care, education, housing, transportation, recreational activities and the like and reserving in most cases ten percent (10%) of the services to the disabled. The Bill also established the National Commission for Persons with Disabilities with the objectives to promote the welfare of the disabled in general by promoting the full utilisation of the disabled in the development of human resources and to bring about their acceptance as full participants in every phase of national economy and development with equal rights and corresponding obligations; stimulate and encourage actions that will improve the civic political, cultural, social and education of the disabled; play a co-ordinating role between government and the disabled Nigerians; work towards total elimination of all social and cultural practises-tending to discriminate against and dehumanise the disabled; co-ordinate in the various States of the federation to promote government efforts to enhance the integration into the community; enforce the rights of the disabled in any existing legislation in all ways deemed proper and appropriate. It goes without saying that this Bill laudable and a good instrument for the protection of persons with disability when passed into law.

³⁷⁰Discrimination against Person with Disability (Prohibition) Bill,s 2.

³⁷¹*Ibid.*

Lagos State has set the pace by its Lagos State Special People's Law, 2011. It is aimed at protecting the rights of disabled people. The Lagos State government has been on the fore to address the plight of those with disability in Nigeria by passing this disability law.³⁷² The purpose of the law is to reduce the stigma people with disabilities face every day. It made provisions that ensure equal rights in all social services, employment, political, health, transportation access and educational facilities. It guarantees the rights of the disabled against discrimination, and right of access to information. An Office for Disability Affairs is to be set up to address complaints of harassment, discrimination, torture among others. Successful implementation of this law will obviously go a long way in bringing positive impact on the status of people with disability.

A Bill for the protection of the Disabled is in progress in Anambra State, when signed into law; the interest of person living with disabilities will be protected. These steps by States are commendable as they will project the disabled people in the society as subjects of rights.

Other laws which though may not apply to the child but which took cognisance of the disabled are: the Company and Allied Matters Act³⁷³; the Armed Forces Pension Act³⁷⁴; the Consumer Protection Council Act³⁷⁵, the Electoral Act 2010; the Employees Compensation Act, 2010.

On the role of the court, Awah argued that for disability legislation to impact and make the needed change, it has to be supported by an effective judiciary, enlightenment and cooperative civil society and an environment tailored and responsive to the needs of the disabled.³⁷⁶ The researcher agrees with Awah's view and submits that the court has the duty of

³⁷²The Disability Affairs Law of Lagos State, 2010.

³⁷³ CAP A23, Laws of the Federation of Nigeria, 2004.

³⁷⁴ CAP C 20 Laws of the Federation of Nigeria, 2004.

³⁷⁵ C25, LFN, 2004.

³⁷⁶ A Awah, 'Legislating for the Disabled' in E Azinge, C Ani (eds), *The Rights of Persons with Disabilities*, *Opcit.* (Lagos: Nigerian Institute of Advanced Legal Studies, 2011)p 143.

interpreting legislations, and an effective and proactive judiciary can promote the rights of the disabled child there from. One of the vital fundamental rights of the disabled child that should be promoted by the court is right to life.³⁷⁷ Disabled children have by virtue of the fact that they are human beings the same rights like other children. Despite the fact that legislations provide for equal rights for all people and protection of the rights to life, in reality, disabled children are subjected to treatments that violate their right to life. People are not eager to care and protect the disabled child, and people run away from such duties of care, which may lead the disabled to difficulties. Many homes have issues arising from care giving for their disabled child or children. Disabled children are also not given the social support given to other children in some cases.

In countries where abortion and euthanasia are legalised, they are used against disabled children. It has been the view of some doctors especially outside Nigeria, that ending the life of a disabled is legitimate. For instance, Peter Singer, President of the International Association of Bioethics has commented of babies suffering from Down Syndrome as follow:

We may not want a child to start on life's uncertain voyage if the prospectus is clouded. When this can be known at the very early stage of the voyage, we may still have a chance to make a fresh start. This means detaching ourselves from the infant who has just been born. Instead of going forward and putting our efforts into making the best of the situation, we can still say no and start again from the beginning.³⁷⁸

Some examples of such conduct by Doctors in some countries include administering drugs to end the lives of disabled children with severe health issues, refusing to intervene to save the

³⁷⁷ CRA,s 4.

³⁷⁸ G Lansdown, 'It is our World Too, A Report on the Lives of Disabled Children' Disability Awareness in Action, 2001 in by E Azinge, C Ani(eds), *Rights of Persons with Disabilities* (Lagos: Nigerian Institute of Advanced Legal Studies 2011) p 70.

life of a disabled child even where the parents desperately seek such intervention.³⁷⁹ Furthermore, disabled children also fall victims of armed conflicts and insurrections. It is imperative that Nigerian Government protect the right to life of a disabled child with equal vigour as that of a non- disabled child. Right to life is for all persons and all children alike as provided in the 1999 Constitution and the Child Rights Act and in other relevant international instruments.

It is pertinent to point out that right to non-discrimination and active participation in the society for disabled persons has been promoted in some places in Nigeria. For example, many qualified disabled people are employed in the Anambra State Civil Service and Federal Institutions within the State, and disabled children are not denied admission into government schools within the State as a result of their disability.

3.8 Role of the Court in the Protection of Child Victims

Children fall victims of abuse, trafficking and labour as a result of their vulnerable nature. These acts are correlated, because acts which constitute child abuse also constitute trafficking or child labour. The court can promote the rights of child victims provided in various international and national laws through interpretations and applications of the extant laws.

(i). Child Abuse

Child can be seen as any act or omission or commission, physical or psychological mistreatment or neglect of a child by parents, guardian, caregivers, or other adults that may endanger the child's physical, psychological or emotional health and development.³⁸⁰ The UNCRC provides that State Parties should take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental

³⁷⁹ *Ibid* p 69.

³⁸⁰ Child Welfare Information Gateway, 'What is Child Abuse and Neglect'(2008) <<http://www.childwelfare.gov/pubs/factsheet/whatiscan.cfm>> accessed on 10 March, 2017.

violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents, legal guardian or any other person who has the care of the child. The protective measures to be undertaken include: effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment as appropriate for judicial involvement. The Convention further provides that State Parties should undertake to protect the child from all forms of sexual exploitation and sexual abuse. It provides that all appropriate measures be taken to prevent the inducement or coercion of a child to engage in any lawful sexual activity; the exploitative use of children in prostitution or other unlawful sexual practices; the exploitative use of children in pornographic performances and materials.³⁸¹

Similarly, the African Charter on the Rights and Welfare of the Child provides that State Parties shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child. The measures to be taken shall include the establishment of special monitoring units to provide necessary support for the child and those who have the care of the child as well as other forms of prevention and for identification, reporting referral investigation, treatment, and follow-up of instances of child abuse and neglect. The Charter also prohibits children taking direct part in hostilities.³⁸²

The CRA prohibits all forms of child abuse including having sexual intercourse with a child, or other forms of sexual abuse and exploitation of a child. Accordingly, no person shall

³⁸¹ UNCRC, Article 19.

³⁸² AFRWC, Article 16 & 23.

have sexual intercourse with a child, and a contravention of the provision amounts sexual offences including rape and is liable upon conviction to imprisonment for life. The Act prohibits other forms of sexual abuse and exploitation prejudicial to the welfare of the child.³⁸³ Incidences of rape and other sexual assault on children is rife in Nigeria, however reports are few, owing to fear of stigmatisation. There is need to discard such perceptions, because prosecution of offenders will reduce the commission of the offence and protect the rights of other children from prospective offenders. There is serious need for the enforcement of the laws on the subject matter as well as awareness through the media and other medium to encourage victims to open up to the security agencies. There is also the need for proper funding of child welfare agencies and other relevant agencies by the government. The CRA prohibits a child from being recruited into any of the branches of the armed forces in Nigeria.³⁸⁴ The Criminal and Penal Code protects the child from sexual offences and criminalises several forms of defilement and indecent assaults on children as well as rape.³⁸⁵ The Violence against Persons (Prohibition) Act³⁸⁶ which prohibits and criminalises all forms of violence against persons including the child, prohibits sexual abuse for the child.

(ii). Child Trafficking

Trafficking in children in its dynamism has existed in Nigeria for decades. The Nigerian child is a direct victim of this modern day slavery, which deprives them of their childhood bliss and foists on the child a life of pain and sorrow from infancy. Children are

³⁸³ CRA, ss 31-33.

³⁸⁴ CRA, s 34.

³⁸⁵ Criminal Code Act, C 38, *LFN*, 2004, ss 216-222& 375. Penal Code(Northern States) Federal Provisions Act, Cap P3, *LFN*, 2004, s 275&276

³⁸⁶ The Violence Against Persons Act, 2015, s 1.

trafficked for forced labour, sexual purpose, child labour (e.g domestic work, baby sitting, begging, criminal activities) and participation in armed conflicts.³⁸⁷

The United Nations Protocol to Prevent, Suppress and Punish Trafficking 2003,³⁸⁸ prohibits trafficking in women and children, protects and assists the victims of such trafficking with full respect for their human rights. Trafficking in persons is defined in the Protocol to mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat of use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation include: at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. It went further to provide that the recruitment, transportation, transfer, harbouring or receipt of a child for the purposes of exploitation shall be considered trafficking in persons. The protocol mandates State Parties to adopt legislative and other measures as may be necessary to establish as criminal offences the conducts mentioned above.

Trafficking could be done internally or externally. External trafficking involves exportation of victims of trafficking to other countries. It is common knowledge that Nigerians are internationally trafficked to Italy, Spain, and Netherlands, just as Nigerian children are internationally trafficked to Garbon, Togo, Mali, Saudi Arabia, aand Italy through Sokoto, Lagos, and Ogun State boarders by road and air routes. While internal trafficking is executed by transportation of children and women from one part of the country

³⁸⁷ B N Okpalaobi, C Q Umeobika & U C Kalu, 'Legal Framework for the Eradication of Child Trafficking in Nigeria: Strategies for Implementation' *Journal of Public and Private Law*, vol 8(2016) p 44.

³⁸⁸ Article 2- 3.

to another.³⁸⁹ The causes of child trafficking in Nigeria includes but not limited to: poverty, unemployment, perverse culture, political instability, high profit in trafficking in person, Corruption in government, weak law enforcements, delinquency, etc. The frequent repatriation of Nigerians from Europe and Libya is an evidence that trafficking thrive in Nigeria.

UNCRC urges States to take appropriate national, bilateral and multilateral measures to prevent abduction of, the sale of or traffic in children for any purpose or in any form.³⁹⁰ Article 32 protects the right of the child to be protected from economic exploitation. The optional Protocol to the Convention on the Rights of the child on the sale of children, child prostitution and child pornography³⁹¹ prohibits the sale of children, child prostitution and child pornography. It defines the sale of children to mean any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration; child prostitution means the use of a child in sexual activities for remuneration or any form of consideration; child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primary sexual purposes. The Convention mandates State Parties to ensure that these acts are covered under its criminal or penal law for the punishment of the perpetrators of the acts along with their accomplices.³⁹² State parties are mandated to adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences and give adequate attention to protect children who are especially vulnerable to such practices. In view of that, member States should promote awareness in the public at large, including children, through

³⁸⁹ B N Okpalaobi *et al*, *opcit*, p 46.

³⁹⁰ UNCRC, Article 35.

³⁹¹ Article 1-2.

³⁹² *Ibid*, Article 3.

information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences.³⁹³

In Nigeria, Trafficking in Persons (Prohibition) Law Enforcement and Administrative Act³⁹⁴ prohibits trafficking in person and any offender is liable to punishment. According to the Act, Trafficking means all acts and attempted acts involved in the recruitment, transportation within or across Nigerian borders, purchase, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person whether for or not in voluntary servitude whether domestic, sexual or reproductive in force or bonded labour, or in slavery-like conditions. The Act prescribes punishment for every act that amounts to child trafficking and it ranges from imprisonment of two years with or without option of fine to life imprisonment. The Act established the National Agency for the Prohibition of Traffic in Persons and other related matters(NAPTIP) to take such measures and in collaboration with other agencies or bodies that may ensure the elimination and prevention of the root causes of the problem of traffic in person. The Agency is also to strengthen and enhance effective legal means for international co-operation in criminal matters for suppressing the international activities of traffic in persons among other duties.³⁹⁵ The legal unit of the Agency will work with the investigation unit and other detection and security agencies for the prevention and detection of offences in violation of the provisions of the Act.³⁹⁶ The Legal shall carry out its legal duties of protecting child victims and the prosecution of traffickers, thereby enhancing the role of the court in the promotion of the rights of the child victim of trafficking.

³⁹³ *Ibid*, Article 9.

³⁹⁴ Trafficking in Persons (Prohibition) Law Enforcement and Administrative Act, 2003, ss12- 50.

³⁹⁵ *Ibid*,s 4(h&i)

³⁹⁶ *Ibid*, ss 8&9.

In the same vein, the CRA prohibits the use of children as slaves, or for practises similar to slavery such as trafficking the child for purposes of prostitution, pornography, trafficking of illegal drugs, and other forms of trafficking commits an offence and is liable to imprisonment for ten years.³⁹⁷

Despite these measures, child trafficking is fast assuming a disturbing dimension in the country, and all hands are expected to be on deck. For instance in January this 2018, Special Task Force in charge of internal security in plateau State in collaboration with the police, intercepted three suspected traffickers conveying 145 children in trucks from Bauchi and Jigiwa states to Plateau, Kaduna and Nasarawa States. The children were between four and eight years old, and in December 2017, four persons were arrested in connection to trafficking of 49 male children.³⁹⁸ On the 18th January, 2018, the Federal high court sitting in Enugu sentenced Onwe Nwakaego to six months imprisonment without option of fine for child trafficking.³⁹⁹ They were charged for engaging a seven year old child as a domestic worker contrary to section 23(1)(a) of the Trafficking in Persons (Prohibition) Enforcement and Administration Act. The NAPTIP has been calling on members of the public to report any suspected case of child trafficking and abuse to NAPTIP. This attitude to children is most uncharitable and should be stopped. Stiffer punishments should be provided for child trafficking in order to curb the menace. According to 2018 Trafficking in Persons Report by the U.S. Department of State, Nigeria is on Tier-2 Watch list for failure to meet minimum standards for the elimination of trafficking. However is making significant efforts to do so by funding NAPTIP, supporting the signing and implementation of a UN action plan to end and prevent the recruitment and use of children by the Civilian Joint Task Force(CJTF), with an international organisation to identify and prevent sexual exploitation and abuse of IDPs, and

³⁹⁷ CRA, s 30.

³⁹⁸The Sun, Rising Cases of Child Trafficking in Nigeria. <sunnewsonline.com,rising case of child trafficking>

³⁹⁹ N I Aniagoar (NAPTIP), 'Court Sentences Woman to Jail for Child Trafficking' <https://www.naptip.gov.ng/slider> accessed 12th June, 2018.

prosecuting three suspected traffickers for child forced labour, though were acquitted by the court. Nigerian Government was accused of not addressing the allegations of trafficking levelled against senior government officials and soldiers. The report showed that Nigeria did not report any prosecutions or convictions of government employees complicit in human trafficking offences, despite consistent reports of officials' committing trafficking offences each year. The government failed to report investigations, prosecutions or convictions including government officials for sexual exploitation of female IDPs. It was also reported in that Nigeria's port and waterways around Calabar were transit for West African children subjected to forced labour in Cameroun, Equatorial Guinea and Gabon, pointing out that Nigerians travel to Togo for child sex. It was reported that the Nigerian military continued to inappropriately detain, arrest and interrogate victims of child trafficking for alleged association with the insurgencies and did not provide trafficking victims protections.⁴⁰⁰

(iii) Child Labour

The Worst Forms of Child Labour Convention⁴⁰¹ prohibits child labour. It defines worst forms of child labour to comprise of all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic; the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; work which by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. It further provides that penal sanctions should be applied for

⁴⁰⁰ U.S Department of State, 2018 Trafficking in Persons Report by the U.S Department of State, Country Narrative <https://www.state.gov/tiprpt/countries> accessed 12th June, 2018.

⁴⁰¹ Worst Forms of Child Labour Convention 1999(No. 182), Article 3.

perpetrators of child labour.⁴⁰²The Convention provides that importance of education in eliminating child labour should be taken into account by member States, and thus effective steps to prevent the engagement of children in the worst forms of labour; provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social re-integration; ensure access to free basic education, and wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour; identify and reach out to children at special risk; and take account of the special situation of girls. The Minimum Age Convention,⁴⁰³ prohibits child labour and provides that the minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of a person shall not be less than eighteen years. The UNCRC prohibits the recruitment of any person who has not attained the age of fifteen years into their armed forces or to take part in direct hostilities. It further provides that in recruiting persons who have attained the age of eighteen years, priority should be given to those who are the oldest. It also mandates State Parties to ensure protection and care of children who are affected by armed conflict.⁴⁰⁴Optional Protocol to the Convention on the Rights of the Child on the involvement of children in Armed Conflict⁴⁰⁵ prohibits the compulsory recruitment of persons below eighteen years into armed forces by member States.

The African Charter on the Rights and Welfare of the Child,⁴⁰⁶ provides that every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual,

⁴⁰² *Ibid*, Article 7(1).

⁴⁰³ Minimum Age Convention 1973, Article 3(1).

⁴⁰⁴ *Ibid*, Article 38.

⁴⁰⁵ General Assembly Resolution A/RES/54/263 of 25th May 2000, and entered into force on 12th February 2002. Article 2.

⁴⁰⁶ African Charter on the Rights and Welfare of the Child 1990.

moral, or social development. It mandates that penalties and sanctions be provided by State Parties to ensure its effective enforcement through legislations.⁴⁰⁷

The Child Rights Act,⁴⁰⁸ criminalises the using or involving of a child in any criminal activity. The CRA provides that no child should be subjected to any forced labour or employed in any capacity except where he or she is employed by a member of his family on light work of an agricultural, horticultural or domestic character. No child is required in any case to lift, carry or move anything so heavy as to be likely to adversely affect his physical, mental, spiritual, moral or social development, or employed as a domestic help outside his own home or family environment. The Act prohibits a child from working in an industry undertaking. Any person who subjects a child to child labour has committed an offence and is liable to five years imprisonment with fine upon conviction. The Act adopts all the provisions in the Labour Act prohibiting child labour.⁴⁰⁹ The Act further prohibits the use of a child for the purposes of begging for alms, guiding beggars, prostitution, domestic or sexual labour or for any unlawful or immoral purpose, or for hawking of goods or services on main city street, brothels or highways or for any purpose that deprives the child of the opportunity to attend and remain in school as provided under the Compulsory, Free University Basic Education Act. Contravention of this provision attracts ten years imprisonment.⁴¹⁰ The Act prohibits the recruitment of children into any of the branches of the armed forces of the FRN, and government and other relevant agencies has a duty to ensure that no child is directly involved in any military operation or hostilities.⁴¹¹ The Constitution of the FRN guarantees the rights of the child to life, and freedom from inhuman and degrading treatment.⁴¹² The Labour Act

⁴⁰⁷ *Ibid*, Article 15.

⁴⁰⁸ CRA, ss26.

⁴⁰⁹ *Ibid*, s 28.

⁴¹⁰ *Ibid*, s 30.

⁴¹¹ *Ibid*, s 34.

⁴¹² CFRN 1999(as amended) ss 34&35.

made provisions against exploitative child labour.⁴¹³ The court in promoting the rights of the child should in all cases of child labour; trafficking and abuse give the maximum punishment to the offender, so as to deter people from such acts.

Despite these international and national laws aimed at protecting child victims, incidences of abuse, trafficking, labour, on children still thrive in Nigeria. The negative effects of these criminal acts on child victims are devastating. These criminal acts infringes on the fundamental rights of victims, regrettably the prevalence is very high. There is need for effective enforcement of the laws on the subject matter, as well as creating serious awareness through appropriate channels to encourage victims to come up, so as to ensure that criminals do not go unpunished, since the court can only promote the rights of a child victim only if judicial intervention is sought by the victim. In addition to that, adequate funding of child welfare institutions and other government agencies by government is very important, since it serves as platforms through which victims channel their complaints and investigations and arrests are made. The activities of non-governmental organisations and *pro bono* service cannot be underestimated.

The problems of lack of enforcement and implementation of laws, poor funding of institutions, political instability, socio-economic crises, corruption and other factors practices have made the crimes of child abuse, exploitation, and trafficking a long standing issue in Nigeria. These issues should be addressed. The courts should also endeavour to pronounce the maximum punishment provided in the offences committed against child victims, since stiffer punishments may serve as deterrence to others. For example, life imprisonment pronounced on several persons will deter many prospective perpetrators from venturing into the act.

⁴¹³ Labour Act, L1, LFN, 2004, ss 54.

From the foregoing examination of the roles of courts in relation to many categories of children, it is submitted that courts have roles to play in the promotion of the rights of all children and children facing violations of their fundamental rights; child offenders; children in need of care and protection; children in failed marriages; child witness; children with disability; and child victims. The role of the court is evident in promoting the rights of these children and the need to highlight this role is apparent, because it will put more vigour in the drive to actualise the rights of the Nigerian child in the society where matters relating to children are not given adequate attention that is required. There is therefore need for proper establishment of the Family Court which is vested with unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim in respect of a child is in issue; and any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a child, against a child or against the interest of a child. The Court has two levels: the High Court and the Magistrate Court Level. The Court at the High Court level shall be duly constituted if it consists of a judge; and two assessors, while the court at the Magistrate Court level shall be constituted if it consists of a Magistrate and two assessors.⁴¹⁴ This is usually the problem or bottleneck in the CRA, in view of the fact that there are few assessors existing in the Ministries of Social Welfare, which in turn leads to delay in matters relating to children. Matters relating to children ought to be completed within time considering the immature nature of the child and in the interest of the child. Appeals from the Family Court at the Magistrate Court level lie to the Court at the High Court level, while appeals from the Court at the High Court level shall lie to the Court of Appeal. To that effect, there is need to have the Family Court as a court of record in the Constitution whose appeal shall lie to the Court of Appeal. The Family Court protects the

⁴¹⁴ Child Rights Act, 2003, ss 149, 150, 151, 152 and 153.

rights of the child, through its less formal procedure; guidance by the principle of conciliation of the parties involved; encouragement and facilitation of settlement of matters before it in an amicable manner; exclusion of person other than members and officers of court, parties to the case and their counsel, parents or guardian of the child and other persons concerned directly in the case from attending the court; proceedings in the interest of the child; protection of child witnesses; right to counsel and participation; and professionalization and training of court personnel etc.⁴¹⁵

⁴¹⁵CRA 2003, ss 154, 156, 155,158,160 and 151.

CHAPTER FOUR

THE ROLES OF CORRECTIONAL INSTITUTIONS IN PROMOTING THE RIGHTS OF THE CHILD

4.1 Concept and Development of Corrections

People are prone to breaking rules of conduct made to regulate the activities and interactions of people in the society. Whereas some persons obey the law because they feel it is right to do so, some do not obey the law for some gain that may be derived therefrom. In order to prevent disarray and to protect citizens of the society from harm, sanctions became apposite. Hence, the idea of getting people liable for acts done by them which amounts to crime, and the imposition of the attendant punishment attributable to such crime, as well as the treatment of such depraved behaviour is the crux of corrections. This is largely anchored on the premise that people, who break rules of conduct while carrying out their daily activities, should not be exhilarated but rather punished. Again, the approach also serves to motivate law abiding citizens.

According to Wash et al,

Corrections originated to address the problems of breaking rules of conduct made to regulate man in the society. Ever since human beings formulated rules of conduct, they have equally been inclined to break them. Most people conform to the rules of social behaviour and feel ashamed when they break or violate them, but travelling the straight and narrow road had never, and may never come actually. Control theorists postulate that the real question is not why people commit crimes but rather, why most do not. After all, crime affords immediate gratification

of desires with little or no effort: ‘money without work, sex without courtship, and revenge without court delays.’⁴¹⁶

From the foregoing assertion, it is deduced that some persons commit crime for the instantaneous gratification of their desires without exerting the required efforts. For example, a kidnapper makes millions of money which could be made in so many years of hard work in just one operation. This is in consonance with the earlier submissions made to the effect that as a result of prompt responses derived from doing things the wrong way with less efforts, some people desire to break the law. However, there may be various other causes for breaking the law by some category of persons.

Ifeolu is of the view that punishment did not just evolve for the fun of it. He identified that Nigeria is a society made up of people with different cultures and idiosyncrasies, yet the people do interact in a diversity of ways. In the course of relating with one another, some people advertently or inadvertently step on the toes of others. This leads to conflicts, disagreements and sometimes strife. In effect, a system of redress has to be put in place to check the excesses of the defaulting person or group of persons, in order to maintain peace and tranquillity.⁴¹⁷

According to Hans Kelson, the belief of pure theory of law that attaching sanction or punishment to legal norms is what differentiates it from other norms such as moral rules. Put differently, any legal norm that imposes a duty, as opposed to those that merely permit an act, should have a sanction attached to it.⁴¹⁸

⁴¹⁶A Wash, I Yush , ‘The Philosophical and Ideological Underpinning of Corrections’ in M Maguire, D Okada(ed) *Critical Issues in Crime and Justice*(California: Sage Publications Inc, 2011) p 296.

⁴¹⁷ J K Ifeolu, *Appreciating Criminal Law in Nigeria* (2nd edn, Ilorin: Decision Management Consult Limited, 2016) p 3.

⁴¹⁸ J M Elegido, *Jurisprudence* (Ibadan: Spectrum Law Series, 2002) p 8.

In view of the belief that persons who commit crimes ought to be punished for their actions, mode of punishment that should be adopted became relevant. To arrive at that many communities devised several methods of dealing with offenders at their different levels. Ifeolu further posited as follows:

Throughout history and in many different parts of the world, societies have devised a wide assortment of punishment methods. In ancient times, societies widely accepted the law of equal retaliation, a form of corporal punishment that demanded ‘an eye for an eye’⁴¹⁹.

In Corroboration to the above quotation, Schmallegger posited that, if a person’s criminal activity injures another person, authorities would similarly maim the criminal. He stated that certain countries throughout the world still practice corporal punishment. In some Islamic nations, officials exert revenge-based corporal punishment against criminals such as amputation of a thief’s hand. Monetary compensation was another punishment method. In England during the early Middle Ages, that is the 5th to the 15th century, payments of money were required as compensation for death, personal injury, and theft.⁴²⁰ An example of the above statement on punishment adopted in Islamic nations is the Sharia law practised in Northern Nigeria, where arms and some other parts of the human body are amputated as punishment for crimes.

Seiter stated that previously in some jurisdictions, public responses to crime varied based on the beliefs regarding the causes of crime. The earliest responses to crime were extremely brutal and include; torture, beatings, branding, and mutilation. These corporal punishments were often an attempt to relate the punishment as closely as possible to the

⁴¹⁹Leviticus 24, 17-21 in J K Ifeolu, *Appreciating Criminal Law in Nigeria* (2nd edn, Ilorin: Decision Management Consult Limited, 2016) p 3.

⁴²⁰ F Schmallegger, *Criminal Justice Today* (9th edn, New Jersey: Pearson Prentice Hall, 2007) p 402.

crime committed. For instance, liars had their tongues ripped out, thieves had their fingers or a hand cut off, and adulterers had a scar branded on their foreheads to reduce their attractiveness and discourage further adultery. Besides corporal punishment, removing the offender from a group was regularly used. Banishing someone from the tribe into the wilderness often resulted in death, because the person could not survive alone in the wilderness. Another way to remove offenders from the society was through deportation.⁴²¹

With passage of time, some of these methods of corrections were codified. For example, one of the early codes of punishment is the Code of Hammurabi, which was created during King Hammurabi's reign. The codes were usually created to specifically spell out the mode of punishment and the way it will be carried out. It was further stated that the foremost reaction to crime in America was based on the English Criminal Code. Violations of expected community behaviour were addressed severely employing the means of corporal and capital punishments which is usually carried out in the public to deter both the offenders and the community at large. Flogging, placement in stocks and pillories at designated centres were used for minor offenses such as drunkenness, slander, or stealing something of minor value. These punishments were not just to ridicule the offender, as passers-by often threw rotten food items or rocks at the offenders to aid in their punishment. Branding was also a popular way to punish offenders; the forehead, face, or hands would be branded, labelling the offender as a certain type of criminal. Torture could also include cutting off a hand or finger of thieves or pick-pockets. More serious offences resulted in brutal torture, such as stretching and breaking the offender's body on the rack, or in capital punishment by hanging or burning at the stake.⁴²²

⁴²¹ R P Seiter, *Corrections, An Introduction*, (2nd edn, New Jersey: Pearson Prentice Hall, 2007) p 19.

⁴²² *Ibid*, p 20.

In Nigeria, there were customary criminal laws that existed before the arrival of the British colonial masters. These customary laws existed in different parts of the entity now called Nigeria, where organised communities require the enforcement of certain behaviour and impose punishments for their breach. These punishments are administered at the family levels or at the community levels. For example, thieves are brought before the family and community heads to be punished and the punishment would serve as a deterrent to others. The person may be flogged and ridiculed in public or locked up for some time. Some very grievous offences such as death may be applied by killing the offender or banishing the person from the community.

There are other methods such as depriving the person of the freedom to associate with others and banning the person from attending some community functions or throwing stones at the person while he or she is being paraded in the community. These customs were largely unwritten, but were generally accepted in the community where they are universally applied. However, the situation in the north is different, since due to the influence of the Islamic religion, the Muslim law was predominant. Though, this did not remove the fact that there exist some minor communities that retained their customary laws or blended them with Muslim law as the case may be. There is, however, a codified system presently, where no person is to be punished for any crime except such acts or omissions as are contained in an enactment with punishment stipulated. This position is provided for in the Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 36(12) as follows ‘subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty thereof is prescribed in a written law’. Pursuant to this constitutional provision, the Criminal Code⁴²³ defines an offence as an act or omission which renders the person doing the act or making the omission liable to punishment under the code,

⁴²³Criminal Code Act, Cap C38, *LFN*, 2004. s 2.

or under any Act, or Law in Nigeria. Similarly the Penal Code provides that every person shall be liable to punishment for every act or omission of which he shall be guilty and no person shall be liable to punishment under any native law and custom.⁴²⁴

Bringing it down to the child at the informal sector, when children are growing up in the family, parents, guardians and older relations correct them when they exhibit certain acts of misconduct such as, fighting with siblings, disobedience to orders, refusing to do chores or school work, being disrespectful or other negative actions to discipline them. Corrections also continue as they grow older: teachers discipline them through scolding, flogging, deprivations and other forms of punishment. Peers, colleagues and friends correct in different contexts through several means, such as refusing to grant requests, excluding individuals from groups, fines for violations of certain rules, and scolding. These measures often serve as a deterrent to others. These acts or correctional methods are forms of informal social control which are commonly used to achieve peace and tranquillity as people relate in the family and society. Corrections in the life of a child is indispensable, as the child obviously will have to learn that in life, there should exist a mutual relationship with people around him or her, and lack of cooperation will lead to aberrant behaviours which ought to be corrected. Put differently, there is a correlation between duties and rights, and corrections are a veritable tool to ensure that the required standard is attained. This is different from the adulthood.

According to Tarhule, adulthood comes with its own challenges, since the parents are no longer there to discipline and correct the person. Friends may avoid the person for being incorrigible, thus leaving the person to only the mercies and vagrancies of the criminal justice system which has detailed rules regulating behaviour and human conduct and interrelationship. At that stage, violations of societal norms will no longer be corrected by exclusion from peers or correction by parents, but rather, a long criminal trial with all the

⁴²⁴Penal Code Act, Cap P3, LFN, 2004, s.3.

negative publicity and punishment attendant thereto. Tarhule also observed that where the court finds a person guilty, the society is faced with the problem of what to do with the offender adjudged guilty. The courts are thus faced with the question of what punishment to award to the individual found to have desecrated societal norms. Should such a person be fined, or sentenced to imprisonment, or both? Should he be warned and made to keep the peace? Or should his assets be forfeited to the State? How exactly should the society treat such an individual? These and many more questions deluge the mind of the court in its quest to turn the offender around. Tarhule concluded that in choosing a particular mode of punishment, the court should bear in mind the fact that the model adopted is aimed not just at the punishment *per se*, but also at turning the individual from a deviant to a useful and productive member of the society. He stated that in most jurisdictions, including United States of America (US), Canada, United Kingdom and South Africa, this aspect of criminal justice system is referred to as corrections.⁴²⁵

In the formal sector, wherein the child offender for instance, faces the law for the offences committed. Punishment along with treatment which is usually the purport of corrections done by parents and teachers at the informal sector comes to play. It involves sanctioning the child for the wrong acts done as well as reforming the child to a better and more useful child. That is the reasoning behind the rehabilitation method of corrections adopted in the child justice administration for the child offenders as well as children in need of care and protection. This is largely because children do not have the same mental and intellectual capacity with adults, and are more disposed to accept rehabilitation and reformation, which will aid their reintegration into the society.

We hold the view that correctional methods geared towards reformation is beneficial and ought to be implored by corrections officers. In other to achieve this, it is advocated that

⁴²⁵ V V Tarhule, *Corrections Under Nigerian Law*, (Lagos: Innovative Publishers, 2014) p2.

the focus should be less on the crime and more on the offender when trying to reform. Put differently, more focus should be placed on why the offence is committed and how to cure such mentality than on the crime committed. Criminality is a human behaviour which needs to be corrected, and this particular human mentality may not be jettisoned with punishment solely, but should be complemented with treatments for reformation. For example, for a child who did not copy notes in school while other were copying, the more appropriate correctional method would be counselling the child to find out the reason for such behaviour and making him to stay back during break to copy the notes, rather than beating or flogging the child, which is just aimed at punishing the child alone.

Similarly, in the formal justice system, a child offender caught stealing and who was influenced negatively by his environment and background can be kept in the approved institutions away from the unfavourable environment, and given correction which is adequate or relevant to his or her reformation. In other words, the punishment inflicted should be geared towards establishing the right mentality and perception serve as a deterrent to others and keep the child away from embarking on such conducts and preserve the society from crime as well.

Consequently, the method of correction adopted is an important factor which should be considered, as well as the impact of the corrections on the offender. The same method is advocated for adult offenders, especially first offenders. This is because in order to save the society from crime and criminals, punishment alone may not suffice; rather it should be complemented with other goals.

Richard Seiter summarised the concept of corrections thus:

The mission of corrections has traditionally been to implement court prescribed sentences for criminal violators or to carry out the sentence

of the court. This mission statement is rather narrow and seems to indicate a lack of control or initiative by correctional agencies as to their functions and how they are to carry them out. However, most contemporary y correctional administrators recognise a much broader mission and responsibility. The more complete mission of correction is to protect society. Protection of the society is accomplished through a combination of surveillance and control of offenders, of treatment and rehabilitative services, and of incapacitation during the service of the prison sentence.⁴²⁶

The above stated opinion is apt in the administration of the child offender as it will make the child less willing to go back to such criminal actions and more motivated to become reformed and law abiding. It is not only beneficial for the child offender; adult offenders are also amenable to change. This is logical in the sense that if the aim of corrections is to protect the society and punish offenders, there should be a complementary role of treating the offender while serving punishment so as not to release a person who shall continue to be a threat to the society at the end of prison terms or his stay in the institution as the case may be. When correctional officers solely focus on punishment alone without treatment, the role is narrow and somewhat incomplete in the mission to protect the society. Generally, under our criminal justice system, criminals are punished by the State for crimes committed, and it is the role of correctional officers to carry out such pronouncements of the court, which include: death sentence, imprisonment, fines, caning, deportation, binding over, restitution, conditional discharge, prohibition, order, haddi-lashing (applicable in Northern Nigeria). This basic role should be complemented with treatment measures.

⁴²⁶R P Seiter, *op cit*, p 6.

Death sentence and imprisonment cannot be pronounced on children. Children can only be kept in approved institutions, in cases where non-institutional measures would not serve as the best option for correcting the particular child.⁴²⁷

It is therefore submitted that corrections do not stop at punishment alone; it also involves the effect or ability to achieve a positive bearing or change in the individual who is being punished. In other words, it involves the consideration of the relevancy or impact of the punishment inflicted towards the reformation of the person from a deviant to a useful and law abiding citizen of the society. This is because, in most cases except in life imprisonment and death sentences, the criminal offender will someday be reintegrated into the society. Thus, while the correctional system is saddled with the responsibility of ensuring that the sentence pronounced by the court is carried out, its activities should also explore methods of treatment measure in preparation for re-integration into the society. Measures such as education, skills acquisition, health care especially on drug addicts, counselling and psychology, and faith based approach, should be adopted while serving punishment.

There are four goals of correction and they include: retribution, deterrence, incapacitation, and rehabilitation. A correctional system should therefore emphasize and adopt relevant and adequate measure or measures that will be implemented to attain the goals for correction in offenders. Therefore the correctional officers should broaden their horizon by complementing punishment with forms of treatments. In other words, they should monitor, supervise, and take charge of the activities and conduct of offenders and accordingly aid or assist in their rehabilitation through counselling, indulging in formal and informal education, crafts and arts and other services necessary for their reformation.

⁴²⁷*Johnson v the State* (1988) 4 NWLR (pt. 87) 130.

When corrections end only with punishment and nothing more, it may be a problem to national security. This is so because if there are no efforts towards adopting policies and mechanisms to change the orientation and perceptions of offenders in Nigeria while serving their terms, the possibility of releasing criminals back into the society to cause mayhem will be rife. This will obviously be an irony of the basic role of correctional system, which is protecting the society from criminals by putting them in prisons without the complimentary role of treatment which will impact on the behaviours of persons released into the society at the end of their prison term.

4.2 Goals of Corrections

Several goals abound as to the justification of corrections on criminals or offenders. The goals, though conflicting, is expected to be achieved by corrections. These goals include: retribution, reformation, deterrence, and rehabilitation. Punishment aims at emphasizing pain and suffering. This is so because of the belief that if you spare the rod, you spoil the child. It is believed that punishment is used on the child to teach him that his conduct was wrong. It is also believed that punishment goes a long way to maintain moral and legal order, thus, when a crime is committed, the individual is punished by the State acting for the society, because he has become a threat to the society at large. Punishment also goes a long way to commend those who are law abiding and motivate them to keep on with their positive way of living, while serving as a deterrent to others nursing the motive to commit crimes in the future. When a person commits criminal offence and he is punished for that, the goal of retribution sets in.

4.2.1 Retribution Goal

The retribution goal is the earliest known goal of punishment. It is anchored on the basis of what is deserved for deed done, or merited punishment. Retribution simply means that

punishment of criminals can be justified on the ground that, because of their actions, they deserve to be punished. Hence, retribution means punishment given in recognition of the deed done. It is the position of the proponents of this goal, that people are punished to receive their merited punishment or just due to the harm done to the society. Society therefore, demands a sentence proportionate to the offender's culpability. Couched differently, the society demands vengeance against the evil doer.⁴²⁸ Hodges posits that:

The theory demands that an individual who violates societal rules deserve punishment because he has de-balanced the scale of justice. The perpetrator deserves punishment proportionate to the harm caused to restore the scale of justice and this is the essence of just desert or deservedness of the punishment. According to this theory, it is only the imposition of punishment that purges the offender of the wrong done and restores him in the society to the position he was prior to the commission of the offence. This theory preaches expiation which advocates that punishment is a debt which the offender owes his victim and the society by his violation so that until he serves that punishment, the debt remains unpaid and the guilt hangs on him. His liability is extinguished when he serves the punishment.⁴²⁹

Adeiza is of the view that, the basis of retribution is to strive to repair the emotional or physical disruption caused by the offender to the victim by fairly exerting punishment of a like nature, and if failing in this, by exacting punishment of a just nature.⁴³⁰ According to

⁴²⁸ J K Ifeolu, *op cit*, p11.

⁴²⁹ D C Hodges, 'Punishment' International Phenomenological Society; Philosophy and Phenomenological Research, vol 18, no. 2, December 1957,p218.

⁴³⁰ E M Adeiza, 'Reforming the Punitive Policies of Nigeria's Crime Control Regime as a Source of National Growth', p 6. Available at < www.etudai.yeandco.com > accessed on 17 April, 2017.

Neubauer,⁴³¹ retribution has served as the justification for punishment from centuries ago, starting with the enlightenment, but lost its influence as it was seen as barbaric having been anchored on revenge, and more utilitarian goals for sentencing were preferred. In recent times however, it has again attracted the interest of scholars, and the criminal justice reformers used a better phrase to describe it as ‘deserved punishment or just deserts’. By the just desert principle, a person that infringes the rights of others does wrong and deserves blame for his conduct. It is because he deserves blame that the sanctioning authority is entitled to choose a response that expresses moral disapproval. However the theory has been criticized on the basis that, it is exceedingly difficult to decide what is the fair proportion between a crime and its punishment, taking into consideration all the circumstances of the case.⁴³²

It is submitted by Ifeolu that, aside from very clear incidents like, life for life, actual tooth for tooth, blow for blow, it is practically not possible to mete out punishment in exact proportion to the crime. He posited that at whatever point one looks at legal, moral or religious retribution, the theory has fallen out of acceptability. From the legal point law seeks to protect lives and property by the prevention of crime, but the theory is not aimed at crime prevention but punishment of offenders. Ifeolu concluded that in Nigeria, despite the use of retributive punishment in capital offences, crime rate is still on the increase.⁴³³

From the foregoing, the goal of retribution is geared towards exerting punishment on criminals who injure members of the society. The punishment to be inflicted should be equal to the offence committed, because their actions have violated the rights of others; and because their victims were subjected to harm, they should also be treated accordingly. Thus, the logic is that it is natural, fair and just that criminal offenders receive punishment for their

⁴³¹ D W Neubauer, *American's Courts and the Criminal Justice System* (9th edn, USA: Transcontinental Printing/Louisville,2008)pp321-322.

⁴³² C F Hart, ‘Punishment and the Elimination of Responsibility’ in Okonkwo &Naish (Ibadan: Spectrum Law Publishing) p29.

⁴³³ J K Ifeolu, *op cit*, p15- 16.

crimes in the exact proportion. An example is the death sentence for the offence of murder. The researcher agrees with the criticism to this goal that in some offences, it could be very difficult to quantify the punishment that will be equivalent to the offence committed, and in that case the punishment inflicted may be more or less than required. The researcher also holds the view that due to the quest for money and moral decay in the society, punishments do not scare some persons from committing offences. For example, in view of the way and manner at which very rich people are celebrated and honoured in the society; punishment may not deter some people from going into armed robbery, money laundering, drug trafficking, and many other crimes, to acquire money. Thus retribution is necessary, but should be complimented with other goals, so as to cure the criminal mentality.

4.2.2 Deterrence Goal

Deterrence is a correctional goal focused on future actions by both individuals and society. The expectation is that, as a result of offenders receiving punishment, both they and others will be deterred or discouraged from committing crimes in the future.⁴³⁴ Tarhule posited that, to the deterrence school, the aim of punishment is to deter or discourage the offender and others with similar vices from committing offences. Punishment is thought to act as a check on the offender and others like him.⁴³⁵

One of the reasons for punishment is to deter future offenders from committing offences. This can be very effective in some cases where there are stringent punishments and offenders are apprehended by law enforcement agencies once the crime is committed. An example is the drastic reduction of kidnapping cases in Anambra State due to the law in the State which introduced death sentence and pulling down of buildings used for keeping

⁴³⁴ R P Seiter, *op cit*, p112.

⁴³⁵ V V Tarhule, *op cit*, p17.

victims; and effective implementation of the law by the law enforcement agencies in the State.

There are specific and general deterrence. Specific deterrence targets at preventing the offender himself from further committing offences. The idea is that the punishment received by the person created an unpleasant situation that he or she will not want to experience again. This is logical, but requires that offenders receive punishment that is swift, certain, and specifically linked to the criminal act.⁴³⁶ General deterrence on the other hand, targets potential offenders at large by the punishment inflicted; potential offenders are put on notice of the fate that awaits them should they venture into criminality.⁴³⁷

Jeremy Bentham, first articulated the deterrence theory. To him, punishment based on retribution was not only pointless, but also counter-productive. Instead, sanctions should be used to further society's goal of preventing crime. Bentham believed that human behavior is governed by individual calculation. People seek to maximize pleasure and minimize pain. Under this utilitarian theory, the basic objective of punishment is to discourage crime by making it painful, because people seek to minimize pain, they will refrain from activities, such as crimes, that result in painful sanctions.⁴³⁸

Jeremy's view is apt for so many prospective offenders, because specific deterrence justifies punishment of the criminals which is painful to the offender, while general deterrence justifies punishment of criminals to the effect that it discourages not only the criminal himself, but also others from engaging in criminal activities themselves.

According to Elegido, punishment may inhibit criminal activity by disabling the criminal. The death sentence penalty, for instance, makes it impossible for a criminal to

⁴³⁶ *Ibid.*

⁴³⁷ *Ibid.*

⁴³⁸ *Ibid*, p17.

commit any more offence. Similarly, while a criminal is in prison he is prevented from committing many offences. Equally a reckless driver whose driving licence is suspended for a period is hindered from committing similar driving offences. Punishment may also deter other people from committing crimes by making them realise that they are at risk suffering the same fate if they engage in similar behaviour.⁴³⁹ This view is correct; however some cases such as imprisonment may have some negative trait on the offender.

It has been argued by Ekwunkama that, though punishment has purged some convicts of their criminal behaviour, the fact that some convicts become more hardened while in prison and commit crimes therein, and shortly thereafter, coupled with the fact that crime is on the increase on the daily basis, negates the deterrent value of punishment.⁴⁴⁰ It was also argued by Tarhule that the increase of number of people in the prisons in Nigeria is also an indicator that people are not deterred by terms of imprisonment. Statistics from the prison service showing the high rate of recidivism implies that the convicts are not deterred by imprisonment. He concluded that while punishment may not have deterred all criminals or potential criminals, it has at least acted to checkmate the criminal instinct of some others as attested to by both the opponents and proponents of the deterrence goal, thereby making the continuance application of the theory substantially valuable.⁴⁴¹

It cannot be ruled out that deterrence is still a valuable goal for punishment in Nigeria. However, for deterrence to work there should be an effective system that apprehends criminals and make punishment visible and stringent. Again, there should be action and a belief in the system that once an offence is committed, the offender will be caught and punished accordingly, as well as using uniform punishment for every offender of the same

⁴³⁹ J. M Elegido, *Jurisprudence* (Ibadan: Spectrum Books Limited, 2002) p214.

⁴⁴⁰ D U Ekwuankama , *Criminology and Penology: A Nigerian Perspective* (Jos: New World Publishers, 2002)p 176.

⁴⁴¹ V V Tarhule, *op cit*, p19.

kind of offence, as depicted in the example given above. Once these measures are not taken, and some people get away after committing crimes, the goal of deterrence will not be achieved despite the punishment.

4.2.3 Incapacitation Goal

Incapacitation goal is geared towards preventing future commission of crime by removing the offender from society. This is based on the belief that crime can be prevented if there is constraint on the movement or liberty of offenders. Where an offender is imprisoned, he loses his or her freedom and will not have the opportunity to commit further crime. For example, when a notorious criminal is apprehended and sentenced to imprisonment, he is away from the society and will be believed to be incapable of committing further crime.

According to Tarhule, incapacitation refers to the act of making an offender incapable of committing the same or another crime. Historically, it is by execution or banishment, and in modern times by execution, maiming, or lengthy terms of imprisonment. Most instances of incapacitation involve offenders who committed repeated crimes otherwise known as habitual offenders. Tarhule submitted that incapacitation is also utilized in cases involving offenders who are deemed dangerous and likely to commit grave and violent crimes unless restrained. Incapacitation requires only restraint as punishment. In developed societies, incapacitation can also be achieved in some non-custodial corrective ways such as probation, by which the offender is restrained to a particular environment or locality under the watchful eyes of a probation officer.⁴⁴²

Ogunleye is of the view that, incapacitation goal is aimed at making the society safe when the criminals that are threat to people are taken away from the society. In other words, the reasoning behind this goal, is the fact that the offender who is imprisoned and under

⁴⁴² *Ibid*, p2.

surveillance will not have the opportunity to commit another crime. The extreme cases are that of permanent incapacitation, such as amputations of hands of thieves, castration of rapists, and life imprisonment for violent or habitual offenders, death sentence for capital offenders such as, murderers. In Nigeria, for instance, within the Northern Emirates in the past, an offender convicted of theft was deprived of his limbs progressively; a hand for the first offence, a foot for the second, and the other hand for the third.⁴⁴³

The Sharia Law in Nigeria has reintroduced amputation, and there are instances of persons whose hands are amputated for crimes they committed. The aim is therefore to incapacitate the person from engaging in further crime. The criticisms of incapacitation, especially permanent incapacitation is that, it renders the offender useless and dependent on other persons afterwards. For example, most of them turn to beggars because their hands or legs are chopped off. Again, incapacitation may not always be the appropriate punishment for some offences, as some offences are punished through non-institutional measures or punishments. However, some offenders are better handled in custody, and for notorious criminals, the society will be at peace while they are incapacitated.

4.2.4. Reformation or Rehabilitation Goals

Contemporary and recent opinion takes reformation and rehabilitation goal into recognisance as a justification for correction. This is because if the crime and the reason for the commission of the crime are addressed, the offender may come out a better person and the society will be better for it.

Reid is of the opinion that, the reformatory or the rehabilitation approach justifies punishment as a way of bringing about a change in the character and behaviour of the offender, which will make him a better citizen in the future, or upon re-integration into the

⁴⁴³ A Ogunleye, *The Nigerian Prison System* (Lagos: Specific Computers Limited, 2007) p7.

society. It prevents future commission of crime by changing an offender's behavior. Reid identified that, rehabilitations measures include, educational and vocational programs, treatment and counseling programs, and faith-based approaches. He pointed out that since the 19th Century, there are emphasis on reformation and rehabilitation as a basis for imprisonment. Moreover in the works of Alexander Moonachie and Walter Crofton people's consciousness was awakened for the need for reformation to be the theoretical framework for institutional corrections.⁴⁴⁴

Imishua and Obilade are of the view that people are sent to prison to be reformed. Reformation requires encouraging the prisoner to abstain from anti-social behavior, by providing educational, social, and vocational facilities to enable the prisoner conform to generally acceptable societal values and standards. They advocated that the prisons be run in a progressive spirit with a view to ensuring not only custody of the prisoners, but also the ultimate reformation and social re-integration⁴⁴⁵. Igbo is of the view that:

Reformatory or rehabilitative sentence operate through learning process which make the criminal aware and appreciative of the fact that it is wrong to commit crime. The awareness of the wrongness of the criminal's act rather than the fear of punishment (as in the case of deterrence) is the factor that reforms the offender. The court here awards a sentence with treatment of the offender in mind rather than his punishment.⁴⁴⁶

From the above view, it is believed that through a lot of process of reformation, the mentality of the offender is changed and the offender is appreciative of the fact that commission of

⁴⁴⁴ S T Reid, *Criminal Justice*(4th edn, Florida: Brown& Benchmark Publishers, 1999) p 330.

⁴⁴⁵ R W Imishua, M O Obilade, 'The Aims and Philosophy of Imprisonment: How Far These are Realised by Discipline and Treatment' in T O Elias(ed) *The Prison System in Nigeria: National Conference on the Prison System* July 1-5 , 1996) p153.

⁴⁴⁶ I M Igbo, *Criminology: A Basic Introduction* (Enugu: Jock Ken Publishers, 2006) p92.

crime is wrong and should not be continued. Thus, rehabilitation as it were, brings out the justification of punishment as it seeks to showcase the essential changes in offenders and in their mentality and character. Here the key factors are the fact that first the offender changes his mentality as a result of his new orientation of the wrongness of his actions, and not that he is deterred by the weight of the punishment; and second the court would now bear treatment in mind while sentencing the offender. The prisons will adopt progressive measures in dealing with offenders.

Reformative goal as summarized by Tarhule is to the effect that it assumes that criminal behavior is the result of social or psychological disorders, and that the treatment of such disorders should be the primary target of corrections. Success to this school means assessing the needs of the individual and providing a programme to meet those needs. He noted that, as is the case with deterrence, the ultimate aim of rehabilitation is a reduction in the number of criminal activities. Whereas deterrence relies on the fear of the consequence of violating the law, rehabilitation generally works through education and psychological treatment to reduce the likelihood of future criminality. Ultimate therefore, offenders are not being punished but treated, not only for their good but for the benefit of society at large.⁴⁴⁷

Rehabilitation and reformation is the anchor of Child justice administration. It is usually applicable in cases concerning the child, and the courts ought to accept the notion of reformation and rehabilitation as a basic objective in dealing with child offenders and children in need of care and protection. The Child Rights Act and other child related laws have made elaborative provisions on the importance of rehabilitation for the child. This is because commission of crime could be consequent upon several factors which include his or her dependency and vulnerability, due to immaturity and lack of mental capacity. Thus, there is a great likelihood that rehabilitation will go a long way in restoring many child offenders to

⁴⁴⁷V V Tarhule, *op cit*, p22.

normalcy. Thus, when child offenders are not presented to child justice administration, rehabilitation may elude the child. This is worrisome considering the incessant cases of children charged before regular adult courts and imprisoned.

In summary, Retribution prevents crime by making a person get equal punishment for his acts, while the victims and the society at large get the fulfillment that the criminal gets what he deserves. Specific deterrence prevents the commission of crime by startling an individual offender with severe punishment. On the other hand, general deterrence prevents the commission of crime by alarming the public with the punishment given to an offender for the crime he committed. Incapacitation prevents crime by taking the offender away from the society, such that if such an offender is in prison, he cannot terrify members of the society with his criminal acts, and the society will be safe. Rehabilitation prevents crime through changing an offender's behavior and mentality to positive attitudes.

A combination of these goals in varying cases may be very productive as focusing on one alone may not make the notion of corrections complete, especially in cases of adults. However, rehabilitation as a goal is highly recommended for children and first offenders that are more likely disposed to change in mentality and focus if put in the right direction. There is thus need for several measures and commitment to be put in place for the actualization of this goal in the interest of the child, as without these measures, the mandate may not be feasible. A K Ahmed's view buttressed this submission: that beyond a general political rhetoric and declaration in government publications about the corrections which involves reformation and rehabilitation of the child offender, there are no explicit legal and institutional framework and commitment towards the realization of the goals.⁴⁴⁸

⁴⁴⁸ A K Ahmed, *The Law and Childs Rights in Nigeria* (Lagos: Malthouse Press Limited, 2015) p161.

4.3 Classifications of Corrections

Corrections can be classified into two. They include: non-institutional or non-custodial corrections and institutional or custodial corrections.

4.3.1 Non-Institutional Corrections

Non- Institutional corrections have been said to be the first disposition method to be considered for child offenders under the law by the court, and it is only when it is found not appropriate for the situation that institutional correction would be adopted. The ultimate focus should be on the best interest of the child offender or children in need of care and protection as the case may be. This is based on the belief that some community approaches may better suit the problem of the child, and more relevant and impactful to the child in the cure of his mental perception of crime or the situation at hand rather than institutional corrections.

Thus, despite the benefits of institutional corrections which will be discussed hereafter, the law stipulates that it should be used as a disposition of last resort and not ordered unless there is no other way of dealing with the child.⁴⁴⁹

This is supported by the commentary on rule 19⁴⁵⁰ of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice⁴⁵¹ which is as follows:

Progress has been found in terms of the success of institutionalisation as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences.

⁴⁴⁹ Child Rights Act, 2003, s 223 (2).

⁴⁵⁰ Which states that the placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

⁴⁵¹ The Beijing Rules, adopted by the General Assembly resolution 40/33 of 29th November, 1985.

Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development. Rule 19 aims at restricting institutionalisation in two regards: in quality (last resort) and in time (minimum necessary period). Rule 19 reflects one of the basic guiding principles of Resolution 4 of the Sixth United Nations Congress: a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalised, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to 'open' over 'closed' institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

The above stated reasons are cogent, since it is not in all cases that institutional corrections may be the appropriate measure to be taken in the interest of the child. If the child can be conveniently corrected by adopting measures outside the approved institutions, the court should be minded to adopt it. Again, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty⁴⁵² provides that juveniles should only be deprived of their liberty in accordance with the law, and the deprivation of the liberty of a juvenile should be limited to exceptional cases.

In non-institutional correction, the offender is not confined in an institution but is allowed to remain in the community while undergoing his punishment and treatment. This

⁴⁵² Adopted by General Assembly Resolution 45/113 of 14 December 1990. Article 1.

community service approach to offender treatment within the community is anchored on the premise that crime and delinquency are failures not only of the individual offenders, but of the society or community as a whole. The task of corrections, therefore, must be one of offender re-integration into the community, restoring family ties, assisting the offender to get an education and by extension, employment and securing for the offender a place in the normal functioning of society.⁴⁵³In furtherance to that, Tarhule reasoned that jurisprudentially, by undergoing his punishment within the society, the individual has higher potential of being corrected and re-integrated to the community as opposed to the prison offender, who sometimes turns into a recidivist.⁴⁵⁴

It is submitted that, though community based correction is good for the child, institutional correction may be necessary in cases where the environment is unfavourable for the child, or where the child is a threat or a bad influence to other children and people.

In some jurisdictions, placing children in a residential facility is usually the last resort, because juvenile court judges believe that the most effective interventions come about in the local community. An example is the Ohio Department of Youth Services in 1993 which created the Reclaim Ohio (Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minors) programs; a funding initiative to encourage juvenile courts to develop or contract for the range of community-based options for juvenile offenders that would keep them in the community and avoid incarceration in state juvenile facilities.⁴⁵⁵

The Child Rights Act provides for non-institutional correctional measures such as, placing a child under care order, guidance order and supervision under a supervision officer, guardian, relative, or any other fit person. It also provides that the child can also be ordered to

⁴⁵³ V.V. Tarhule, *Corrections under Nigerian law* (Lagos: innovative communications, 2014) p 8.

⁴⁵⁴ *Ibid.*

⁴⁵⁵ *Ibid*, p278.

participate in group counselling and similar activities; pay, a fine, damages, compensation or costs or undertake community service under supervision or the court may order the parents or guardian of the child offender to pay a fine, damages, compensation or costs, or give security of his good behaviour or enter into a recognisance to take proper care of him and exercise proper control over him or making an order concerning foster care, guardianship, living in a community or other educational settings.⁴⁵⁶

Generally, the Nigerian criminal justice system provides a reasonable number of options of non-institutional treatments including but not limited to: fines, caning, probation, binding over orders, forfeiture of assets, plea bargaining, compensation, undertaking to be of good behaviour, and condonation. These options especially fines, compensation, forfeiture of assets, caning and condonation, have their roots buried deep in law of Jurisprudence.⁴⁵⁷

4.3.2 Institutional Corrections

Institutional Corrections as the name implies is a correction that is effected in an institution established under the law. There are various approved institutions for the child offender and children in need of care and protection, as well as prisons for adults.

According to Tarhule, under this model, the offender or convict is removed from society and sent to an institution for the purpose of his correction. While in the institution, the offender is then taught some trades and given some vocational training so as to make him a better citizen upon discharge.⁴⁵⁸

In other words, institutional correction entails that the offender is thus, constrained in the institution for punishment for his crime, reformation and rehabilitation; wherein after the offender goes back into the society a better person, and thus becomes more useful. Although

⁴⁵⁶ CRA, s 223.

⁴⁵⁷ *Ibid.*

⁴⁵⁸ V V Tarhule, *op cit*, P11.

there are preferences among some writers as to non-institutional correction over institutional correction, as discussed earlier, not all cases will non-institutional correction tackle. A controversial criminal can be a threat to the society and the need to confine him or her to an institution for correction is the best or better option. A child in an environment known for prevalence of crime can be removed and put in an institution for reformation. Put differently, the nature of the offence and other factors such as the environment or the circumstance of the child may be a determining factor as to the choice of which of the measures will better suit and serve the purpose at hand.

Even when the court has adopted an institutional correction as the appropriate mode in a circumstance, there is also the need to choose the appropriate facility that will suit the situation of the child offender. For example, it was reported that in the United States of America, when child offenders are placed under the residential supervision of a state department of youth services, they usually are temporarily sent to a reception and diagnostic centre. At these centres, children or juveniles receive psychological, educational level and risk assessment to determine the type of facility to which they should be assigned. After a few months at the reception centres, they are placed in a long-term confinement facility, often called training or a reform school.⁴⁵⁹

However, there are problems usually encountered which frustrate the reformation measures. One of such challenges is usually the problem of overcrowding, due to lack of well-established and adequately equipped institutions, and coherent programs for treating juvenile offenders and preventing juvenile delinquency in Nigeria. Existing institutions owned by government are those inherited from the colonial masters, and which do not suit the present child justice system and thus do not conform to international standards. The researcher agrees with Austin *et al* that overcrowding results in dangerous conditions that

⁴⁵⁹ R P Seiter, *op cit*, p277.

make the facility management difficult, can be detrimental to rehabilitation and treatment of youths, and creates logical problems in feeding, health care delivery, and space to sleep.⁴⁶⁰

Overcrowding occur where there are inadequate facilities to accommodate the inmates. In Nigeria, it is observed that, there is lack of adequate custodial institutions, both at the State and federal levels, which seriously affects the objectives of reformation of child offenders. Further still, in view of the increasing rate of juvenile delinquency in Nigeria, the consistent problem encountered in the institutions is usually overcrowding, which will affect every other activity. For instance, there are only three borstals Institutions established by the Federal Government at Kaduna, Abeokuta and Ilorin, and few other government owned remand homes across the Country: Sapele in Delta State, Port Harcourt in Rivers State, Ogun State, Oregun in Lagos State which is now known as Oregun Special Correctional Center, Ngwo in Enugu State, Ibadan. There are no borstals or remand homes in Anambra State and even at the Federal Capital Territory Abuja. In the absence of remand home in a State, child offenders may be sent to another State. For example: child offenders in the Federal Capital Territory Abuja are usually sent to Kaduna borstal remand home, While in Anambra State, there are instances where child offenders were sent to Kaduna remand home, Enugu remand homes, Kwara remand homes or other remand homes in other States. However, there are also instances where child offenders were sent to prisons.⁴⁶¹

According to Ehonwa, ‘the inadequacies in child custodial institutions reflect the insensitivity and lack of commitment of Nigerian government towards the protection and promotion of human rights and the dignity of the human person, and in particular to the

⁴⁶⁰ J. Austin, K D Johnson, R Weitzer, ‘Alternatives to the Secure Detention and Confinement of Juvenile Offenders’, in *Juvenile Justice Bulletin* (Washington, D,C; Office of Juvenile Justice and Delinquency Prevention, 2005) p5.

⁴⁶¹ Information obtained during visits to the Courts in Abuja and Anambra State by the Researcher.

welfare of suspects and convicts. Those inadequacies are extension of conditions in the adult prisons that have been neglected for long.⁴⁶²

Bearing in mind the purport or aim of institutionalisation towards treating child delinquency, government should address the issues of lack of institutions and challenges encountered in institutions. An institution devoid of the infrastructure and conditions for rehabilitation defeats the aim. Lack of commitment by government towards its role to the citizens is one of the key challenges. Various infrastructure and programs ought to be provided for the children for their reformation and well-being. These facilities are very important, especially with respect to education, as most children in the institutions are still of school age and have not contemplated their schooling and therefore should participate in the general educational development programs in the institutions. Vocational training is also important and should involve a variety of skills that can lead to employment after release. Adequate health care, adequate feeding, hygienic environment should also be available in institutions, as well as religious counselling and instruction. It is submitted that the Government owe children in corrective institutions care and protection otherwise it is a violation of the children's right to health, nutrition, education and recreation, which the correctional institutions should promote. Lack of basic standard of welfare in the institutions will defeat the aim, and may turn the children into recidivists instead of reforming them. Therefore there is need for establishment of adequate correctional institutions in Nigeria to check: overcrowding, poor living conditions, and inadequate infrastructure for rehabilitation. There are also problems of insufficient and untrained personnel in the institutions which should be addressed. A report on the condition of remand homes in Sapele Delta State and Port Harcourt respectively on this issue is as follows:

⁴⁶²O L Ehonwa, 'Behind the Walls'(Lagos: Civil Liberties Organisations, 1996) in A K Ahmed, *The Law and the Child in Nigeria* (Lagos: Malthouse Press Limited, 2015) p164.

The treatment of juvenile offenders at Sapele and Port Harcourt are reflective of the national attitude towards children in correctional homes. Their conditions are not remarkably different from those of adults in conflict with the law. Like the prisons, the few remand homes in the country are more or less oppressive institutions aimed at punishing offenders rather than rehabilitating them. The institutions are decrepit, ill-equipped and the inmates are ill-fed. They are denied humane treatment and have no access to recreational and sporting activities.⁴⁶³

Nevertheless, the Oregon remand home in Lagos State which has been converted to a correctional institutions according has been reformed to offer schooling, vocational training, and computer classes for inmates. These facilities were not in existence as at when it was a remand home. The institution has sporting facilities for recreation and common room for prayers. The institution is not overcrowded, and has living condition to some reasonable extent. Admission into the home is through corrective orders from the Family courts in Lagos State. The effort by the Lagos State government towards the implementation of the CRL is commendable. This is in consonance with the United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990, which requires juveniles deprived of their liberty to have a right to facilities and services that meet all the requirements of health and human dignity. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities.⁴⁶⁴ These conditions are

⁴⁶³ This Day, The Challenges of Remand Homes, <[https://www.thisdaylive.com.challenges of remand homes](https://www.thisdaylive.com.challenges%20of%20remand%20homes)>.accessed on 4/1/2018.

⁴⁶⁴ United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990, Article 32.

very important in view of the purpose and aim of institutional correction which according to the Beijing Rules is to train and treat the juveniles, which involves providing care, protection, education, and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.⁴⁶⁵

The provision of the CRA⁴⁶⁶ is in all fours with the above provisions. It provides that the objective of training and treatment of a child offender placed in an institution shall be to provide care, protection, education, and vocational skill with a view to assisting the socially constructive and productive roles of the society. It went further to provide that a child offender in an institution shall be given care, protection, and all necessary assistance including social, educational, vocational, psychological, medical and physical assistance that may require, having regard to his or her age, sex, personality and in the interest of his development. A female child offender placed in an institution shall be treated fairly, receive no less care, protection, assistance, treatment, and training than a male child, and be given special attention as to her personal needs and problems. The parents and guardian of the child offender placed in an institution shall have the right of access to the child in the interest and well-being of the child. Inter-ministerial and Inter-department co-operation shall be encouraged for the purposes of providing adequate academic or vocational training for any child offender placed in an institution to ensure that the child does not leave the institution at an educational disadvantage.⁴⁶⁷

⁴⁶⁵ United Nations Standards Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), Adopted by General Assembly resolution 40/33 of 29 November 1985. Article, 26.

⁴⁶⁶ CRA, s 236(1).

⁴⁶⁷ *Ibid*, s 236(2-5).

4.4 Correctional Institutions for Children in Nigeria and their Roles towards Promoting Child's Rights

The two basic legislations for the regulation of the child's right in Nigeria: the Children and Young Person's Act, and the Child Rights Act which is the latest and is to repeal the former, made provisions for custodial corrections and the various facilities for that purpose as follows:

4.4.1 Children and Young Persons Law

The CYPL⁴⁶⁸ provides that the Commissioner or a local government with the prior approval of the Commissioner may establish remand homes, and may make rules for the remand homes. It provides that where a remand home is conveniently situated it shall be a place of detention for child offenders and suspects. Where no remand home is conveniently situated a juvenile ordered to be detained in custody may, in the discretion of the police officer or officer of the court as the case may be detained in an approved institution, prison or police station or any other suitable place or in the care and custody of such person as the police officer or court may think fit. The Law further provided that the police officer and prison officers shall make arrangements for preventing, so as practicable, a juvenile while in custody from associating with an adult charged with or convicted of an offence.⁴⁶⁹ From the foregoing, the custodial institutions provided under the CYPA are remand homes, approved institution and prisons.

i Approved Institutions

Section 16 of the CYPA, provides for establishment of approved schools. It requires the commissioner to establish institutions or declare any school or institution to be an approved institution. The approved school system is traced back to 1933 when it replaced the

⁴⁶⁸ CYPA, Cap C4, LFN, 2004.

⁴⁶⁹ *Ibid*, s 3.

reformatory and industrial schools of the 19th century, earlier recognized in 1908. It essentially caters for boys and girls who are more highly disturbed and less responsive to therapy. Reformatory and industrial school was said to have been established in Nigeria first time at Enugu in 1933 following the British colonial pattern and later at Isheri and Military street Lagos.⁴⁷⁰ This custodial institution was established at Enugu as a wing of the Enugu prison.

The law that established Approved schools which is the Borstal Institutions and Remand Centre Act,⁴⁷¹ was borne as a result of the provision of the Children and Young Person's Act which empowered the establishment of remand homes and approved institutions. The purpose for its establishment is to bring to bear upon the inmates every good influence which may establish in them the will to lead a good and useful life on release and to fit to do so by fullest development of his character, capacities and sense of personal responsibilities.⁴⁷²

A Borstal Remand Centre was established as a remand and reception centre prior to the transfer of committed juvenile offenders to the Borstal Institutions in Kaduna. The Act provides that only children between ten and sixteen years of age should be admitted to the approved school. The approved schools were to prepare children for the first school leaving certificate examinations and those who do well are subsequently released on licence on the ground that they continue to be of good behaviour.⁴⁷³

According to Ogbolumani the law establishing approved schools demand that every inmate shall receive education according to his age and development and such education shall be at least the equivalent of that which he would receive in his own special circumstance was

⁴⁷⁰ E.U.M Igbo, *Introduction to Criminology* (Nsukka: Afro Orbis Publishing Co. Ltd, 1999) p84.

⁴⁷¹ Cap B11 *LFN*, 2004

⁴⁷² The Borstal and Remand Center Act, Cap B11 *LFN*, 2004, s 4.

⁴⁷³ B.O.I. Ogbolumani, 'Institutional Treatment of Juveniles' in T.O. Elias (ed), *The Magistrate and the Offender* (Lagos: Lagos University Press) p 84.

he or she attending school in the usual way of education. Those who cannot cope with educational training have the option to get into various other vocational trades such as welding, tailoring, sign-writing, carpentry etc. The girls were taught domestic science subjects such as dress making, cookery and bakery. Corporal punishment is discouraged in order to avoid giving the wrong message to the inmates that they are in the school for punishment instead of treatment. Also recreational facilities such as football, netball, table tennis, as well as facilities for moral and religious training are provided to make inmates feel as much at home as possible. He further revealed that the motive behind these at the approved school, goes a long way to promote and preserve the rights to life and human dignity of the child and his right to reformation, and such a child gets back to the society a better and useful person. Having learnt techniques or undergone education, counselling and faith based therapy adds value to the society.⁴⁷⁴

The approved school from its mandate in the CYPA is an institution set for the care of children in need of care and protection, and child offenders in the absence of remand homes, and its motives as stated above are good for the treatment of the children. However, these good motives are not realised in practice as a result of lack of well equipped structures, funding, inadequate personnel among other factors.

On the other hand, Borstal institutions were established for the detention of offenders between sixteen and twenty-one years who were found guilty of offences by the court. A borstal thus serves both as a place of detention for older young offenders covered by the CYPA and as an intermediate place of detention for young adults who do not fall within this purview, on the presumption that they too may benefit, from the specialised treatment that is supposed to be available in borstals. Borstals are to provide such training to inmates as is

⁴⁷⁴*Ibid.*

conducive to their reform and prevention of crime.⁴⁷⁵ Borstals were established by the Borstal Institution and Remand Centre Act of 1960.⁴⁷⁶ The law provides that where a person is convicted by a court of an offence punishable with imprisonment, then if on the day of his conviction he is not less than sixteen years but under twenty-one years of age, and the court is satisfied having regard to such evidence available as to his character and previous conduct, and to the circumstances of the offence, that it is expedient for his reformation and the prevention of crime that he should undergo a period of training in a Borstal Institution, the court may in lieu of any other sentence, pass a sentence of the Borstal training.⁴⁷⁷ The purpose of the institution is to 'bring to bear upon the inmates every good influence which may establish in them the will to lead a good and useful life on release and to fit them to do so by the fullest development of character, capacities, and sense of personal responsibilities'. The Act also stipulates that Juveniles sent for Borstal training shall be detained in such institutions for not more than three years from the date of the sentence.⁴⁷⁸

One of the criticisms to borstal was the contamination of child offenders by young adults who were also inmates which is inconsonance with the Beijing rules which provides for the separation of Juveniles in institution from adults and kept in a separate institution.⁴⁷⁹ This is to prevent the danger of criminal contamination, being vulnerable to the negative influences of adult detainees and to grant ease of reformation. There is also need for separation based on other factors such as sex. To ensure non-discrimination on the grounds of sex, the rules provide that young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care,

⁴⁷⁵ A K Ahmed, *op cit.* p43.

⁴⁷⁶ Borstal Institutions and Remand Centre Act, 1960.

⁴⁷⁷ *Ibid*, s 3.

⁴⁷⁸ E E O Alenika and I.C Chukwuma , *Juvenile Justice Administration in Nigeria: Philosophy and practice* (Lagos: Centre for Law Enforcement Education) pp 52-53.

⁴⁷⁹ United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Rule 26 (3) and (5).

protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.⁴⁸⁰

The Borstal infringes the rule of separating children and adult inmates. Another challenge of the Borstal Institutions in Nigeria is the fact that workers at the Borstal Institutions are recruited from prison staff. This is in view of the fact that prison staff are trained to handle adult criminals and their line of training is focused on punishment primarily, and not on any other goal especially reformation.

Furthermore, with regard to the facilities needed for the realization of the objectives or goals of reformation and rehabilitation in the Borstals, it was reported that the facilities were fairly managed in the 1970's. However, by the 1980's, facilities and trainings had deteriorated, and were virtually non-existent in the 1990's.⁴⁸¹ The situation now cannot be said to be better either. Alemika and Chukwuma argued generally that the laudable goals of the Borstal Institution could not be realized due to lack of proper policy, legal and institutional framework for juvenile offender, correction and juvenile delinquency prevention. Other problems include under funding, inadequate staff in qualitative and quantitative terms, and lack of necessary training facilities in the workshops and educational programmes.⁴⁸² It is the view of the researcher that lack of maintenance of the home and overcrowding gave rise to these poor conditions. These conditions are not in consonance with the provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)⁴⁸³ which provides that the objectives of training and treatment of Juveniles placed in institution is to provide care, protection, education and vocational skills, with a view to assisting them to assure socially constructive and productive roles in the society. It

⁴⁸⁰ *Ibid*, Rule 26 (4).

⁴⁸¹ C R. Nwanna and N E N Akpan , *Research Findings of Juvenile Justice Administration in Nigeria*, (Constitutional Rights Project, 2003) p39.

⁴⁸² E.E.O Alenika and I.C Chukwuma , *op cit*.

⁴⁸³ Adopted by the General Assembly Resolution 40/33 of 29 November, 1985.

provided further that Juveniles in institution shall receive care, protection and all necessary assistance –social, educational, vocational, psychological, medical and physical that they may require because of their age, sex, personality and in the interest of their wholesome development.⁴⁸⁴

ii. Remand Homes and Centres

Remand home is another custodial institution provided under the CYPA and established pursuant to the Borstal Institutions and Remand Centre Act. Section 16(1) of the CYPA empowered the minister or a local authority with the prior approval of the ministry to establish remand homes and make rules for the management, upkeep and inspection of the homes. Section 16(2) provides that where a remand home is conveniently situated, it shall be the place of detention for detention pending trial, or a place of custody while on trial if he is not granted bail and where a child is found guilty of a crime, which if he were an adult would have been in prison.⁴⁸⁵

According to Igbo, Remand homes were established to cater for juvenile offenders whose offences would attract imprisonment if they were adults. Remand homes share most of the characteristics with prisons. It serves as a place where juvenile facing trial in a Juvenile Court is sent pending the final determination of their cases. Also, juveniles who are thought to be beyond parental control or in need of care and protection are sent to remand centres until suitable foster homes are found for them. Ordinarily then, children in remand homes are usually there on transit.⁴⁸⁶

The Act stipulates a period of six months as the maximum period beyond which a juvenile shall not be detained or kept in this institution. The Act further provides that where

⁴⁸⁴ Rules 26 (1) and (2).

⁴⁸⁵ CYPA, ss. 4, 7 and 14.

⁴⁸⁶ E U M Igbo, *Introduction to Criminology* (Nsukka : Afro Orbis Publishing Co Ltd.) pp86-87.

no remand home is conveniently situated, a child or a young person ordered to be detained in custody may, in the discretion of the officer or the court, as the case may be, detained in an approved institution or prison, provided that the child or a young person if detained in the prison he shall not be allowed to associate with adult prisoners.⁴⁸⁷ Detention of children in prison as stipulated in the CYPA is contrary to the provisions of the Child Rights Act. This is really worrisome, in view of the state of prisons in Nigeria and the problem of crowding, which can never allow non-association of the child with the adult inmates.

There are remand homes established in major cities in some States across Nigeria. These include: Sapele remand home in Delta State, Port Harcourt remand home in Rivers State, Ogun State remand home, Oregun remand home in Lagos State now known as Oregun Special Correctional Center, Remand home at Ngwo in Enugu State, Remand home at Oji River in Enugu State, Ibadan remand home and others. There are no remand homes in Anambra State. Thus the practice in Anambra State is that child offenders may be sent to remand home in another State. However, it must be noted that for very grievous cases, child offenders are sent to prisons, on the supposition that they are kept separate from adult inmates. There are also occasions where the ages of the child offenders are overstated in order to keep them in prison custody and arraign them at the regular courts. Similar situation obtains in Abuja.⁴⁸⁸

iii. Prison

In Nigeria the law which regulates prison management and administration is the Prison Act.⁴⁸⁹ The Act provides that the Minister may by order in the federal gazette, declare any

⁴⁸⁷ CYPA, s 15.

⁴⁸⁸ Information obtained during visits to the Courts in Abuja and Anambra State by the Researcher.

⁴⁸⁹ Prison Act, Cap P29, LFN, 2004.

place or building in Nigeria to be a prison.⁴⁹⁰ The Act further provided that a prison must be housed in a building or an enclosure for the purposes of keeping offenders or persons suspected of deviating from the agreed societal norms.

Prisons were formerly meant for offenders generally, however, with the advent of the child justice system, children were excluded. Despite that, children are still imprisoned, and left to associate with adults, though contrary to the CYPA, which allowed child committal to prison when other measures are indispensable, but frowns at association with adult inmates. The CRA which is the latest legislation does not support imprisonment for children.

Despite these provisions, a study by Nwanna showed that some juvenile offenders were detained in the prisons in some of the States covered because they did not have correctional institutions for juvenile as provided the Law. The study also revealed that these juvenile were associating with the adult criminals.⁴⁹¹ The lack of remand homes in Anambra State for instance corroborates this observation.

Similarly, Bamgbose observed that inadequacy in the number of remand centres, approved schools and borstal institutions have led to the detention and the imprisonment of young offenders in the prisons when the offence does not deserve it. Consequently, she expressed concern that in reality that it is not practicable for the officers of the prisons to segregate young offenders from the adults due to problems of overcrowding. She stated that the Nigerian prisons are said to contain a large number of young offenders, and often they are not separated from adults inmates on the basis of age or other relevant classifications, and this

⁴⁹⁰ *Ibid*, s 2(1).

⁴⁹¹ C R Nwanna, N E N Akpan , *op cit*, p 91.

is consistent with the provisions of Article 10(3) and 14(3)(d) of the international Covenant on Civil and Political Rights.⁴⁹²

Again, according to another later study, great majority of children in conflict with the law were held together with adults in regular prisons. It was observed that twenty one percent of persons in Kuje Prisons in the Federal Capital Territory (FCT), are children. There is a high population of children in Kano prisons and that Rivers State had the highest number of children in regular prisons compared to four other States where the study was conducted.⁴⁹³ Though the researcher denied the opportunity of determining the percentage of persons in Kuje Prisons and other prisons in Lagos and Anambra State, good number of children is inmates of the prisons. Also, Infants born in the prisons are currently in prison with their mothers in the prisons.

Ahmed posited that some children end up in prison not because they have committed any offence or come under any of the situations listed under the law, but either because they were born there or taken into the prison by their mothers. He gave instances with Mohammed Zulai Nasidi; Aisha Abubakar and Fauziyya Mua'azu who were all nursing mothers in Kano central prisons. They were in detention along with their children between the ages of a day to 20 months.⁴⁹⁴ Another instance was Juli Haruna, male of fourteen years from Kundum village, a Fulani settlement near Gwagwalada Area Council of Abuja was arrested by the police on September 3, 2005 and detained at Garki Police station for ninety nine (99) days before being charged to Gudu High Court, Abuja on December 11, 2005 for murder. As at September 28, 2006 when the National Human Rights Commission visited Kuje prisons, he

⁴⁹² O Bamgbose, *Re –Evaluating the Juvenile/ Child Justice System in Nigeria* (Lagos: Nigerian Institute of Advanced Legal Studies, 2014) p 34.

⁴⁹³ G Y Akinsesye, *Juvenile Justice System in Nigeria* (Abuja: Centre for Socio-Legal Studies, 2009) pp 64, 68 & 73.

⁴⁹⁴ The State of Human Rights in Nigeria 2005-2006. A Report on Human Rights Violations Monitored in Nigeria by Network of Human Rights Violations Monitors in Collaboration with NHRC, UNDP, and NORAD, p 34 in A K Ahmed, *op cit*, p 47.

was still awaiting trial. The boy complained that since his incarceration, he was not provided with a bed or a mattress and that, he slept on the bare floor. He also complained that he did not understand what was going on in the open court where he was tried publicly. The proceedings in court were being conducted in English Language which he did not understand and no provision was made for an interpreter.⁴⁹⁵

Ideally, children should not be detained in prison. This is worrisome considering the fact that these acts have continued till date and there has not been any substantial change as a good number of children were still found in prisons in various States across the country recently by the various Chief judges of the States during prison visits, organisations, and agencies after having spent copious time in the prisons without trial. An example is the release of children in prisons in Lagos State by the Chief Judge of Lagos State Atilade Olufumilayo in August 2017. Reports had it that the move was prompted by information by a social worker, who has been monitoring activities at the institution. The CJ released over eighty children between the ages of twelve to seventeen years who were remanded in the prisons for offences which includes: breaching public peace, hawking, loitering, environmental sanitation and special offences. Some of these children were arrested by the Lagos State Task Force and were kept in prisons for inability to pay fine imposed on them for violating sanitation laws. The children were malnourished, untidy and could barely walk when they were called out.⁴⁹⁶ That same August, 2017, the United Nations Children's Fund Child Justice Consultant Dr. Wilfred Mamah asserted that they were many Nigerian children currently languishing in different prisons across the country. He expressed this concern at the sensitization meeting on Diversion Community Rehabilitation Programmes in Lagos, wherein

⁴⁹⁵ *Ibid*, p 26.

⁴⁹⁶ Vanguard News, Lagos Chief Judge Frees Juvenile Offenders, inmates with Disabilities from Prisons, August 14, 2017, at <<https://www.vanguardngr.com/2017/08/lagos-cj-frees-62juveniles-offenders-67-inmates-disabilities-prisoners/> assessed on 4/4/2018. Chuks Azu, Daily Trust, How Kids are Locked up with Adults in Nigerian Prisons, August 20, 2017.

he announced the inauguration of a pilot community rehabilitation programme for children in conflict with the laws and children at the high risk of offending in Lagos State. He stated:

We have been working with the Lagos State Government in the Protection of the rights of the child. There are many children languishing in Lagos State Prisons, as well as other prisons across the country as revealed by a study and the recent release by the Lagos State Chief Judge. We have therefore come up with a community rehabilitation programme with Grace Spring Rehabilitation Home, to gainfully engage these children and ensure that other children are not sent to prison unnecessarily.

He further expressed concern that many of these children are held in decrepit, abusive, and demeaning conditions, deprived of education, access to meaningful activities, and contacts with the outside world.⁴⁹⁷

Visits to Awka and Onitsha Prisons in Anambra State, court registry, police stations and the Ministry of Children and Social welfare in Anambra State in May and June 2018 by the researcher, revealed that children are kept in prison; however information on the percentage of children were withheld. Furthermore, information obtained from the court registry, police station and observations during trial in court by the researcher also revealed that matters involving children were resolved at the police station for minor offences, and in grievous offences child offenders are put in prisons and in very few cases to remand homes in another State. In Lagos, the information obtained from the prison officials at Kirikiri Prisons in Apapa Lagos was that children are no longer kept in the prisons. They stated that children are now taken to the correctional institutions for children established in Lagos State on

⁴⁹⁷ Guardian, Children in Prisons at <http://guardian.ng-opinion>, assessed at 4/4/18.

corrective orders from the courts. However information obtained from the court registry revealed that child offenders, especially for grievous offences come from the prisons, while some of them come from Oregun and Idi-Araba correctional institutions. In Abuja, the researcher also visited Kuje prisons where the information obtained from the prison officials was that children are presently sent to Kaduna remand homes, and are no longer kept in prisons. However, information gathered from the social welfare was that some children are still kept in the prisons, especially those that committed grievous offences and those who are charged along with adults. They expressed the view that inadequacy or non-existence of correctional institutions for children is the major reason for such arrangement.⁴⁹⁸ This seems more logical in view of the fact that juvenile delinquency is prevalent in the society, and arrests are made accordingly, yet there are inadequate child correctional institutions presently in some States for delinquents.

To further corroborate the above information, incarceration of children in prisons got the attention of Legislators in Nigeria. Thus the Senate following the motion moved by Senator Victor Umeh, supported by other senators on the 30th day of May on the illegal confinement of child offenders and infants in the same prisons with adults prisoners urged security agencies to refrain from imprisoning children with adults, and detaining children beyond forty eight hours after arrest. Consequently expressing concern on the number of children in prisons across the country and the deplorable state of prisons, the Senate mandated its committee on interior to invite the Comptroller General of Prisons to brief it on the state of prison inmates in the Country. The committee was also asked to investigate the confinements of child offenders and infants with adults in prisons. The Senate called on the Federal Government to establish more children correctional institutions.⁴⁹⁹ Senator Umeh noted that the implication of keeping underage children in prisons is that they would mix up

⁴⁹⁸ Information obtained by the researcher during Prisons to Awka, Lagos and Abuja respectively.

⁴⁹⁹ Channels Television 10pm News on 30/5/2018.

with adult inmates who are likely to influence them negatively, using manipulative techniques to espouse and enforce beliefs and practices that create a paranoid view of the outside society. On the infants, he noted that the repercussion of keeping infants in prisons include: making them suffer for their mother's offences, poor upbringing, health issues and psychological damage to estrangement from the larger society.

It is pertinent to point out that the inclusion of prisons as an option of child correction in the disposition measures for child offenders under the Children and Young Persons Act is punitive in nature, as opposed to reformation and rehabilitation. This is because the focus of prisons in Nigeria are geared towards punishment alone, neglecting the aspect of rehabilitation, which is the treatment for the prisoners who would someday go back to the society and live their normal lives as better and useful citizens. It is more critical where there are no correctional institutions for children available in a particular State or even region, the police will have reasons to take children to prisons as noted above.

Again, the conditions of Nigerian prisons today are not far from what was observed by the Nigerian Law Reform Commission in 1983 as follows: 'from all indications, the Nigerian Prison System as at present, is not geared towards the reformation of prisoners to enable them live a more useful life instead our prison system appears more punitive and retributive'.⁵⁰⁰ This view is also supported by the assertion of Cook who stressed that the prisoner with the exception of those serving life and death sentences serves his sentence in and with the knowledge that he or she is part of the society and will one day be returning to it⁵⁰¹. To this end, prison inmates should be treated humanely in view of the fact that imprisonment does not rob or deprive the prisoner of his humanity. This accounts for why the

⁵⁰⁰ Nigerian Law Reform Commission (1983) Report and Draft Bill for Reform of Prisons in Nigeria (Lagos: Nigerian Law Reform Commission).

⁵⁰¹ A N Cook, 'British Enterprise in Nigeria' cited in T.O Elias, *op cit*, who quoted Lord Lugard as describing the Kano prison which was in existence before the arrival of the colonialist.

United Nations General Assembly adopted the standard minimum rules for the treatment of prisoners,⁵⁰² and the Prison Regulation of Nigeria made pursuant to section 15 of the Prison Act⁵⁰³ has reproduced some of the provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

The correctional institutions created under the CYPA do not meet up with international standards for child justice administration. The CRA has made provisions for correctional institutions that should be established to handle children in the child justice system and the unborn child, by incorporating the special mother centres in accordance with international standards.

4.4.2 Child Rights Act

The Child Rights Act 2003 is the latest and most comprehensive legislation that promotes the rights of the child in Nigeria. In addition to other provisions on the welfare and development of the child, the CRA made provisions for institutional corrections. It provides⁵⁰⁴ that approved institutions consist of approved children institutions and special mothers' centres, all of which shall be established. It further provides that the minister shall establish, in any part of the Federation or any part of a State, the following institutions to be known as approved children Institutions: children attendance centre; a children centre; a children residential centre; a children correctional centre; a special children correctional centre; and such other institutions as the minister may, from time to time, establish and make rules for the management, upkeep and inspection of the approved children institutions. The CRA also requires the Minister to also establish institutions to be known as special mother's centres,

⁵⁰² Resolution 45/111 adopted on 14th December, 1990, Resolution 663 (xxiv) of 31/7/1957 and 2076 (Lxii) of 13/5/77.

⁵⁰³ Cap P 29 *LFN*, 2004.

⁵⁰⁴ CRA 2003, ss 247 & 248(1).

and make rules for the management, upkeep and inspection of the approved children institutions and the special mothers' centres.⁵⁰⁵

The Act empowers the Minister to declare any building, place or land within the Federation or State as the case may be, to be a Children Attendance Centre, a Children Centre, a Children Residential Centre, a Child Correctional Centre, an Emergency Protection Centre, a Special Children Correctional Centre, or such other institutions as may be established by the minister.⁵⁰⁶

i Children Attendance Centre

The Act provides that a Children Attendance Centre shall be a non-residential place at which children shall attend, on a daily basis or on such only as may be prescribed, on the order of the court which dealt with the case of the child concerned.⁵⁰⁷ If this particular institution is established children beyond parental control or truants can be brought here for counselling and other correctional measures by specialised individuals and this will promote their right to rehabilitation and save them from venturing into delinquency.

ii. Children Centre

A children centre shall be a place for the detention of children who are remanded in or committed to custody for trial or for the making of a disposition order after trial, or awaiting adoption or foster. A children residential centre shall be in a place in which school education and such other training and institutions as may be conducive to their reformation and re-socialization and the removal or reduction, of their tendency to commit anti-social acts and such other acts which violate the criminal law.⁵⁰⁸ The CRA Further provides that in

⁵⁰⁵ *Ibid*, s 248(1&2).

⁵⁰⁶ *Ibid*, s. 249.

⁵⁰⁷ CRA s 250(1)(a).

⁵⁰⁸ *Ibid*, s 250(2).

exceptional circumstances, children in need of care and protection may be kept in approved institution.⁵⁰⁹ The establishment of this centre will curb the inhuman and degrading treatment on children by the police when arrested and awaiting trial. It will thus restore the right to the child's dignity of human person and right to life. It will also eliminate the remanding of children in prisons before and during trials and give room for rehabilitation. The children will also be handled by specialised personnel in the institution, who will handle the child in accordance with the international standard of best interest principle.

iii. Children Correctional Centre

A Children Correctional Centre shall be a place in which offenders may be detained and given such training and instructions as will be conducive for their formation and re-socialization, and the removal or reduction, in felons, of their tendency to commit anti-social acts and such other acts which violate the criminal law.⁵¹⁰ The establishment of this centre will go a long way to eliminate recidivism and delinquency in children. When a child offender is placed in this institution; education, skills acquisition, counselling, faith approaches, medical approaches will help to turn the mentality of the child positively and the child will be reformed and re-integrated in the society a better person. The child offenders' right to life, dignity of human person, good health, education, rehabilitation, child justice system among others will be promoted and protected.

iv. Emergency Protection Centre

An Emergency Protection Centre shall be a place in which a child taken into police protection or in respect of whom an emergency protection order is made shall be accommodated until the expiration of the order.⁵¹¹ According to section 42, if there is a reasonable cause to

⁵⁰⁹ s 50& 52.

⁵¹⁰ *Ibid*, s 250(4).

⁵¹¹ s 205(5).

believe that the child is likely to suffer or is suffering grievous harm, the court upon application made may make an order that such a child be placed in the Emergency protection centre.⁵¹² Also, where the specialised children police in a state have reasonable grounds to believe that a child is otherwise likely to suffer significant harm, a specialised children police may take the child into police protection by removing the child from the place and keeping him or her in the Emergency protection centre or explore other options provided in the Act.⁵¹³ This centre is a very important place for the protection of the life and safety of children in danger or likely to suffer harm. The establishment of this centre therefore will go a long way to secure children in those conditions.

v. Special Children Correctional Centre

A Special Children Correctional Centre shall be a place to which children who are found to be incorrigible or to be exercising bad influence on other inmates detained in a children correctional centre may be detained.⁵¹⁴ Where this institution exists, children that committed very serious offences as well as those who come from very crime prone area or immoral and unfavourable environments will be accommodated therein. This will enable the correctional officers to apply more measures of treatment that will be adequate to turn such incorrigible child offenders, and also avert the possibility of influencing other inmates who may not be as bad as this ones.

vi. Special Mother Centre

A Special Mothers Centre shall be a place in which expectant and nursing mothers are held for purposes of remand, re-socialisation and rehabilitation in the society in an atmosphere devoid of the regime of institutional confinement which may be damaging for the proper

⁵¹² s 42.

⁵¹³ CRA 2003, s 44.

⁵¹⁴ *Ibid*, s 250(6).

development of their children.⁵¹⁵This is a very welcome development in custodial corrections, as many children find their way into prisons because they are either born there or taken by their mothers to the prisons. The establishment of this institution will go a long way to protect the interest of the child and foster the welfare and development of the child.

The CRA requires in the interest of the child, that the child shall be provided where appropriate with necessary assistance, including accommodation, education or vocational training, employment and other helpful and practical assistance, during the period of rehabilitation order in the institution.⁵¹⁶ In furtherance to that, the Child's Right Act just like the CYPA provided that a child offender in an institution shall be given care, protection and all necessary assistance, including social, educational, vocational, psychological, physical and medical assistance, that he may require having regard to his age, sex, personality and in the interest of his development. A female child offender placed in an institution shall be treated fairly, receive no less care, protection, assistance, treatment and training than a male child, and be given special attention as to her personal needs and problems. The parents and guardians of a child offender placed in an institution shall have the right to access to the child in the interest and well-being of the child.⁵¹⁷

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

⁵¹⁵*Ibid*, s 250.

⁵¹⁶*Ibid*, s 234.

⁵¹⁷*Ibid*, s 236.

The Child Rights Act⁵¹⁸ has more correctional approaches or techniques for the child. For example, contrary to the CYPA, it provides that no child shall be ordered to be imprisoned, however, where a child is found to have attempted to commit serious offences such as treason, murder, robbery or manslaughter, or wounded another person with intent to do grievous harm, the court may order the child to be detained in the approved institutions.

The challenge at stake is the implementation of the CRA as well as the sustenance of the institutions when established. This is because while the theoretical framework of the Act is very interesting, there has not been implementation after several years of the promulgation of this law to the detriment of the child who continues to be thrown into Nigerian prisons, which facts has been established earlier in this work. This is really worrisome as the Nigerian child is not benefitting from the law as it should be. The focus of correctional institutions is reformation and rehabilitation or re-orientation of child offenders and children in need of care and protection. If these institutions are properly established and made functional, child offenders and children in need of care and protection will be benefitting there from.

Again, the rights of the child offender to life, dignity of human person and rehabilitation ought to be protected while in custody for the child offender is not to be punished, but to be given adequate treatment for his or her reformation to become a better citizen.

In the light of the serious economic crisis in the country, ushering in parental poverty, unemployment, and inflation, and insecurity, parental care will most likely drop. Illiteracy, ignorance, negligence may also be some of the contributory factors too. If the current economic condition of the country is improved, parents will be able to meet the welfare needs of their children and the level of child delinquency will reduce drastically.

⁵¹⁸*Ibid*, s221.

It behoves the government to ensure the observance of basic and required standard for children in correctional institutions. In the United Nations Rules for the Protection of Juveniles Deprived of their Liberty,⁵¹⁹ Member States are required to ensure that juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity. It further provides that the design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment. This includes standard that should comply with the physical needs of the child such as clothing, clean environment, feeding, education, vocational training and work, and those that work should have right to an equitable remuneration, right to recreation, right to satisfy the needs of his or her religious and spiritual life, right to receive adequate medical care, right of the family of the child to be notified of illness, injury and death of the child. It further provides for the prohibition of use of force or instruments of constraint on the child while in the institution.⁵²⁰ It further provides that any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely instilling a sense of justice, self-respect, and respect for the basic rights of the person; the child should have the right to return to the community; and the personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other staff should normally be employed on a permanent basis.⁵²¹ In Nigeria, with respect to appointing officers to all the approved institutions, the CRA provides that persons with background in criminology, criminal justice, sociology, psychology, social psychology, guidance and counselling, or social work be recruited.

⁵¹⁹ Adopted by General Assembly Resolution 45/113 of 14 December 1990.

⁵²⁰ *Ibid*, Rules 31 - 65.

⁵²¹ *Ibid*, Rules 66- 87.

Lack of adequate and unqualified staff is one of the challenges to proper realization of the goals or purposes of correctional institutions in Nigeria. When personnel do not have the required training and knowledge, he or she will definitely not give what he or she does not have. Training is very important, because it is essential in the rehabilitation of the child, which is expected to leave the institution once he or she is above eighteen depending on the number of years as provided in the CRA. Accordingly, the CRA provides that when a child attains the age of eighteen, and he is detained in a Children Attendance Centre or a Children Correctional Centre, he shall be released; but if he is considered to require further training and instruction in a Youth Correctional Centre, he shall be transferred to Youth Correctional Centre.⁵²²

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

⁵²² CRA, s 257.

which will affect their lives positively. There is need to highlight these roles to enable government to wake up to reality and do the needful.

4.4.3 National Agency for Prohibition of Traffic in Persons (NAPTIP)

The National Agency for Prohibition of Traffic in Person was established to be responsible for taking charge, supervising, controlling and coordinating the rehabilitation of trafficked persons and participation in proceedings relating to traffic in persons.⁵²³ In carrying out this mandate, the Agency is required to rehabilitate child victims of trafficking, and re-integrate into the society as useful members of the society. The agency is therefore a correctional institution for child victims of trafficking. For the effective conduct of the function of the Agency, there are several units in the agency. These units include: the investigation unit; the legal unit; the public enlightenment unit; the counselling and rehabilitation unit and such other units as the Agency may establish.⁵²⁴ The counselling and rehabilitation unit shall in collaboration with the relevant government ministries be responsible for counselling, after care rehabilitation, social re-integration and education of trafficked persons; and counselling and the promotion of the welfare of convicts⁵²⁵. The Agency reinforces and supplements measures in bilateral and multilateral treaties and conventions on traffic in persons as may be adopted by Nigeria to counter the magnitude and extent of traffic in persons and its grave offences.⁵²⁶

Child trafficking is one of the fastest growing organised crimes in Nigeria. The trafficking of children for domestic services, prostitution and other forms of exploitative labour is prevailing practice in Nigeria. This may be attributed to problems of poverty and illiteracy and decline of morals in the society. Children of school age are lured out from their

⁵²³ Trafficking in Persons(Prohibition)Law Enforcement and Administration Act, 2003, s 4(k).

⁵²⁴ *Ibid*, s 8.

⁵²⁵ *Ibid*, s 9(3).

⁵²⁶ *Ibid*, s 4(g).

parents on the promise of good education, training, empowerment and good job. Child trafficking which is very dangerous to the development and welfare of the child is usually a secret arrangement and obtaining accurate data on it might be difficult. It is a matter of serious concern, since external trafficking now exists between Nigeria and some countries, such as; Gabon, Cameroun, Italy, Spain, Libya etc. The number of persons repatriated to Nigeria and rehabilitated on daily basis in Nigeria by NAPTIP is a confirmation of this view. These incidences have been on the headlines of news and Nigerian government have been progressive in the intervention of this harmful crime and rehabilitation of the victims. The Agency intervened and addressed the problem of Nigerians from Libya and Europe this year, through reception and rehabilitation of victims. This is quite commendable. The Agency has in collaboration with other bodies established, maintained and secured communication to facilitate the rapid exchange of information concerning offences, conduct research and improving international co-operation in the suppression of traffic in persons.

Nigerian government has made efforts in some areas in addressing the issue of relevant institutions for the rehabilitation and reformation of children in Nigeria, however there are many lapses and show of genuine commitments by government as well. The establishment of NAPTIC is a good step and commendable effort in combating trafficking and rehabilitating child victims of trafficking. Nevertheless, with respect to correctional institutions in the child justice system, a lot needs to be put in place. In Anambra State government have adopted the CRA, and in implementation of the law, the government has through the Ministry of Women and Children Affairs and Social Welfare which operates through child care and survival programmes; child rights promotion programme; child social services programme and orphans and vulnerable programmes; established a correctional institution at Abagana for child offenders, children in need of care and protection, children beyond parental control etc. They have also established community homes for the orphans

and vulnerable children at the major cities of Nnewi, Awka, and Nnewi. Though the correctional institution is just one, it has the facilities for vocational education and skill acquisition, counselling, and other rehabilitation services. This is a good step, however the implementation is slow. We hold the view that one institution for the State is not ideal with the provisions of the CRA. Therefore more institutions should be established with adequate and trained personnel and children so as to accommodate child offenders and save them from being imprisoned. In Lagos State, the remand homes at Oregun and Idi-Araba has been converted to a correctional institution under the CRA after the enactment of the Child Rights Law in Lagos State. Arrangements for establishment of new correctional institutions are in progress. There are homes for orphans, and disable children in Lagos State. Lagos State has taken some steps towards the implementation of the CRA when compared to many States which has not taken any significant step to that effect. The Federal Capital Territory has homes for orphans, which also harbour children in need of care and protection. There are no correctional centre for other categories of children especially child offenders as stipulated in the CRA, however the remand home at Kaduna is still the place of reference of child offenders from the FCT. About 27 States has adopted the CRA, but implementation of the CRA in terms of structures for courts and institutions; personnel; and funding is still rhetoric and far from reality.

4.5 Appraisal of the Impediments to the Role of Courts and Correctional Institutions in Promoting Child's Rights

As elucidated in previous chapters, the roles of the court and correctional institutions to the child are spelt out in the various laws that protect rights of the child. However an evaluation of these roles exposed the impediments often encountered by them. It is pertinent to state that the impediments to the actualisation of the rights of the Nigerian child are equally the same factors that also affect or foil the roles of courts and correctional institutions in

promoting the rights of the Nigerian child. The roles as highlighted and discussed in previous chapters are very imperative to the struggle for the development and welfare of the Nigerian child. Thus, the need to evaluate the impediments to such positive steps becomes pertinent.

The impediment envisaged include: Non -adoption and implementation of the CRA and other instruments that protect the rights of the child, conflicts in laws relating to children, Lack of genuine commitment on the part of government; Cultural/Religious values and constraints, Illiteracy and lack of awareness on enforcement of rights.

4.5.1 Challenges of Adoption and Implementation of Laws

Several international and national laws have made elaborate provisions for the protection of the rights and welfare of the Nigerian child. These laws have been discussed in the previous chapters. In Nigeria, the relevant laws that apply to the subject matter include but not limited to: Constitution of the Federal Republic of Nigeria 1999 (as amended), Children and Young Person's Act/Laws of various States, the Criminal Code Act, Borstal Institutions and Remand Centres Act, the Child Rights Act 2003(CRA). At the international level, we have the Declaration on the Rights of the Child of 1959, Convention on the Rights of the Child(CRC) 1989 ratified by Nigeria in 1991, United Nations Standard Minimum Rules for the Administration of Justice (Beijing Rules), United Nations Rules for the Prevention of Juveniles Deprived of their Liberty, United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), Administration of Juvenile Justice(Vienna Guidelines); The United Nations Rules for Non-Custodial measures (Tokyo Rule), African Charter on the Rights and Welfare of the Child 1990 which was ratified by Nigeria in 2000, These legal instruments made provisions on the rights, welfare and development of the child.

In addition to the above mentioned specific laws relating to child's rights, there are other international instruments wherein such rights can be garnered. They include: United

Declaration of Rights of 1948, the International Covenant on Civil and Political Rights of 1966 and the International Convention on Economic, Social and Cultural Rights of 1966.

The above laws *inter alia* make provisions protecting the rights of children, but the implementation of the laws is one of the problems thwarting the actualisation of the provisions of the laws on the child. The international laws mandate State parties to adopt measures to ensure the actualisation of the provisions of the laws. Nonetheless, the efficacy of the laws in some jurisdictions does not measure up to the recognition accorded the Treaties by member States. A typical example is the United Nations Convention on the Rights of the Child⁵²⁷ which witnessed massive acceptance by Member States, but is witnessing several setbacks in adoption and effective implementation in some countries including Nigeria.

i. Domestication/Adoption of Laws

One of the factors affecting the roles of the courts and correctional institutions in promoting the rights of the child stems from non-domestication of international laws and adoption of national laws. Domestication of international treaties is a *sine-qua non* in Nigeria, due to the provisions of the Constitution of the Federal Republic of Nigeria⁵²⁸ which provides for domestication of international treaties before it can become applicable in the Country, Section 12 provides: ‘No treaty between the Federal Government and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly’. This is a major challenge faced in applying laws in Nigeria. This challenge occasioned by this constitutional provision is anticipated, thus international laws such as, the CRC, directed that Member States should undertake to disseminate the provisions of the Convention and take all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the Convention. To this end, the

⁵²⁷ United Nations Convention on the Rights of the Child (UNCRC) 1989.

⁵²⁸ Constitution of the Federal Republic of Nigeria, 1999 (as amended), s 12.

CRA was enacted in Nigeria in 2003, as the domestication of the UNCRC which Nigeria signed since 1991 and the African Charter on the Welfare and Rights of the Child (ACRWC) signed in 2000.⁵²⁹ Other international Conventions also undergo the same process in Nigeria in order to become enforceable, while many other instruments are still awaiting the same process. The challenge is that treaties cannot apply straight to Nigeria upon ratification until after domestication by the National Assembly. This process of domestication usually takes so many years, and the application by the court of the treaty to citizens of Nigeria seeking legal redress will elude them for those number of years. An example is the gap in the number of years between the ratification of the UNCRC and the enactment of the CRA.

Again, it is usually the practice by many State Parties while domesticating to do some modifications. In some cases, the aspects removed by the draftsman may represent or affect a particular vital situation or persons. For instance, the provisions on disabled and handicapped children's rights as provided in the UNCRC⁵³⁰ and ACWRC⁵³¹ were not reflected in the CRA. This could affect this category of children who may need more special protection and care as a result of their mental and physical disability. For example, disabled children may need special facilities for effective access to education, vocational training, health care services, rehabilitation services, high way and public facilities, and other services to which they may want to have access for their development and welfare. The plight of this group of children may also be compounded by the social factors affecting the disabled child, who is often abandoned or given less attention by parents, guardians and society at large in the area of education and other spheres of life. These reasons and more may warrant legislative attention for the recognition of the specific needs of the disabled children. To that end, it is submitted that some omissions or modifications often made by State Parties while domesticating treaties

⁵²⁹ Modelled after the UNCRC but tailored to suit or accommodate the African socio-economic and cultural aspects of the child's welfare interest.

⁵³⁰ CRA ss. 15(7) & 178(8).

⁵³¹ ACRWC 1990, ss 277& 15(7).

may affect the rights of some people, for it is only when there is a legal framework addressing a particular situation or persons, that the court can apply such laws to the given situation or persons in question, and in this case to the specific rights of the disabled child.

Apart from non-domestication of International treaties, similar procedure is also required with respect to national laws concerning children in Nigeria. Matters relating to children are neither in the exclusive or concurrent list.⁵³² The legal implication is that States make laws concerning child welfare and justice in Nigeria. To that end, States will adopt and adapt laws made at the national level with respect to children before it can be enforced in the State. CYPA which was the first law that dealt with child justice, child welfare and the establishment of the juvenile courts⁵³³ in Nigeria was adopted or enacted into law by States in the Federation to govern juvenile justice administration in their various States. This was after being first enacted in 1943 by the British Colonial Government for the application in any part of the Protectorate of Nigeria on the order of the Governor-in-Council. It was specifically enacted for Lagos in 1946 and was extended to the Eastern and Western Regions of Nigeria in that year. A very similar law was enacted for the Northern Region of the Country in 1958. On the introduction of a State structure in the Country, Lagos State (in common with many others) enacted its own Children and Young Persons Law which is almost identical to the 1943 Legislation.⁵³⁴ This enabled the law to become enforceable in all the States of the Federation.

The CRA which came later was a huge development on the rights and welfare of the child, having contained comprehensive provisions on the rights and welfare of the child. It is a Federal legislation that only applies directly in the Federal Capital territory, while States are

⁵³² CFRN,1999(as amended) s 4(7)(a&b).

⁵³³ CYPA, s 1.

⁵³⁴ I Okagbue, *Children in Conflict with the Law: the Nigerian Experience* (Lagos: Institute of Advanced Legal Studies,) p 2.

at liberty to adopt or enact the law before it can become applicable in the various States. Presently, many States (about 27) have adopted the CRA as laws applicable in the State; an example is Child Rights Act of Lagos State 2007 which repealed the Children and Young Persons Law of Lagos State⁵³⁵, and the Anambra State Child Rights Law 2004, which also repealed the Anambra State Children and Young Person's Law. However, some States especially those in the North, where provisions of the CRA conflicts with customary and religious practises prevalent in those areas clamped down the adoption of the CRA in their States. This fact is gleaned from the statement made by the Supreme Council for Sharia in Nigeria as follows: ‘ ‘Any law that seeks to give an illegitimate child the same rights as a legitimate one and an established court (Family Court) that ousts the jurisdiction of a Sharia Court on all matters affecting the children, is unacceptable to Muslims’^{.536}

The implication of the above is that the provisions of the CRA which is a comprehensive legislation on the interest, protection, development, welfare of the child, and which provides a permanent special child justice system at the Family Court will elude the children in those States. It also means non-conformity with international standards on the rights of the child for children in those States. Against this backdrop, it is submitted that issues relating to children should be made a national interest by including it in the exclusive list to attract uniform attention and application of laws on all children. It will also enable courts and correctional institutions to promote the rights of every Nigerian child, irrespective of his or her State of origin or residence.

ii. Implementation of Laws

The next impediment after adoption of laws is implementation of the laws adopted. Lack of implementation of laws in Nigeria has always been prevalent. The Child Rights Act can be

⁵³⁵ CRL of Lagos State, 2007 s. 263.

⁵³⁶ Muslims Council in Nigeria Protest Child Rights Act, <<http://www.allafrica.com/stories/20050829.html>>. <<http://religion clause.blogspot.com 2005/08/muslim council Nigeriaprotesthtm>>1. Accessed on 2 march, 2018.

used as an illustration of this view. The provisions of the CRA can better be described to be in theory rather than in practice. The non- establishment of Family Court in States for the purposes of hearing and determining matters relating to children as provided in the CRA⁵³⁷ as well as correctional institutions for rehabilitation, reformation of child offenders and child victims in many States that adopted the CRA, is a clear indication of lack of implementation. This is clearly a gross neglect on the part of government to ensure implementation of the law so ratified. It is seriously a constraint to the promotion of child's rights as non-implementation of the CRA surely affects the role of the courts towards the promotion of the rights of the child. This is due to the fact that the Family Court which is created by the CRA under the child justice system to ensure the compliance of the philosophy of child welfare and justice has not been established and therefore not functional. The question that readily comes to mind is: how can child rights and welfare be protected and promoted without the existence of the Family Court? The Court can only play its role only when it is established.

Further still, the CRA requires the Family Courts to be at two levels: the Family Court as a division of the High Court at the High Court level; and the Family Court at the Magistrate level,⁵³⁸ which is a better arrangement than the juvenile courts established under the Children and Young Persons Act which is just at the magistrate court level only. Nevertheless, there is a controversy shrouding the establishment of the Family Court at the High Court level as opposed to the Family Court at the Magistrate Court. The Constitution empowers the National Assembly and the Houses of Assembly of States with the inherent powers to make laws establishing Magistrate Courts and not High Courts.⁵³⁹ The Family Court at the High Court level is not designated as a superior court of record in the Constitution, like the State High Court and other superior Courts. The Superior courts were

⁵³⁷ CRA, s 149.

⁵³⁸ *Ibid*, s 150.

⁵³⁹ CFRN, 1999,(as amended) s 6(1)& (5).

mentioned in the Constitution for the Federation and for the State. According to the Constitution, the courts so specified as the superior courts of records in Nigeria⁵⁴⁰ include: the Supreme Court of Nigeria; the Court of Appeal; the Federal High Court; the High Court of the Federal Capital Territory, Abuja; a High Court of a State; the Sharia Court of Appeal of the Federal Capital Territory (FCT); a Sharia Court of Appeal of a State; the Customary Court of Appeal of the Federal Capital Territory, Abuja; and a Customary Court of Appeal of a State. Furthermore, the CRA provides⁵⁴¹ that appeals shall lie to the Court of Appeal on any matter decided by the Family Court at the High Court level in the same manner as appeals lie in respect of matters decided by the High Court of the State⁵⁴², while the Constitution provides that the Court of Appeal shall have jurisdiction to the exclusion of any other Court of Law in Nigeria, to hear and determine appeals from the Federal High Court, the High Court of the Federal Capital Territory, High Court of a State, Sharia Court of Appeal of the Federal Capital Territory, Sharia Court of Appeal of a State, Customary Court of Appeal of the Federal Capital Territory, Customary Court of Appeal of a State and from decisions of a court martial or other tribunals as may be prescribed by an Act of the National Assembly⁵⁴³, and the National Industrial Court which was added to the list through the third alteration of the Constitution in 2011, and no other. To this end, it is submitted that there is need for constitutional amendment to recognise and upgrade the Family court at the High Court level as a superior court and allow appeals from the Family court to go to the Court of Appeal as was done with the National Industrial Court.

Another challenge confronting the courts in the promotion of the rights of the child as observed by the researcher during the visit to the Family Courts mentioned earlier is lack of effective Family court. The Family Courts presently existing in some States are not as

⁵⁴⁰ *Ibid*, s. 6(1)(2) & (3).

⁵⁴¹ CRAs 152(5).

⁵⁴² *Ibid*, s 153(5).

⁵⁴³ *Ibid*, s.240.

intended by the CRA. The current arrangement is similar to the Juvenile court setting under the CYPA. The proceedings are either held in the same building but in a different room from where the regular court proceedings are held or in the same room at different days or times or at chambers of the magistrate or judge. Under this arrangement, regular Courts and the Family courts are manned by the same judicial officer who has little or no specialisation or professional competence on the welfare and best interest of the child. It also implies that the assessors may not be present in some of the proceedings involving the child. Consequently, the procedure in the court may not be conducive for the child to participate fully in his or her trials as required by the CRA. This cannot be said to be a good arrangement for an effective administration of the child justice system, and definitely will not advance the goals of rehabilitation and reformation as provided in the CRA. In view of that, section 215 of the CRA⁵⁴⁴ provides:

The proceedings are to be conducive to the best interest of the child and is conducted in an atmosphere of understanding which allows the child to participate therein and express himself freely: the reaction taken is always in proportion not only to the circumstance and the gravity of the offence but also to the circumstance and needs of the child and the needs of the society.

The above situation has given rise to agitations for a permanent well-structured Family Court with permanent and specialised staff. This delay is attributable to lack of commitment on the part of government towards the implementation of the CRA. This is lamentable considering the fact that children should be given maximum protection through legislative and other

⁵⁴⁴ CRA 2003, s 215(1).

means as required under international laws. If the CRA is implemented, the Family Court as provided in the CRA will have the opportunity to⁵⁴⁵

hear and determine civil proceedings in which the existence or extent of a legal right, power, duty, liability, privileged, interest, obligation, claim in respect of a child is in issue; and any criminal proceeding involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a child, against a child or against the interest of the child.

Again, it will help to address or resolve the prevailing confusion with respect to the appropriate court to try a child offender or victim. Thus, where Family Courts are functional, the police will have no excuses for taking children to the regular courts in the guise that there are no Functional Family Courts, or that both proceedings are handled by the same judicial officers in the same court or environment. In addition to that, child victims languishing in streets, prisons and other unwholesome places will have the opportunity of being handled by the Family Courts for appropriate treatment. To this end, it is our position that government should show commitment to implementation of the CRA since Family Court is a very important feature in the pursuit for child justice and welfare by providing adequate structures and specialised staff.

The personnel of the Family Court which includes the Judges and Magistrates of the Family should be specialists on areas of child interest and welfare as provided by the CRA. This is one of the new innovations introduced by the CRA. Non-adherence to this, will obviously lead to lack of expertise and infusion of formal and technical procedures into the

⁵⁴⁵ *Ibid*, s 151.

court by the Judges and Magistrates handling both the regular courts and the Family courts simultaneously.

Specialisation and competence in areas of child interest and welfare can only be improved by continuous and daily sitting of Judges and Magistrates in the Family Court without interruptions or intermittent posting to other courts. It is only when specialisation and training are guaranteed in the Family Court for judges and magistrates, that they can be in the best position to handle matters under the jurisdiction of the court judiciously. Furthermore, to achieve maximum effectiveness from the judges, job progression to the Court of Appeal and Supreme Court from the Family Court should be considered. This permanent and better structured position will encourage the availability of specialized child welfare Judges at the Appeal Courts for the entertainment of Appeals from the Family courts. This will curb the problem of sending cases on Appeal to non-specialised judges, which will be tantamount to another barrier to child justice and welfare. The same position applies to the assessors, development officers, social welfare workers, probation officers, specialised police officers and other personnel working in and with the court. To this end, the CRA provides that the personnel of the court shall be afforded professional education, in-service training, refresher courses and other modes of instruction to promote and enhance the necessary professional competence they require.⁵⁴⁶ In other words, personnel of the court ought to be specially recruited, adequately trained and permanently employed to work in the court without transfer to other government ministries and departments.

In addition to that, there is also the need for the provision of facilities for effective work, regular refresher trainings, adequate resources, and effective supervision by the designated authority. Adequate human and material resources are indispensable at the Family Court and Corrections. For example, in the Family Court, certain information on the status of

⁵⁴⁶ CRA, s 154(1).

the child should be obtained and presented to the court before the commencement of the child's matter. Information such as: home and school environment, and health conditions of the child and other factors are usually relevant and considered by the court. To this effect, the CRA⁵⁴⁷ provides thus:

The appropriate officers shall, before a case, other than all that involving a minor offence, is so finally disposed of by the Court- properly investigate: the background of the child; the circumstances in which the child is living, and the conditions under which the offence has been committed; and inform the court of all relevant facts, relating to the child, including his social and family background, school career and educational experience, arising out of the investigation conducted.

The above information which goes a long way in assisting the court in its role is usually gathered by the specialised personnel (social welfare workers). The assessors on the other hand sit with the Judge and Magistrate during proceedings, and without them the Court cannot be properly constituted. Their absence in court proceedings amount to relieving the daily activities of the court, hence the need for a permanent job arrangement at the Family court and approved institutions instead of operating from other government ministries and department where they also work.

These outlined measures ought to be put in place; otherwise what is referred to as the Family Court would barely be a replicate of the pattern and arrangement existing in the juvenile courts under CYPA or worst still, a cloaked adult formal trial at the regular courts. Unfortunately, some of these features are lacking presently in the Family Court in States that have established it.

⁵⁴⁷ *Ibid*, s 219.

It is submitted that through observation and information obtained during visits previously mentioned, Anambra State government has succeeded in enacting the CRA as a State Law, yet there are no permanent and separate buildings for the Family Court, insufficient specialised personnel, there is just one new correctional institution, and the same judicial officers man the regular court and Family Courts. There are Family Courts in every magisterial district in the State, though not close to the ideal. The Admin Magistrate in every magisterial district is the Family court as well as a regular court, same position apply at the high court. The Magistrates sit as a Family Court in chambers with assessors from the ministry of social welfare, children and women affairs. However these assessors are inadequate and would have to combine their work at the government ministry with Family court sitting. There is only one correctional centre situate at Abagana in Anambra State for children in need of care and protection, child offenders, and children beyond parental control are to rehabilitated. The facility is new and has measures put in place for skills acquisition, counselling and medical care for inmates, though needs more measures. There are few other homes for disabled, orphans, and children beyond parental control established by Non-governmental organisations, individuals and groups which partner with the government.

Lagos State which is said to have made remarkable strides in the establishment of the Family Courts is not also without some shortfalls. The Child Rights Law (CRL) of Lagos State, 2007 created the Family Courts at the High Court level and Magistrate Court level. The Family Court was set up to replace juvenile courts established in 1948 in Lagos.⁵⁴⁸ According to Ogunniran and Nwanna, in a study conducted in Lagos State on Family Courts in 2016, it was revealed that the composition of the Family Courts constituted a problem in the administration of the CRL because the assessors were sometimes absent from court because of their dual work in the government ministries as development officers and at the Family

⁵⁴⁸ CRL, Lagos State, 2007, s 138.

Court as assessors. Another reason proffered for the absence to court sittings was poor remuneration.⁵⁴⁹ The study also showed that the structure of the Courts constituted a challenge, as the courts were not modelled to encourage privacy. There are no courts in accordance to the standard and precepts of the provisions of the CRA⁵⁵⁰ which should be conducive for the child and encourage child participation and privacy. The study also revealed inadequate resources and funding, lack of quality personnel, and lack of institutions. A recent visit to the Family Courts in Lagos State this 2018 by the researcher corroborated these observations.

It is therefore submitted that, serious commitment ought to be shown by Nigerian Government in the child justice administration in order to comply with the obligations assumed under the UNCRC and ACRWC as a member State. It is a great step to incorporate international standards on the rights and welfare of the child, as well as on child justice administration by domesticating the Convention as the CRA. However, it does not stop at that, implementation is key to accomplishing the compliance. This can be kick-started by providing adequate human and material resources. In the absence of these basic features, the court and even the correctional institutions can barely perform their roles in the promotion of the rights of the child, and it will obviously have a devastating effect on Nigerian children, whether as children in conflict with the law; children in need of care and protection; or children beyond parental control, or as a Nigerian child generally.

The child justice administration is very essential. This is because challenges such as poverty in the family, illiteracy, family and matrimonial problems, health challenges, malnutrition and hunger, urban migration, parental unemployment, lack of basic public amenities, early negative exposures associated with child labour, economic challenges thrive

⁵⁴⁹ I Ogunriyan, C N Nwanna, *op cit*, p 94.

⁵⁵⁰ CRA, s149.

in Nigeria. It is regrettable that a combination of all these factors and more, often lead to child delinquency, which can be an indication of lack of protection and care for children by the society at large. According to Bella *et al*⁵⁵¹ in spite of the enormous natural endowment of the country, development has been slow due to poor public fund management, and serious poor governance resulting in decaying infrastructure, stagnant economy, and corruption and wide spread poverty. Consequently, a life of want, family instability, exposure to physical, sexual and emotional abuse has been associated with delinquent behaviour; and so a large number of Nigerian children are expected to be involved with the juvenile justice system.⁵⁵² Without an effective child justice administration under the CRA, the child offender may be tried in the regular criminal justice administration which is not favourable to him or her.

Free legal aid services provided by the CRA is a very important provision considering the low financial class of the people or children who fall into delinquency and are brought before the court. This intervention will assist to restrain some of the excesses of the police and also project the voice of the child who may be lured into delinquency. With respect to correctional institutions, the CRA promotes establishment of correctional institutions that suits all children needing treatment for reformation and protection. The possibility of having children in the justice system for institutional care is apparent. Child offenders negatively influenced by unfavourable environment and other vice and led into delinquency exist in the society as noted earlier. There are also children living in the streets without any means of livelihood and requiring serious health care and protection, which also could be institutionalised and rehabilitated. Non-establishment of the approved institutions as a result of non-implementation of the law will affect the children; especially child offenders who

⁵⁵¹ T T Bella, O Atiola, O O Omigbodun, 'Children Within The Juvenile Justice System In Nigeria: Psychopathology And Psychological Needs', *Annals of Medicine Postgraduate Medicine*, 2010 June; 8(1) 34-39)3.

⁵⁵² *Ibid*, p 4.

would be incarcerated along with adults in prisons and may turn out to be recidivists. It will be a daunting task for the courts on the choice of measures of disposition to be adopted in helping affected children in the absence of approved correctional institutions.

In addition to child welfare and justice, implementation of the CRA will create employment for qualified individuals in the society at the Family court and correctional institutions and other sectors of the Child justice system. This feat will help to contribute to employment creation by government, as well as benefit parents and guardians and decrease the number of children in need of care and protection and child delinquency. In summary, the court and correctional institutions can barely exercise their roles in the promotion of the rights of the child, if the CRA is not implemented.

4.5.2 Conflicts in some Laws Relating to the Child

Another impediment to the roles of the court in the promotion of the rights of the child is the issue of conflicting provisions of laws, which may result to miscarriage or delay of justice.

First, the economic, social and cultural rights of the child under the CRA and other national and international instruments are not enforceable under the 1999 Constitution, having been provided under fundamental objectives and directive principles of State policy.⁵⁵³ However they are provided in the CRA as enforceable rights. Example of these rights provided under the CRA for the child include: every child has the right to free, compulsory and universal basic education and it shall be the duty of the Government in Nigeria to provide such education;⁵⁵⁴ every child is entitled to enjoy the best attainable state of physical, mental and spiritual health; every government in Nigeria shall: endeavour to reduce infant and child mortality rate; ensure the provision of necessary medical assistance and health care services to all children with emphasis on the development of primary

⁵⁵³ CFRN 1999(as amended), chapter two.

⁵⁵⁴ CRA, s 15(1).

healthcare; ensure the provision of adequate nutrition and safe drinking water; ensure the provision of good hygiene and environmental sanitation; combat disease and malnutrition within the framework of primary health care through the application of appropriate technology; ensure appropriate healthcare for expectant and nursing mothers; and support, through technical and financial means, the mobilisation of national and local community resources in the development of primary health care for children⁵⁵⁵. These rights are important for the development and welfare of the child, and will definitely reduce the number of child offenders and victims if executed by government. However, they are not provided by government. An example of such Constitutional provision under chapter two, which is in consonance with the provision of the CRA above is that government shall strive to eradicate illiteracy; and to this end shall as when practicable provide: free, compulsory and universal basic education; free secondary education; free university education; and free adult literacy programme.⁵⁵⁶

Bad governance, poor management of resources and corruption which is prevalent in Nigeria has made these principles mentioned above unrealisable for citizens of the country. Unless and until these economic and social rights placed under fundamental objectives principles are given attention by policy makers and government, children will continue to bear the brunt. In view of the fact that children form a good percentage of the population of the country, and the future lies with them, matters concerning them should not be relegated to the background by policy makers and government. It is submitted that every sector, private and public, government and other non-governmental organisations should take into consideration the best interest of the child in making policies that affect children. To this end, the UNCRC provides ⁵⁵⁷ ‘in all actions concerning children, whether undertaken by

⁵⁵⁵ CRA, s 13(1)(3).

⁵⁵⁶ The Constitution of the Federal Republic of Nigeria, 1999 (as amended), s 13.

⁵⁵⁷ CRC, 1989, Article 3(1) and 4.

public or private social welfare institutions, court of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration'. Accordingly, the UNCRC mandated that State parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Convention. With respect to economic, social and cultural rights, State Parties shall undertake such measures to the maximum extent of their resources. The CRA has similar provisions.⁵⁵⁸ This is a prompting of the necessity of the rights and benefits of the rights provided under chapter two of the 1999 Constitution, and the need for a more responsible government impacting the lives of citizens adequately in line with international best practises. Economic and social rights, just as the political and civil rights are very important for the welfare and development of the child and the nation generally.

To address this seeming conflict, Umozurike argued that legislations passed by the legislators can make justiciable certain limited rights under limited conditions. In so doing, these rights can be made meaningful and enforceable.⁵⁵⁹ It can also be argued that the enactment of the CRA by the legislator has made some of the rights provided under chapter two of the Constitution justiceable. The child can only ventilate these rights for the courts to make pronouncements on them if the CRA is implemented. In the same light, the Universal Basic Education Act,⁵⁶⁰ has made basic education in Nigeria compulsory for all Nigerian children. In *Ogugua v the State*⁵⁶¹ the Supreme Court in holding that a law by the National Assembly on the rights can be justiceable, held that the human rights provisions in the African Charter on Human and People's Rights are applicable and enforceable in Nigeria by rules of courts.

⁵⁵⁸ CRA, s (1)&(8).

⁵⁵⁹ U O Umozurike, 'The African Charter on Human and People's Rights and Economic, Social and Cultural Rights' vol 1, No 3, 2002. 110.

⁵⁶⁰ Universal Basic Education Act, Cap U LFN

⁵⁶¹ (1994) 9NWLR(PT 366) p 1.

The courts can also be proactive instead of being passive in interpreting the provisions of laws and the fundamental rights under the Constitution to make rights provided under chapter two justiciable, by giving elaborate interpretations to the fundamental rights provisions in the enforcements of rights by citizens. It is generally accepted that human rights are universal, inalienable, indivisible, interdependent, interrelated and mutually reinforcing. By universality it means they apply to all human beings without discrimination. They cannot be prioritised; that is, no group should be more important than the others. Human rights are interrelated for the full enjoyment of it by any group must of necessity involve the full enjoyment of it by others; without this correlation, none can be enjoyed in full.⁵⁶² For example, Right to life can be broadly interpreted to include good health and security of lives, and other civil and political rights should also be interpreted to accommodate the economic, social and cultural rights. In some jurisdictions, the court has given such broad interpretations. The Indian Courts has over the years created a relationship between part 111 of the 1950 Indian Constitution on fundamental rights consisting mainly of civil and political rights and part iv on directive principles of State Policy. The courts have reconciled them in such a way that the justifiability of one is understood within the framework of the other.⁵⁶³ Thus, in the Indian case of *Rathinam v Sharma*⁵⁶⁴ the Supreme Court of India held that the economic and political rights could be interpreted alongside the civil and political rights; and the right to life includes right to livelihood and good health. Similarly in *Olga Tellis v Bombay Municipal Corporation*,⁵⁶⁵ the Indian judiciary held that since the State has a duty to ensure the individual's means of livelihood, the denial of means of livelihood equally amounts to denial of right to life. Thus the court can interpret fundamental rights to

⁵⁶² U O Umozurike, *op cit*, p 108.

⁵⁶³ *Ibid.*

⁵⁶⁴ (1994) 3SC 394.

⁵⁶⁵ (1992) SC AIR p 1858.

accommodate the other rights, so that when a government may not legally be compelled to provide shelter, it can be compelled to respect the right of property by paying compensation for shelter destroyed or appropriated.

Again the Constitution permits any person who alleges that any of his or her fundamental right, is being or likely to be contravened to apply to a High Court in that State for redress.⁵⁶⁶ The CRA further adopted these fundamental rights provisions, but however provided for the Family court as a place of redress for all matters concerning children.⁵⁶⁷ Our position is that enforcement of child's rights should be entertained at the Family Court to enable the specialised Judge or magistrate handle the matter in the best interest of the child.

Another conflict is with the provisions of Matrimonial Causes Act (MCA)⁵⁶⁸ on matrimonial causes, custody and divorce cases. The MCA, empowers the State High Court to hear and entertain Matrimonial Causes which include custody and maintenance of the child.⁵⁶⁹ While the Child Rights Act also provides that matrimonial matters which includes the custody and maintenance of the child should be handled at the Family Court.⁵⁷⁰ The above provision of the CRA is in consonance with what is obtainable in some jurisdictions presently. It has been noted by authors that family law is one of the areas of law that increasingly uses special court, such as the Family courts.⁵⁷¹ This is attributed to the contemporary changes in marriage and divorce behaviour. Thus according to Garoupe et al:

More and more people are getting divorced. People are demanding quicker decisions. Growing number of children are affected by divorce

⁵⁶⁶CFRN, 1999(as amended), s 46.

⁵⁶⁷ CRA, s 3.

⁵⁶⁸Cap M7, LFN, 2004.

⁵⁶⁹*Ibid*, s 3.

⁵⁷⁰CRA, s 97.

⁵⁷¹ N Garoupa, N Jorgensen, P Vazquez, 'Assessing the Argument for Specialised Courts: Evidence from Family Courts in Spain' (2010) 24(1) *International Journal of Law, Policy and the Family*, 54 -56.

and their interest are paramount in family law. In civil law countries, the response to the higher rate of divorce and the consequential impact on an already congested court system has been the development of a network of specialised family courts.⁵⁷²

The need to separate family matters from other civil adversarial proceedings has long been recognised in many jurisdictions. For example, the first Family Court in the United States of America came into being in Cincinnati, Ohio in 1914.⁵⁷³ In Nigeria, the Family Court was ushered in by the CRA in 2003 for matters relating to children only. The Family Court is empowered by the CRA to have jurisdiction in all child welfare matters. It provides for custody and maintenance of the child as a matter concerning the child and the Family court should assume jurisdiction on that subject matter.

Again, the Constitution in its third alteration⁵⁷⁴ provides that the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil cases and matters connected with or related to child labour, child abuse, human trafficking or any other matter connected therewith or related thereto, while the CRA⁵⁷⁵ gives the Family Court exclusive jurisdiction in all civil matters involving children. There is need for harmonisation of the jurisdiction of the courts on this subject.

Another area that may raise confusion is the provision of correctional institutions in the CYPA and the CRA. The Children and Young Persons Act made provisions for remand homes, approved institutions and borstals.⁵⁷⁶ While the CRA provides for children attendance center or approved institution; children center, children residential center, children correction center, an emergency protection center, a special children correctional centre, and such other

⁵⁷²*Ibid.*

⁵⁷³ M Attah, *Family Welfare Law in Nigeria* (Benin City: Ambik Press Ltd, 2016) p 273.

⁵⁷⁴ Third Alteration of the Constitution of the Federal Republic of Nigeria, s. 254C(1)(i).

⁵⁷⁵ CRA, s. 149.

⁵⁷⁶ CYPA, s.

children institutions as may be established by the Minister.⁵⁷⁷ The purpose and the categories of children to be kept in these institutions as prescribed by the law differ.⁵⁷⁸ Though the provisions of the CRA ought to repeal that of the CYPA, it can only happen when the CRA is adopted and implemented in a State. There is need therefore for the implementation of the CRA, so as to abolish the existing correctional institutions and replace with the institutions under the CRA. This will enable the court make disposition measures in view of the provisions of the CRA, and not on the existing institutions created under the CYPA. This is because the approved institutions provided under the CRA are more encompassing, and envisage all children. They are more geared towards reformation and rehabilitation.

The conflicts identified above, could result to miscarriage or delay of justice, in promoting the rights of the child in some circumstances, especially on issues of jurisdiction. There is need for harmonisation of these provisions of the law, as justice delayed is justice denied.

4.5.3 Government Response

There are various government course that ought to be activated to enhance the roles of the court in promoting the rights of the child. Some of these have been mentioned in the course of our discussions earlier. For example, the adoption and implementation of the relevant laws applicable to children is the responsibility of the Federal and State government to take the positive steps necessary to achieve that by being committed to matters that concern children and ensure the provision of adequate facilities and human resources.

Specifically, the establishment of courts and correctional institutions which is a medium for the promotion and protection of the rights of the child, which ought to be put in place and made functional by government, is lacking in many States. Studies show that

⁵⁷⁷ CRA 2003, s. 249.

⁵⁷⁸ *Ibid*, s 250(1- 7).

institutional facilities for children in Nigeria are in very deplorable conditions. The States are finding it difficult to fund and build new facilities.⁵⁷⁹ In fact, some correctional institutions were described as more abusive than parental, thus more for exploitation rather than for training and development.⁵⁸⁰

Again, the child justice administration personnel such as the judges, magistrates, probation officers, assessors, supervision officers, development officers, social welfare officers, specialised police are not available or inadequate in various States, due to lack of funding, and commitment by the government . It was noted by Peter-Odili⁵⁸¹ as follows:

Nigerian problem is not that the absence of appropriate legislation, but the failure of the executive arm of government to make concrete investment geared towards putting in place the right policy and mechanisms for determination of the best interest of the child in specific situations. It is only in matrimonial causes that some jurisprudence has been developed. By s. 71(1) of the Matrimonial Causes Act, the court is enjoined in proceedings with respect to custody, guardianship, welfare, advancement of education of the children of the marriage, to regard the interest of these children as the paramount consideration and subject to this, the court is empowered to make such other in respect of these matters as it deems fit. The Fact that the proceedings for custody of children, the interests of the children must receive paramount consideration as has been consistently and uniformly emphasised in decided cases.

⁵⁷⁹ G Akinseye, *Juvenile Justice in Nigeria* (Abuja: Center for Socio-Legal Studies, 2009).

⁵⁸⁰ B Krisberg, *Juvenile Justice: Redeeming our Children* (Sage Publishers, 2005)

⁵⁸¹ M U Peter Odili, *Principles and Applications of the Best Interest of the Child Under the Law* (Lagos: Nigerian Institute of Advanced Legal Studies, 2013) p 25.

Economic crises resulting from bad governance and corruption have made the observance of the rights of a child to necessities impracticable for parents. This factor is the major cause of child delinquency. The existing system lacks focus on preventing juvenile delinquency, but are more focused on punishing delinquency. The prevention of juvenile delinquency through providing good economic and social environment, empowering parents, and provision of basic amenities and security for the citizenry that will enhance the welfare and development of the child is the role of government and policy makers. Securing children in the child justice system should be centred on the prevention of child delinquency which can be controlled through good policies on the welfare of citizens.

In addition to provision of amenities and institutions for child welfare, government should also ensure supervision and monitoring of the various institutions. Corruption in all sectors and non-respect to the rule of law has aggravated the plight of children. It is even worse, considering the fact that matters concerning children are not regarded as a matter of national interest; hence its non-inclusion in the exclusive list or the concurrent list. The role of courts and correctional institutions cannot be achieved without the enabling environment.

4.5.4 Cultural Constraints and Family Values

Customary and religious values constitute a major obstacle to the promotion of the rights of the child. First and foremost, the non-application of the CRA in some States in the North is linked to religious/cultural values, thereby denying children the benefits of the veritable provisions of the CRA. These values are in conflict with the provision of the CRA which provides that in every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration. Cultural values is also a major constraint in the effective implementation of the CRA in the FCT and the Child rights Laws

of States that have adopted the Act. Some of the provisions of the CRA that conflict with Sharia law which made States in the North to cease from adopting the Act are with respect to marriage, adoption, custody, and issues of inheritance and the establishment of the Family Courts.⁵⁸² On the issue of marriage, the Quran⁵⁸³ keeps the age of marriage at the age of maturity, while the CRA provides that a person less than eighteen years of age cannot contract a valid marriage.⁵⁸⁴ The provision in the Quran is a religious injunction which is also the custom in Sharia States. It is therefore a difficult task to change this practice. Adoption and custody are provided under the CRA. An order of adoption extinguishes any claim of the biological parents, and vests the adopter with all the rights, duties and obligations of the future custody, maintenance, supervision and education of the adopted child, while the Quran in chapter 3:4-5 and 50 provides the position of the protection of the legitimacy and paternity of a child under Islam. On Custody, the CRA provides that the court has the discretion to make such orders based on the consideration of the best interest of the child, having regards to the welfare of the child, while rules of custody is fixed under Sharia. Under Sharia, in the event of divorce or separation, the right to custody of children during the subsistence of the marriage is on the woman. The custody of a male child remains with his mother until he is matured and the female child until she gets married or the marriage is legally consummated. Where the mother loses custody due to some ascertainable circumstances, specified persons are entitled to the custody of the children.⁵⁸⁵ Under the CRA,⁵⁸⁶ the Family Court has the unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privileged, interest, obligation or claim of a child is in issue and any criminal proceedings involving or relating to any penalty forfeiture,

⁵⁸² A W Zakari, 'Child's Right Act: Its Adoption and Implementation' a paper presented at the FIDA Annual General Meeting in Abuja on 30/11/16, p7.

⁵⁸³ Chapter 4: 6 of the Quran.

⁵⁸⁴ CRA, ss 21& 22.

⁵⁸⁵ ⁵⁸⁵ A W Zakari, *op cit*, p9.

⁵⁸⁶ CRA, ss 15.

punishment or other liability in respect of any offence committed by a child. While under Sharia Law, Muslims of all ages, adult and children are subject to the tradition of Sharia Court in both civil and criminal proceedings. The CRA prohibits corporal punishment for the child and it conflict with cultural standards on child discipline. Protection of the child against the parents at the Family Court also conflicts with customary values.

Again, the plight of female children especially in rural areas is also embedded in customary values. The female children are denied economic and social rights to education, while the boys are trained despite the provisions of the law on non-discrimination by reason of sex.⁵⁸⁷ The customary law and practises governing inheritance and succession rights of female children are also wanting in most communities especially amongst the Igbos in Nigeria. This is also a clear case of discrimination based on sex. This is actually rooted from the fact that one of the sources of our Nigerian Law is customary law, and it has a great impact on members of the society. It is even more critical since customary law in Nigeria is patriarchal in nature and discriminates women and female children. Despite the fact that customary practices which are repugnant to natural justice ,equity and good conscience are to be abolished, some of those acts are still perpetrated against female children and women, because the perceptions of the act.

Before now, the courts ruled in some cases against the inheritance rights of the female child and women.⁵⁸⁸ Presently, the courts have been more proactive and overruled some of its decisions, for example the court held in *Ukeje v Ukeje*⁵⁸⁹ that the Igbo native law and custom which disentitles female children from sharing in their deceased father's estate is void and in conflict with the provisions of the Constitution and the African ACHPR. Similar position was held earlier in *Salami v Salami*, where it was held that the female child was entitled to her

⁵⁸⁷ CFRN 1999(as amended) s 42, and the provisions of all human rights instruments.

⁵⁸⁸ *Ugboma v Ibeneme*(1971) ENLR 251, *Uka v Ukama*(1963) FSC 184, *Ejiamike v Ejiamike* etc.

⁵⁸⁹ (2001) 14 WRN 31.

father's property on equal share with her brothers. The position in the north has been more liberal than in the East. Also in *Asika v Atuanya*,⁵⁹⁰ the court held that any custom which discriminates against women and female children, which disentitles them from inheriting their father's property is contrary to the provisions of the Constitution, which is the basic law of the land. The court stated that customary law cannot in any way render the Constitutional provisions nugatory. From the foregoing, it is commendable that the court is being progressive by making decisions in the best interest of the female child by abolishing obnoxious cultural practices or values. There is need therefore for violations or threat of violations of the rights of the child to be enforced, since that is the only way the court can promote the rights of the child through proactive decisions.

The practice of Female genital mutilation (FGM) in some communities which is a violation of rights to life, health, privacy, right to equal protection of the law among others is another aspect of bad cultural practices. According to T Yerima, FGM is deeply entrenched in socio-cultural practices in mostly all Geo-political zones in Nigeria, and is widespread among the poorly educated, low socio-economic and low social status group.⁵⁹¹ This view is supported by Obi Okafor, where he reiterated that in Nigeria, many incidents of gender based violence are not reported to the law enforcement agencies. The major reason for this is poverty since many of the victims of such crime come from the lowly background and may not even have the money for transport to police stations to make a report. He stated that where civil rights organisations and women advocacy groups like FIDA come in. He called on these groups to create a help desk at their various branches across Nigeria for purpose of receiving complaints from the victims of gender-based violence, their relatives or even

⁵⁹⁰ (2008) 17 NWLR (Pt 1117) 484.

⁵⁹¹ T F Yerima, 'Combating the Menace of Female Genital Mutilation within the Context of Criminal Law in Nigeria' Nigerian Law Journal, vol 19, No 2, 2016.

witnesses.⁵⁹² The legislators in some States are also proactive, making customs that are repugnant to natural justice ineffective through laudable laws. For example, there is the law to prohibit female circumcision and genital mutilation of 1999 in Edo State. The female genital mutilation (prohibition) Law, Bayelsa State, 2000, A Law to prohibit Girl-Child Marriage and Female Circumcision or Genital Mutilation in Cross River State, 2000, River State Schools Rights (parents, children and teachers) NO 2, 2005, and so many other laws like that in many States. However, the problem of implementation is usually the predominant factor.

The need for domestication and implementation of the Child Rights Act in every State in order to curb certain customary practices that are harmful to the child is imminent. A Functional Family court where child victims of customary practises can be brought will be a good step in the right direction. Again, when the CRA become known and practicable to all and sundry, a check on the perpetrators would become prominent, and the law enforcement agents, courts, social welfare officers, and correctional officers will carry out their work effectively. This is in consonance with the provisions of the African Charter on the Rights and Welfare of the Child which stated in Article 1(3) that any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall, to the extent of such inconsistency, be discouraged. The Charter further provided that State Parties shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular, those customs and practices prejudicial to the health or life of the child; and also those customs and practises discriminatory to the child on the grounds of sex or other status. It went further to state that child marriages and the betrothal of girls and boys shall be

⁵⁹² A ObiOkafor, 'Strengthening the Nigerian Legal Framework for the Effective Prosecution of Gender – Based Violence', an Article presented during the 2016 FIDA Nigeria Week at Abuja on the 28th November, 2016.

prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be eighteen years.⁵⁹³ Age of statutory marriage has been taken care of in the CRA, which can only take effect when a State adopts same, and when effective implementation is achieved, hence the need to address the problem of adoption of the CRA in the Northern States to protect children from marriages. On the other hand, part one of the schedules of the Nigerian Constitution, item sixty one which deals with the legislative powers of the National Assembly limits the powers of the National Assembly to make laws on marriages contracted under Islamic and customary law. Some Muslims may take cover under this provision to get married under custom to children, since no contrary law exist under Islamic law.

Another aspect of this journey is family values. This is because the child's life starts in the family, and family values impact his or her behaviour. The child largely depends on the parents and the other members of the family for survival and welfare. Thus while the court is exercising its role in the promotion of the rights of the child, it must be complemented by family roles which can be enhanced by social and economic roles by government and policy makers. The importance of the family as a social unit and the primary unit cannot be exaggerated, as treatment of children in most cases whether as delinquents or victims usually emanates from the home. The CRA recognises the importance of parents in the treatment of child offenders under the child justice system.⁵⁹⁴ A fusion of the roles of the family, government, civil society, courts, and corrections can get the welfare and best interest of the child promoted and actualised.

⁵⁹³ ACRWC 1990, Article 21.

⁵⁹⁴ CRA, ss 174(5) & 178(2).

4.5.5. Socio-Economic Constraints

Access to justice can be hindered by economic and social factors. The commonest hindrance to getting justice in Nigeria is poverty which translates to lack of funds to enforce the infringement of rights. According to Malemi, poverty is a reality in Nigeria and in Africa and the commonest hindrance to obtaining justice.⁵⁹⁵ Access to justice is the bedrock for the enjoyment of rights, without which it is impossible to ensure the realisation of any right. The effect of poverty is that the practical actualisation of the fundamental rights cannot be achieved where many are indigent. When parents are indigent, they cannot afford legal services for themselves and for their children. Equal access to court requires that citizens who are unable to hire the services of lawyers should be assisted by government with the provision of legal assistance. The 1999 Constitution and other laws make provisions for free legal services (Legal Aid) or financial assistance for the poor.⁵⁹⁶ Accordingly, the CRA provides that the Family Court will ensure legal representation of a child either by a legal practitioner of their choice or by the legal aid. Therefore in order to address the economic problem of poverty, accessible and functional legal aid scheme in a given legal system becomes the essential bedrock of the rights to access to justice. Children will benefit from the legal Aid services in a functional Family Court under the CRA. There is need for government to establish Family courts, as well as adequately fund the Legal Aid Scheme, otherwise the indigent people especially children will have no means of accessing the formal justice system or of enjoying their human rights.

⁵⁹⁵ E Malemi, *The Nigerian Legal System, Text and Cases*(3rd edn, Lagos: Princeton Publishing Co)p 420.

⁵⁹⁶ Legal Aid Act 2011, ss 36(6) & 46(4).

Another constraint is the problems of illiteracy and ignorance. Illiteracy and ignorance is prevalent in Nigeria, especially in the rural areas. Education enlightens and endows a person of the intellectual capacity to know his or her rights and when such rights are violated and to insist on the enforcement of his rights, quite unlike the illiterate and the ignorant. The rights of a person is valueless unless they can be enforced. The rights of the child can be protected and promoted only when such rights are enforced. Many parents are illiterate and ignorant and can hardly ensure the enforcement of the rights of their children. Many people in the rural area are absorbed in the daily rigours of the struggle for survival and do not know what their legal rights are, when they have a remedy for breaches, and how they can go about the enforcements. Many illiterate parents are afraid of the legal practitioners and the legal system and feel intimidated to access justice. The child is thus helpless without adequate measures of ensuring the protection of his or her rights.

In furtherance to the above, other constraints such as, the location of the court and the perception in some areas impede the promotion of the role of the courts. Many courts are located in the urban area and few legal practitioners live in the rural areas. People who live in the rural area find it difficult to travel to the urban area for legal matters due to some factors, such as lack of transport money, preference to have recourse to the traditional means, lack of information, among others. These factors serve as a clog to the enjoyment of the legal rights of children in the rural areas. There is need for proper awareness, education and enlightenment of the people of their legal rights and obligation and the procedures to follow in the enforcement of breaches of the rights.

In summary, it can rightly be submitted that, these constraints discussed above obviously impede the roles of the courts and correctional institutions in the promotion of

the rights of the child. The courts have been described as the hope of the common man, and correctional institutions correlate with the courts. Children being vulnerable have special rights for their welfare and development, which the court and corrections institutions should promote in the best interest of the child and the society in general.

CHAPTER FIVE

THE COURTS AND THE PROMOTION OF CHILD'S RIGHTS IN SELECTED JURISDICTIONS

5.1 South Africa

South Africa has ratified the United Nations Convention on the Rights of the Child and many other international instruments for the protection of the child. Under national laws, the rights of the child in South Africa is protected in the Constitution of the Republic of South Africa,⁵⁹⁷ the Children Act,⁵⁹⁸ the Children's Amendment Act⁵⁹⁹, the Criminal Law Amendment (Sexual Offences and Related Matters) Act,⁶⁰⁰ and the Child Justice Act.⁶⁰¹ The Constitution of South Africa provides bills of rights for every citizen of the country.⁶⁰² However, the bill of rights contains specific rights for children which include that every child has the right:

to a name and a nationality from birth;(b) to family care or parental care, or to appropriate alternative care when removed from the family environment;(c) to basic nutrition, shelter, basic health care services and social services;(d) to be protected from maltreatment, neglect, abuse or degradation;(e) to be protected from exploitative labour practices;(f) not to be required or permitted to perform work or provide services that (i) are inappropriate for a person of that child's age; or(ii) place at risk the child's well-being, education,

⁵⁹⁷The Constitution of the Republic of South Africa, 1986.

⁵⁹⁸ Children's Act 38, 2005.

⁵⁹⁹ Children's Amendment Act 41, 2007.

⁶⁰⁰ Criminal Law Amendment (Sexual Offences and Related Matters) Act 32, 2007

⁶⁰¹ Child Justice Act 75, 2008.

⁶⁰² Constitution, *ibid*, chapter two.

physical or mental health or spiritual, moral or social development;(h) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be -(i) kept separately from detained persons over the age of 18 years; and(ii) treated in a manner, and kept in conditions, that take account of the child's age;(j) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and(k) not to be used directly in armed conflict, and to be protected in times of armed conflict.

It went further to provide in subsection 2 and 3 that the best interest of a child is of paramount importance in every matter concerning the child. The inclusion in the Bill of Rights of a special section on the rights of the child was an important development for South African children. The reason is that South African children suffered under apartheid for many years, were detained without trial, tortured and assaulted; many faced discrimination in healthcare, education and other areas. Children need special protection because they are vulnerable members of the society. The recognition of these rights in the South African Constitution is commendable. The effect is that the political, civil, social, economic and social rights of the child are all guaranteed in the Constitution. The Constitution guarantees the essential rights for the survival of the child like rights to education; housing; and health

care, food, water, and social security among other rights.⁶⁰³ A 'child' is defined in the Constitution as a person under the age of eighteen years.

On the other hand, the Children Act,⁶⁰⁴ which is a law specifically for children, defines a child to mean a person under the age of eighteen years. The Act gave effect to the Constitutional rights of children to family care, social services, protection from maltreatment, neglect, abuse, degradation and states that the best interests of the child shall be of paramount importance in every matter concerning the child.⁶⁰⁵ The Act went further to provide the standards for best interest for determining care, protection and well being of the child which must be applied.⁶⁰⁶

Other objectives of the Act include: making provision for structures, services, and means for promoting and monitoring the sound physical, psychological, intellectual, emotional and social development of children; to strengthen and develop community structures which can assist in providing care and protection for children; to protect children from discrimination, exploitation and any other physical, harm; to provide care and protection to children who are in need of care and protection; to recognise the special needs that children with disabilities may have; to generally promote the protection, development and well being of children.⁶⁰⁷

The Act among other provisions provides for the child's right to participation, that every child has a right to participate in proceedings concerning the child, if the child is of such age, maturity and development as to be able to participate in any matter in an appropriate way. The views expressed by the child must be given due consideration. Most importantly, the Act allows the child access to court or through another person, unlike in

⁶⁰³ *Ibid*, ss 29, 26& 27.

⁶⁰⁴ Children's Act, *ibid*, s 1.

⁶⁰⁵ *Ibid*, s 2.

⁶⁰⁶ *Ibid*, s 7&9.

⁶⁰⁷ s 7.

Nigeria where children sue or defend through other persons only. To that effect, the Act provides that every child has the right to bring, or to be assisted to bring a matter to a court.⁶⁰⁸

On enforcement of rights; the Act empowers a child who is affected by, or involved in the matter to be adjudicated, or any person acting in the interest of the child, or on behalf of another person who cannot act in their own name, or anyone acting as a member of, or in the interest of a group or class of persons and any one acting in public interest; to approach the court, alleging that a right in the bill of rights or the Act has been infringed or threatened , and the court may grant relief, including a declaration of rights.⁶⁰⁹ The implication of this provision is that the child can approach the courts to enforce the breach of his or her rights by himself or through another person or through public interest litigation.

The Children's Act also provides for protection in cases of children such as custody and maintenance for children seeking care;⁶¹⁰ adoption; child abduction; child trafficking; children in need of care and protection; children with disability.⁶¹¹ The Act created the Children Court, and matters within the jurisdiction of the court, as well as legal representation of the child and the services of the legal Aid.⁶¹² To further ensure the protection of children, a national child protection register is to be kept. Provisions were also made for correctional institutions.⁶¹³

The Children Amendment Act provides for other protection measures such as, strategy concerning child protection, provision of designated child protection services, national norms and standards for child protection, designation of child protection organisation, existing child welfare organisation, withdrawal of designation, and reporting of

⁶⁰⁸ *Ibid*, s 14.

⁶⁰⁹ *Ibid*,s 15.

⁶¹⁰ Children Act, *ibid*, s 36-41.

⁶¹¹ *Ibid*, ss 281,228, 158,150& 11.

⁶¹² *Ibid* ss 42-44 & 55.

⁶¹³ *Ibid*, ss 111& 158.

child abuse or neglected child.⁶¹⁴ The Act also provides for the protection of victims of child labour and exploitation as well as child and youth care centres for the rehabilitation of children.⁶¹⁵

The interest of the child offender is protected under the Constitution and the Child Justice Act. Section 28(2) of the Constitution requires that the best interest of the child should be of paramount importance when dealing with any matter relating to children. The Child Justice Act⁶¹⁶ re-affirms this commitment by introducing a criminal justice system for children which take their individual circumstances into account. The Act provides for the special treatment of children in the child justice administration, which will contribute to safer communities, and encourage children to become law abiding and productive adults. The Act also prevents children from being exposed to the adverse effects of the formal criminal justice system by using, where appropriate, processes, procedures, mechanisms, services or options more suitable to the needs of children and in accordance with the Constitution. Furthermore, it protects the rights of the child as provided for in the Constitution.⁶¹⁷ These objectives are indications of the fact that the Child Justice Act was formulated with the intention of creating adequate protection for children.

The Act provides for apprehension of children in conflict of laws, but however states procedure for handling them. For example, where a police official has reason to believe that a child suspected of having committed an offence is under the age of ten years, he or she may

⁶¹⁴ Children Amendment Act 2007.

⁶¹⁵ *Ibid* ss 141 & 191.

⁶¹⁶ The Act was enacted to establish a criminal justice system for children, who are in conflict with the law and are accused of committing offences, in accordance with the values underpinning the Constitution and the international obligations of the Republic; to provide for the minimum age of criminal capacity of children; to provide a mechanism for dealing with children who lack criminal capacity outside the criminal justice system; to make special provision for securing attendance at court and the release or detention and placement of children; to make provision for the assessment of children; to provide for the holding of a preliminary inquiry and to incorporate, as a central feature, the possibility of diverting matters away from the formal criminal justice system, inappropriate circumstances; to make provision for child justice courts to hear all trials of children whose matters are not diverted; to extend the sentencing options available in respect of children who have been convicted; to entrench the notion of restorative justice in the criminal justice system in respect of children who are in conflict with the law; and to provide for matters incidental

⁶¹⁷ The Children Justice Act, *ibid*, s 2.

not arrest the child, and must, in the prescribed manner, immediately hand the child over to his or her parents or an appropriate adult or a guardian; or if there are no parents to a suitable child and youth care centre, and must notify a probation officer. It provides that a probation officer who receives notification from a police officer must assess the child not later than seven days after being notified. After assessing a child the probation officer in the prescribed manner may refer the child to the children's court or refer the child for counselling or therapy; or refer the child to an accredited programme designed specifically to suit the needs of the child; arrange support services for the child; arrange a meeting, which must be attended by the child, his or her parent or an appropriate adult or a guardian, and which may be attended by any other person likely to provide information for the purposes of the meeting; or decide to take no action.⁶¹⁸ The purpose of the meeting convened by a probation officer is to assist the probation officer to establish more fully the circumstances surrounding the allegations against a child; and formulate a written plan appropriate to the child and relevant to the circumstances. The written plan must specify the objectives to be achieved for the child and the period within which they should be achieved; contain details of the services and assistance to be provided for the child as prescribed; specify the persons or organisations to provide the services and assistance, as prescribed; and state the responsibilities of the child and of the parent, appropriate adult or a guardian. The probation officer must record with reasons, the outcome of the assessment and the decision made in the prescribed manner. In the event of a child failing to comply with any obligation imposed by the probation officer including compliance with the written plan, the probation officer must refer the matter to a children's court.⁶¹⁹

Section 10 of the Child Justice Act provides for a child that is ten but less than fourteen referred by a probation officer to a prosecutor. The prosecutor who is required to

⁶¹⁸ *Ibid*, s 9.

⁶¹⁹ *Ibid* .

make a decision whether or not to prosecute child must take the following into consideration: the educational level, cognitive ability, domestic and environmental circumstances, age and maturity of the child; the nature and seriousness of the alleged offence; the impact of the alleged offence on any victim; the interests of the community; a probation officer's assessment report; the prospects of establishing criminal capacity if the matter were to be referred to a preliminary inquiry, the appropriateness of diversion; and any other relevant factor. In proving the criminal capacity of the child, the inquiry magistrate or the child justice court must consider the assessment report of the probation officer. In addition to that an inquiry magistrate or child justice court may, on own accord, or on the request of the prosecutor or the child's legal representative, order an evaluation of the criminal capacity of the child in the prescribed manner, by a suitably qualified person, which must include an assessment of the cognitive, moral, emotional, psychological and social development of the child.⁶²⁰ Section 43(1)(d) of the Act states that the purpose of a preliminary inquiry is to establish whether the criminal matter should be referred to the children's court, since the child accused might be in need of care and protection. Section 50 of the Child Justice Act empowers the inquiry Magistrate to do so. It provides as follows

If it appears to the inquiry magistrate during the course of a preliminary inquiry that a child is in need of care and protection referred to in section 150(1) or (2) of the Children's Act, and it is desirable to deal with the child in terms of sections 155 and 156 of the Act or the child does not live at his or her family home or in appropriate alternative care; or the child is alleged to have committed a minor offence or offences aimed at meeting the child's basic needs for food and warmth, the inquiry magistrate may stop the proceedings and order that the child be

⁶²⁰ *Ibid*, ss 10 & 11.

brought before a children's court referred to in section 42 of that ACT
and that the child be dealt with under the said sections 155 and 156.

From the foregoing discourse it is clear that the South African Laws on the children are commendable. With the bill of rights in the Constitution and the rights and protection under the other laws, the rights of the child in South Africa will be said to be reasonably protected. The Court has a duty to interpret and apply these laws, and make the necessary orders for each category of children to be protected. There are other provisions for children in conflict with law, such as right to be released on bail, protection of children detained in police custody, placement in a child and youth centre.⁶²¹ The role of the courts in promoting the rights of the child in South Africa can be illustrated thus: in *S v Williams*,⁶²² a matter referred to the Constitutional Court by Cape of Good Hope Provincial Division of the Supreme Court, It is a consolidation of five different cases in which six juveniles were convicted by different magistrates and sentenced to receive a "moderate correction" of a number of strokes with a light cane. The issue is whether the sentence of juvenile whipping pursuant to the provisions of section 294 of the Criminal Procedure Act is consistent with the provisions of the Constitution. The Constitutional Court had to decide whether the sentence of juvenile whipping was unconstitutional. The court declared corporal punishment unconstitutional on the ground that it violates dignity and it violates the right not to be treated or punished in a cruel, inhuman or degrading way. It found that juvenile whipping violated the dignity of the juvenile as well as that of the person administering the whipping. The Constitutional Court declared section 294 unconstitutional. The effect of this is that whipping is no longer a punishment that the courts may impose. Again in *Government of Republic of South Africa and others v Grootboom and others*,⁶²³ 390 adults and 510 children were living in poor conditions in an informal squatter settlement where they had no water, sewage or

⁶²¹ ss 25, 28 & 29.

⁶²² 1995 ZACC 6, 1995 (3) SA 632.

⁶²³ 2001(1)SA 46(CC).

refuse removal services. When they left this settlement behind to live in shacks and shelters on privately-owned vacant land that had been earmarked for low-cost housing, the owner obtained an order to evict them. Their homes were bulldozed and burnt and their possessions were destroyed. After demanding temporary accommodation from the municipal government without success, the squatters asked the High Court to order the government to provide them with adequate basic temporary shelter or housing until they could obtain permanent housing, or basic shelter. Under the South African Constitution, the High Court found that the government was obligated to provide shelter to children if their parents could not, and that where this was the case the children's parents were entitled to accompany. The government appealed this decision to the Constitutional Court. The court considered section 26 of the Constitution, which gave everyone the right of access to adequate housing, and section 28(1)(c), which afforded children the right to shelter. The court held that Because the squatters' housing problem would not be resolved within a reasonably short time and the national housing program did not offer temporary accommodation, the Court concluded that the program violated the squatters' right to housing under Section 26 of the Constitution. The Court cautioned that a government program cannot ignore the immediate needs of those in desperate situations in order to focus on medium and long-term goals, and stated that the housing program must include reasonable measures to provide relief for "people who have no access to land, no roof over their heads, and who are living in intolerable conditions or crisis situations." The Court emphasized that civil, political, social and economic rights in the Constitution are all interrelated and mutually supporting, and that affording socio-economic rights to people enables them to enjoy their other rights. With respect to children's right to social services under Section 28 of the Constitution, the Court found that because children have a right to parental or family care, their right to "appropriate alternative care" from the government applies only where family or parental care is lacking. This means that the obligation to provide housing rests primarily with parents where children are in their care and with the government where children have,

for example, been removed from the home. The government does still have an obligation to ensure that children are protected within family care, however, which it does by passing laws and setting up enforcement mechanisms to ensure that children are protected from maltreatment. Notably, the Court analyzed the state's obligations in the light of international obligations binding upon South Africa, including the Convention on the Rights of the Child.

After the judgment, money was made available to the community from which zinc sheets, windows and doors were purchased. It was followed by the development of a National Housing Programme to expedite action in order to relieve the plight of persons in emergency situations with exceptional housing needs. In 2009, the government established a Housing Development Agency (HDA). The HDA was established to work with provinces, municipalities and private sector developers to double the country's housing delivery rate. By the end of the March 2009, South Africa was projected to have built 2.8 million houses since after the judgement, providing shelter to more than 13.5-million people. Some of the strategies used in South to promote the rights of the child are 'impact litigation'. The purpose of impact litigation is to bring cases before the court with the aim to effect broader changes in society and to have a lasting mark. It deters prospective offenders, acts as a check, and prompts the actors such government and institutions to play their roles. South Africa has made progressive advancements in its protection of children through the provision of the bill of rights in the constitution, laws, policies, measures and institutions for the protection and welfare of the child.

5.2 INDIA

India ratified the United Nations Conventions on the Rights of the Child⁶²⁴ in 1992, which recognises the rights to survival; right to protection; right to development; and right to participation. The Constitution⁶²⁵ is the fundamental law of the country and embodies most rights in the UN Convention on the Rights of the Child as fundamental rights as well as directive principles of State policy. The fundamental rights in the Constitution of India

⁶²⁴ UNCRC, 1989.

⁶²⁵ Constitution of India 2007.

confers on the State a primary duty of ensuring that all the needs of children are met, and that their fundamental human rights are protected. Breaches of fundamental rights according to the Constitution are enforceable at the court of law. The directive principles on the other hand lay down the guidelines the government have to follow. These are merely directives that not enforceable in court if violated. This is the same position in Nigeria; however the difference in India case is with respect to enforcement of rights is judicial activism. Thus, following judicial interpretation, many of the directive principles have now become enforceable through legal actions brought before the court. The courts in some landmark judgements has promoted children's rights which lead to Constitutional amendments as is in the case of the 86th Amendment to the Constitution that made right to education a fundamental right. Again, the court in *Shanti Star Builders v Narayan K Totame*⁶²⁶ interpreted the right to life to include right to food and a reasonable accommodation.

The fundamental rights that directly relate to children in the Constitution are: provision which requires the State to make special provisions for children to free and compulsory education for all children up to fourteen years in such manner as the State may determine, prohibits trafficking in persons including the child, prohibits child labour to the effect that children below fourteen years cannot work in any hazardous occupation or industry.⁶²⁷ The directive principle of State policy that directly relate to children are provision that direct that the State policies are directed towards securing the tender age of children, that State shall endeavour to provide early childhood care and education for all children until they complete the age of six years, and that it shall be the fundamental duty of the parent and guardian to provide opportunities for education to his child or ward.⁶²⁸

⁶²⁶ (1990) 1 SCC 520.

⁶²⁷ Constitution of India, *op cit*, Articles 15(3), 21, 23, and 24.

⁶²⁸ *Ibid*, Articles 39(a) &(b), 45, 51.

Aside the Constitutional provisions, the Indian government has taken several legal initiatives towards creating a protective environment for children. The Juvenile Justice (Care and Protection of Children) Act, 2000 and 2015 respectively, the Protection of Children from Sexual Offences Act 2012, Free Education Act 2009, Prohibition of Marriage Act, the National Plan for Action 2005, the National Policy for Children 1974 are some of the veritable laws for the welfare and protection of children. However, despite these legal interventions, there is an epidemic of gang rape of children going on in India, which even leads to death of victims in some cases. For example Asifa Band eight years was one of the victims that were drugged, gang raped and battered to death in Hindu Temple.⁶²⁹ The Juvenile Justice (Care and Protection of Children Act)⁶³⁰ provides as follows:

the Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including: (i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law; (ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.

The Act mandates central government, state governments, the board and other agencies to be guided by some fundamental principles while implementing the provisions of the Act. The principles are : principle of presumption of innocence, which means that any child shall be presumed to be of any criminal intent up to the age of eighteen years; principle of dignity and worth, which means that all human beings shall be treated with equal dignity and rights; principle of participation, which means that every child shall have a right to be heard and to

⁶²⁹C Charton, The Sun, 'A Nations Shame: The True scale of India's child rape epidemic and how 54 kids are abused everyday revealed' available at <<https://www.thesun.co.uk>>news> 2018. accessed 4/4/18.

⁶³⁰ Juvenile Justice (Care and Protection Act) 2015, s 1(4).

participate in all processes and decisions affecting his interest and the child's view shall be taken into consideration with due regard to the age and maturity of the child; principle of best interest, which means that all decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential; principle of safety, which means that all measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter; positive measures, which means that all resources are to be mobilised including those of family and community, for promoting the well being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerability of children and the need for intervention under the Act; principle of non-stigmatising semantics, which means or accusatory words are not to be used in the process pertaining to a child; principle of non-waiver of rights, which means that no waiver of rights of the child is permissible or valid whether sought by the child or person acting on behalf of the child, or a board or a committee and any non-exercise of a fundamental right shall not amount to a waiver; principle of equality and non-discrimination, which means that there shall be no discrimination against the child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided for the child; principle of right to privacy and confidentiality, which means that every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process; principle of institutionalisation as a measure of last resort, which means that a child shall be placed in institutional care as a step of last resort after making a reasonable inquiry; principle of repatriation as a measure of last resort, which means that every child in the juvenile justice system shall have the right to be united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act unless such restoration and repatriation is not in

his best interest; principle of fresh start, which means that all records of any child under the juvenile system should be erased except in special circumstances; principle of diversion, which means that measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.; and finally, principle of natural justice, which means that basic procedural standards of fairness shall be adhered to, including the right to fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under the Act.⁶³¹ It goes without saying that the rights of children in conflict with the law and children in need of care and protection and other categories of children, will be adequately protected if these principles are adhered to. The above listed principles cover every right of the child in a justice system and protect a child from harm and inhuman and degrading treatment in the system.

A child is defined in the Act as a person who has not completed eighteen years of age.⁶³² The Act also defines children in conflict with the law as a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.⁶³³ Children in need of care and protection includes a child :

(i) found without any home or settled place of abode and without any ostensible means of subsistence;

(ii) found working in contravention of labour laws for the time being in force or is found begging, or living on the street;

⁶³¹ *Ibid*, s 3.

⁶³² *Ibid*, s 1(12).

⁶³³ *Ibis*, s 1(13).

(iii) who resides with a person (whether a guardian of the child or not) and such person-

- (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child;
- (b) or has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out;
- (c) or has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person;
- (d) or who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee;
- (e) or who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child;
- (f) or who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed;
- (g) or who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts;
- (h) or who is found vulnerable and is likely to be inducted into drug abuse or trafficking;
- (i) or who is being or is likely to be abused for unconscionable gains;
- (j) or who is victim of or affected by any armed conflict, civil unrest or natural calamity;

(k) or who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage.⁶³⁴

The above definition is wider than what is contained in the CRA in Nigeria. The conditions of the child that renders him or her a children in need of care in the Indian jurisprudence as provided above is all encompassing and includes child victims of abuse, trafficking , labour, marriage, exploitation, and disabled children. It also includes children affected by armed conflicts or under any threat to life. It is commendable, since these child victims will be adequately protected under the law.

The Act established a juvenile justice board for exercising powers and discharging its functions relating with children in conflict with the law. The Board consists of a Magistrate and two social workers of whom at least one shall be a woman. The Act just like the CRA requires some level of specialisation and training. Thus, the Magistrate so appointed shall have at least three years experience, and have special knowledge or training in child psychology or child welfare. Similarly, no social worker shall be appointed as a member of the Board unless he has been actively involved in health, education or welfare activities pertaining to children for at least seven years or a practising professional with a degree in child psychology, psychiatry, sociology or law. The members of the board should be people who do not have past record of violation of human rights or child's rights; has not been convicted of an offence involving moral turpitude; has not been removed or dismissed from government service; has not ever indulged in child abuse or employment of child labour or any other violations of human rights or immoral act. The State government shall ensure that the induction training and sensitisation of all members including Principal Magistrate of the

⁶³⁴ *Ibid*, 13& 14..

board on care, protection, rehabilitation, legal provisions and justice for children, as may be prescribed, is provided within a period of sixty days from the date of appointment.⁶³⁵

In distinction with the composition of the Family Court under the CRA, the Indian Act allows the Board to act notwithstanding the absence of any member of the Board, and the order passed by the Board shall be valid, provided that there shall be at least two members including the principle magistrate present at the time of final disposal of the case or in making an order.⁶³⁶ The powers conferred on the board may also be exercised by the High Court and the Children's court when the proceeding come before them for trial or in appeal, revision or otherwise.⁶³⁷ The function of the board and responsibilities of the board to the child in conflict the law include: ensuring the informed participation of the child and the parent or guardian in every step of the process, protecting the rights of the child throughout the process, ensuring availability of legal aid for the child, providing interpreter or translator with adequate qualifications and experience, directing the Probation Officer, or in case a Probation Officer is not available to the Child Welfare Officer or a Social Worker, to undertake a social investigation into the case and submit a social investigation report within a period of fifteen days from the date of first production before the Board to ascertain the circumstances in which the alleged offence was committed, adjudicate and dispose of cases of children in conflict with law in accordance with the process of inquiry specified in section 14;(g) transferring to the Committee established in the Act for attending to children in need of care, matters concerning the child alleged to be in conflict with law but stated to be in need of care and protection at any stage, thereby recognising that a child in conflict with law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved;(h) disposing of the matter and passing a final order that includes

⁶³⁵ *Ibid*, s 4.

⁶³⁶ s 7(3).

⁶³⁷ s 8(2)

an individual care plan for the child's rehabilitation, including follow up by the Probation Officer or the District Child Protection Unit or a member of a non-governmental organisation as may be required;(i) conducting inquiry for declaring fit persons regarding care of children in conflict with law;(j) conducting at least one inspection visit every month of residential facilities for children in conflict with law and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government;(k) order the police for registration of first information report for offences committed against any child in conflict with law, under this Act or any other law for the time being in force, on a complaint made in this regard;(l) order the police for registration of first information report for offences committed against any child in need of care and protection, under this Act or any other law for the time being in force, on a written complaint by a Committee in this regard;(m) conducting regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of such a child to the observation home; and any other function as may be prescribed.⁶³⁸

Once a child in conflict in law has been apprehended, he or she will be placed under the charge of the special juvenile police unit or designated child welfare police officer who shall within twenty four hours produce the child before the Board. The parents shall be informed as soon as possible after apprehending the child. The probation or a child welfare shall also be informed for preparation and submission within two weeks to the board a social investigation report containing information regarding the antecedents and family background of the child and other material circumstances likely to be of assistance to the board for making inquiry.⁶³⁹ Where a child alleged to be in conflict with the law is produced before the Board, the Board shall hold an inquiry in accordance with the provisions of the Act and pass

⁶³⁸ *Ibid*, s 8(3).

⁶³⁹ *Ibid*, s 13.

orders as it deems fit under sections 17 & 18. Which provides that the Board can refer the child to the Committee constituted under the Act if the child is found to be in need of care and protection. Secondly, the board can if the child has committed an offence order transfer of the trial of the case to the Children's court or make other orders. The orders include to: allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian; direct the child to participate in group counselling and similar activities; order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board; order the child or parents or the guardian of the child to pay fine: provided that in cases the child is working, it may be ensured that the provision of any labour law for the time being in force are not violated; direct the child to be released on probation of good conduct and place under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years; direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years. Furthermore, the Board may direct the child to be sent to a special home, for such period not exceeding three years as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home.

⁶⁴⁰ In addition, The Board may pass orders that the child should attend school, vocational training, attend a therapeutic centre or prohibit the child from visiting ,frequently or appearing at a specific place, and undergo a de-addiction programme. The board is required to ensure fair and speedy inquiry, and steps to be followed to be followed to achieve the

⁶⁴⁰ *Ibid*,s 18

speedy trial was also provided in the Act.⁶⁴¹ The Children's Court takes over after the receipt of preliminary assessment by the Board and shall determine the procedure to be taken for the child. The Children's Court shall also ensure that the final order with regard to a child in conflict with law shall include an individual care plan for the rehabilitation of the child, including follow up by the probation officer or the District Child Protection Unit or a social worker. The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail: Provided that the reformatory services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety. The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form. The reports shall be forwarded to the Children's Court for record and follow up, as may be required. The Act prohibits sentencing to death or life imprisonment for children in conflict with the law without the possibility of release.⁶⁴²

The procedure for the children in need of care and protection is different. Thus the Act established a Child Welfare Committee for exercising the powers and to discharge the duties conferred on the Committee in relation to children in need of care and protection under the Act.⁶⁴³ The Committee shall have a chairman and four other members, of which at least one shall be a woman and another, an expert on the matters concerning children.

Professionalism with a degree in child psychology or psychiatry or law or social work or

⁶⁴¹ *Ibid*, s14 (5).

⁶⁴² *Ibid*, ss 19 & 21.

⁶⁴³ *Ibid*, ss 29 & 30.

human development as well as practice for at least seven years is required.⁶⁴⁴ The Committee shall have the authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as provide for their basic needs. The Committee work with child welfare officers or probation officers, district protection unit or non-governmental organisations and the State government.

Any child in need of care and protection may be produced before the Committee by any police officer or special juvenile police unit or a designated Child Welfare, Police Officer or any officer of District Child Protection Unit or Inspector appointed under any labour law for the time being in force; any public servant; child line Services or any voluntary or non-governmental organisation or any agency as may be recognised by the State government; Child Welfare Officer or Probation officer; any social worker or a public spirited citizen; by the child himself; or any nurse, doctor or management of a nursing home, hospital or maternity.⁶⁴⁵ This provision is more elaborate when compared to the provision of the CRA with respect to the same subject matter. This provision will give room for many children in need of care and protection to be brought before the Committee for appropriate attention. It is even more laudable since the child can present himself or herself before the court.

The Protection of (Children from Sexual Offences) Act is another law that protects the rights of the child in India. The Act protects children from offences of sexual assault, sexual harassment and pornography and provide for the establishment of special courts for trial of such offences. The Law was made pursuant to section 15 of the Constitution that empowers the State to make special provisions for children. The Act defines a child as a person below eighteen years.⁶⁴⁶ For the safety of the child, the statement of the child is to be taken in the presence of parents or any other person in whom the child has trust or confidence. The police shall while examining the child, ensure that the child at no point in

⁶⁴⁴ *Ibid*, s 27.

⁶⁴⁵ *Ibid*, s 31.

⁶⁴⁶ The Protection of(Children From Sexual Offences) Act 2012, s 1.

time come in contact in any way with the accused.⁶⁴⁷ The Act established a Special Court in every district to try offences under the Act for speedy trials.⁶⁴⁸ It is our submission that this provision is appropriate in view of the normal position of many matters jostling for attention at the regular courts, resulting to cases to delay of cases. Sexual offences ought not to be delayed to enable the victim recover from the degrading act. Nigeria should emulate this measure from India for the best interest of the child and society as a whole. Speedy trials of sexual offences in special courts will drastically reduce the prevalence of the offence.

The court has a role to protect the child by recording his or evidence within a period of one month, complete trial as far as possible within one year, ensure that the child is not exposed to the accused, may record the evidence of the child through video covering or single visibility mirrors or curtains or any other device, try cases in camera and in the presence of the child and any other person in whom the child has trust or confidence, take the assistance of an interpreter if the child has a mental or physical disability, take the assistance of a special educator or an expert in that field to record the evidence of the child.⁶⁴⁹

It is submitted that with the tremendous growth of statutory interventions in India presently, the role of the Indian judiciary and the scope of judicial interpretation have expanded remarkably. The court play an important role in the protection of fundamental rights of the citizen. Judicial Activism emerged as tool for protecting Rights of the Children including protection from sexual exploitation, child trafficking, child abuse etc. This can be seen in the way and manner the court has interpreted the rights provided under the directive principle to fall within the purview of fundamental rights. *In Sheela Barse v. Union of India*⁶⁵⁰, social worker took up the case of helpless children below age of sixteen illegally detained in jails. She petitioned for the release of such young children from jails, production

⁶⁴⁷ *Ibid*, s 24.

⁶⁴⁸ *Ibid*,s 28.

⁶⁴⁹ *Ibid* ,s 37.

⁶⁵⁰ AIR 1987 SC 177.

of information as to the existence of juvenile courts, homes and schools and for a direction that the District judges should visit jails or sub-jails within their jurisdiction to ensure children are properly looked after when in custody. The Court observed that children in jail are entitled to special treatment. Children are national assets and they should be treated with special care. The Court urged the setting up of remand and juvenile homes for children in jails. In public interest litigation of *Peoples Union for Democratic Rights v. Union of India*⁶⁵¹, the Supreme Court held that though the Employment of Children Act, 1938 did not include the construction work on projects because the construction industry was not a process specified in the Schedule to the Act, yet, such construction was a hazardous occupation and under Art.24 children under 14 could not be employed in a hazardous occupation. The right of a child against exploitation under Art.24 was enforceable even in the absence of implementing legislation, and in a public interest proceeding. In *M.C. Mehta v. State of Tamil Nadu*⁶⁵², the Supreme Court directed that children should not be employed in hazardous jobs in factories for manufacture of match boxes and fireworks, and positive steps should be taken for the welfare of such children as well as for improving the quality of their life. The Indian Judiciary stands out in the promotion of human rights generally and that of child rights in particular. Nigerian judiciary should tap into the Indian jurisprudence and become proactive and progressive in matters of rights in order to promote child's rights in Nigeria.

5.3 United Kingdom (UK)

United Kingdom has ratified the UN CRC. At national level, several legislations cover child protection in the UK. However, not all of them cover all parts of the UK (England, Wales, Scotland, Northern Ireland) in one legislation. These laws include but not limited to Children and Young Person's Act 1933, Children Act 1989, Human Rights Act 1998, Children Commissioner for Wales Act 2001, Education Act 2002, Children's Act 2004, Children and

⁶⁵¹ 123 CTR 516.

⁶⁵² AIR 19993 SC 2173.

Adoption Act 2006, The Children and Young Persons Act, 2008, Education Act 2011, Sex Offenders Act 1997, Sexual Offences Act 2003, Sexual Offences Order 2008, Female Genital Mutilation Act 2004, Domestic Violence, Crime and Victims (Amendment) Act 2012, Family Court Act of 1984.

The Human Rights Act incorporates the European Convention on Human Rights into the UK law. Though it is not specifically made for children, children's rights are covered by the legislation since they are human beings recognised under the law. One of the primary instruments in cases involving children in the UK is the Children Act 1989. The Children Act 1989 allocates duties to local authorities, courts, parents and other agencies in the United Kingdom to ensure children are safeguarded and their welfare promoted. The Children Act provisions are based on the idea that children are best cared for within their own families, to that effect, every effort should be made to preserve the child's home and family links. It introduced the concept of parental responsibility which is regarded as the rights, duties, powers and responsibilities which by law a parent of a child has in relation to the child and his property.⁶⁵³ It also establishes the principle that child welfare is paramount when making any decisions about a child's upbringing. The court must also ascertain the wishes and feelings of the child and shall not make an order unless it is the best for the child.⁶⁵⁴ The Children Act 1989 sets out in detail what local authorities and the courts should do to protect the welfare of children. It charges local authorities with the "duty to investigate if they have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm."⁶⁵⁵ Local authorities are also charged with a duty to provide services for children in need, their families and others.⁶⁵⁶ The Act provides for protection of

⁶⁵³ Children Act, 1989, s1.

⁶⁵⁴ *Ibid*, s1.

⁶⁵⁵ s 47.

⁶⁵⁶ s 17.

children from harm and abuse,⁶⁵⁷ established community homes⁶⁵⁸ registered children homes⁶⁵⁹ fostered children⁶⁶⁰ adoption⁶⁶¹ etc. The Children Act 2004 was enacted to amend some provisions of the existing statute and established more process for integrating services to children. It covers England and Wales in separate sections. It established the Children's Commissioner for England to be promoting awareness of the view and interest of children in England,⁶⁶² The Act places a duty on local authorities and their partners (including the police, health service providers and the youth justice system) to co-operate in promoting the wellbeing of children and young people and to make arrangements to safeguard and promote the welfare of children. The Act also puts Local Safeguarding Children Boards on a statutory footing (replacing the non-statutory Area Child Protection Committees) and gives them functions of investigation and review, which they use to review all child deaths in their area.⁶⁶³ The Act updates the legislation on physical punishment. It limits the use of the defence of reasonable punishment so that it can no longer be used when people are charged with the offences against a child of wounding, actual or grievous bodily harm or cruelty. Therefore any injury sustained by a child which is serious enough to warrant a charge of assault occasioning actual bodily harm cannot be considered to be as the result of reasonable punishment.⁶⁶⁴ The Act made elaborate provisions to protect the welfare and interest of the child.

The Children and Young Person Act (CYPA) 1933 is another child related Statute. It consolidated all existing child protection legislation for England and Wales into one Statute. It was preceded by the CYPA 1920 and 1908 and was modified by CYPA 1963 and 1969

⁶⁵⁷ Children Act 1989, ss 43-53.

⁶⁵⁸ *Ibid*, s 53-58.

⁶⁵⁹ *Ibid*, s 63-65.

⁶⁶⁰ *Ibid*, s 66-70.

⁶⁶¹ *Ibid*, s 88-91.

⁶⁶² Children Act, 2004, s1 & 2.

⁶⁶³ *Ibid*, s14.

⁶⁶⁴ *Ibid*, s 58.

which increased the age of criminal capacity to 10 and age of criminality to eighteen years. It established the youth court for handling of child in conflict with the law, and increased the age of execution to eighteen years.⁶⁶⁵ The court has the jurisdiction to hear any charge against a child or young person, and exercise any other jurisdiction conferred on it by under the Act or any other law. The Act mandates that decision of the Court should be in accordance with the welfare of the child. The Act demands that the court in dealing with a child or young person who is brought before it either as being in need of care and protection or an offender or otherwise, shall have regard to the welfare of the child or young person and shall in the proper case take steps for removing him from undesirable surroundings and for securing that proper provision is made for the education and training.⁶⁶⁶ The Act empowers the Secretary of State to send certain juvenile offenders to approved institutions as follows: the secretary may by order direct that (a) a person under the age of eighteen years and is undergoing detention in a borstal institution or (b) a child or young person sentenced to be detained under the Criminal Court (Sentencing) Act of 2000 and (c) a young person who has been ordered to be imprisoned and has been pardoned by his Majesty on condition of his agreeing to undergo training in a school shall be transferred or sent to and detained in an approved school. In addition, the Act provides for supervision order to be made as the case may be in the best interest of the child. The Act made other provisions for the protection of children, thus, it prohibits child labour, assault on the child, ill treatment, neglect, abandonment, or exposure of the child or procurement of a child for exploitation.⁶⁶⁷ The Act prohibits the use of children for begging and exposing children to harm and risk of burning.⁶⁶⁸⁶⁶⁹ Section 7 provides the measures that should be taken by appropriate authorities for the well being of

⁶⁶⁵ CYPA 1933, s 45.

⁶⁶⁶ *Ibid*, s44.

⁶⁶⁷ *Ibid*, s 21 & 1.

⁶⁶⁸ *Ibid*, ss8 &9

⁶⁶⁹ *Ibid*,ss 4& 11.

children and young persons. It also takes care of adoption and fostering of children.⁶⁷⁰ The Act charges the local authorities to secure sufficient accommodation for children in need and equally maintain the children in the homes. The Act also made provisions with respect to provision of support services for children.⁶⁷¹ Finally, the Act established the standard of care that should be given to the child by parents and authorities for the well-being and development of the child, as well as the procedures for the enforcement of the breach of the standards.⁶⁷²

On the other hand, the Family Court Act of 1984 established Family Courts with a view to promote conciliation, and secure speedy settlement of disputes relating to marriage and family affairs and other matters connected there with. According to section 3 of the Act, the States government after consultation with the high court and by the notification shall establish a family court for every area of the State consisting of a city or a town. Family courts are subordinate to the High court which has power to transfer the case from one family court to the other. The Act confers jurisdiction on the court as follows⁶⁷³: to handle a suit or proceeding between the parties to a marriage for decree of a nullity marriage declaring the marriage to be null and void or, as the case may be annulling the marriage or restitution of conjugal rights or judicial separation or dissolution of marriage; a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person ;a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them; a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship; a suit or proceeding for a declaration as to the legitimacy of any person; a suit or proceeding for maintenance; a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor. It goes further to state

⁶⁷⁰ *Ibid*, ss34&35.

⁶⁷¹ *Ibid*, s 9.

⁶⁷² *Ibid*, ss 26-29.

⁶⁷³ *Ibid*, s 7.

that the Family Court shall also have and exercise such other jurisdiction as may be conferred on it by any other enactment.⁶⁷⁴ In the United Kingdom, the principles of best interest of the child as provided in the UNCRC prevail in the courts, whether at the youth courts for child offenders and children in need of care or at the Family court, where cases of welfare of the child is handled. It can be deduced from the foregoing that while the Family Court in Nigeria exercises criminal and civil matters with respect to matters concerning children, it is not the same in United Kingdom. The Laws in the UK places a legal duty on the local authorities to care, maintain and ensure the welfare of children, and people are mandated to report any case of abuse or exploitation against the child for adequate legal protection of the child. Failure to report such cases amounts to a crime under the law and attracts punishment. Accordingly, the child in the UK gets support and welfare from government and promotion of his or rights through the application of the laws by the courts. The Nigerian government should adopt these measures of commitment to the child as practised in other jurisdiction, as well as create an enabling environment for judicial activism.

⁶⁷⁴ *Ibid*, 7(2).

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

Despite the fact that children are exceptionally vulnerable members of the society, adequate response to the needs and welfare of the child is presently lacking in Nigeria. The rights of the child are undermined by government and the society. Children have been grossly abused, exploited and subjected to inhuman and degrading treatments. Matters concerning children have been relegated to the background and calls for action. The interest and welfare of the child is jeopardised. For instance, the Child Rights Act which is a comprehensive law on the rights and welfare of the Child, and which should be a modification of the Children and Young Person's Act is clogged by lack of adoption in some States and implementation in other States that has adopted the Act. The implication is that child offenders, children in need of care and protection, children up for adoption and fostering, and indeed all child will be denied opportunity of adequate welfare and justice system. The plight of child offenders in the regular courts and prisons due to lack of effective family courts, personnel and correctional institutions is devastating. The child justice system is guided by concern, care and reformation anchored on the concept that the mental and physical capacity of the child should not be equated with that of adults. Therefore children should not be exposed to the formal process at the regular court in order not to foreclose their rehabilitation and reformation within the correctional institutions as mandated by the UNCRC.

Socio- economic problems prevailing in the Country has impacted negatively on the child, who due to poverty, parental unemployment, illiteracy, political instability, family instability and health challenges, hunger and malnutrition, are exposed to abuse, trafficking, labour, and other forms of exploitation. It also renders children in need of care and protection, and exposes them to delinquency. There are no concerted efforts towards prevention of

delinquency as done in the selected jurisdictions examined in this work, but the focus of government is to punish delinquents. Pervasive customary practises prevalent in the society are also clogs on the wheel of the actualisation of the rights of the child. Government and society have not shown genuine commitment in ensuring adequate protection of the rights of the child in Nigeria. The need to strive for better treatment for the child and protection of the rights of the child through promotion of those rights by the court and correctional institutions became imminent.

The time for better treatment of the child is ripe. There is need for a more comprehensive and systematic response in which mechanisms and management play a crucial role. There is the need to practically identify the needs of vulnerable children, access the needs and create support for them. Measures to improve the current situation and efforts should be put in place. There the roles of courts and correctional institution in the promotion of child's right in Nigeria examined and highlighted in this research cannot be overemphasized, in view of the basic status as the hope of the common man. The Constitution vests the judicial powers of the Federation and the State on the Courts.⁶⁷⁵ Implicit in this provision is the position of the courts as the guardian of our Constitution, the protector of our cherished governance under the rule of law, the guardian of our fundamental rights, the enforcer of all laws without which the stability of society can be threatened, the maintainer of public order and security, the guarantee against arbitrariness and generally the only insurance for a just and happy society.⁶⁷⁶ In the same vein, correctional institutions play a complementary role in promoting the rights of the child because of the reinforcing correlation between the courts and correctional institutions in handling matters concerning to children. The correctional institutions take over and continue from where the court stops

⁶⁷⁵ Constitution of the Federal Republic of Nigeria, 1999 (CFRN) (as amended) ss 6(1) &(2).

⁶⁷⁶ E Nnamani, 'The Judiciary in the 1990's: Expectations and Challenges' A Journal of Contemporary Legal Problems, Vol. 1, No.3 (1990)27.

especially with respect to child offenders, and children in need of treatment. The role of the courts and correctional institutions to promote the rights of child offenders, rights of children in need of care, rights of children involved in matrimonial causes to maintenance and custody, rights of children beyond parental care, rights of the disabled child, the right of the child to enforcement of breaches of his or her fundamental rights , the rights of the adopted and fostered child, the rights of the child witness, the rights of child victims of abuse, trafficking, exploitation and labour is very important in view of the wide powers and exercise of discretion accorded the court by the Constitution.

Nonetheless, an evaluation of these roles exposed the impediments thereto. The impediment envisaged include: Lack of adoption and implementation of extant laws especially the Child Rights Act in States in Nigeria; Problems of conflicts in laws relating to children; Non- establishment of Family Courts and required correctional institutions and non-specialised personnel; poor funding and functioning of institutions and agencies concerned with welfare of the child; lack of commitment and concern by government and policy makers to creating policies, mandates, monitoring, evaluation, mobilization, accountability, and support for issues of issues of child welfare and rights; Cultural/Religious practices especially as it affects the adoption of the CRA in some States .

6.2 Recommendations

In view of the above finding, it is recommended that:

1. Adoption and Implementation of the Child's Right Act and other Legislations:.,

The CRA suffers adoption in many States in the North: Sokoto, Zamfara, Adamawa, Borno, Bauchi, Kano, Katsina, Kebbi, Yobe and Gombe and lack of implementation in the States that have adopted same. This is worrisome in view of the fact that the CRA guarantees the rights of the child and contains measures that can be taken

against a person that abuses, exploits or jeopardizes the interest of the child. In other to guarantee the recognition, enforcement and enjoyment of the rights of the child, the researcher calls for the implementation and enforcement of the CRA and other laws for the welfare and development of the child all through Nigeria. This will create the enabling environment for the courts and correctional institutions to carry out their roles in the promotion of the rights of the child effectively.

2. **Constitutional amendments to put matters concerning children in the exclusive list and make the social, economic and cultural rights of the child Justiceable:**

Issues concerning children are neither in the exclusive or concurrent list, creating non-uniformity of measures for the child in different States in Nigeria. This is also one of the factors that militate against lack of commitment exhibited by government on matters concerning children, especially as it relates to funding. It is advocated that it has become important that the Constitution should be amended to include matters concerning child welfare and interest in the exclusive legislative list, so as to get national attention. Furthermore, other rights of the child should also be recognised in the Constitution as was done in the South African Constitution.

3. **The Family Court at the High Court to be Included as a Court of Record in the Constitution:**

In view of the provisions of the Family Court at the high court level in the CRA, the Constitution should also be amended to include the Family Court (high court level) on the list of superior court of records, following the example of the Industrial Court in the third alteration

4. **Resolving Conflicts in Laws Relating to children and the need for extensive research by draftsmen:**

The practice of drafting laws in Nigeria, without examining existing laws to avoid inconsistencies and conflicts calls for action. There are provisions of laws that conflict on very critical issues such as jurisdiction which can

occasion serious miscarriage of justice or delay in justice. The writer advocates that draftsmen should be committed to do extensive research and examination of existing laws before making new laws to avoid conflicts of law, especially with respect to jurisdiction.

5. **Establishment of Family Court, Correctional Institutions and other relevant**

Institutions for Child Welfare: Family courts and correctional institutions are the basic institutions in the Child Justice system, without which the child will be subjected to the regular justice administration. The researcher recommends that government should show commitment to their roles towards their citizens, especially as it relates to the child, by providing basic institutions for justice, welfare and development of the child. Government should establish functional Family Courts and correctional institutions as intended by the CRA in every State to take care of child offenders, victims of child abuse, children in need of care and protection etc. In addition, personnel of the child justice system should be trained to be able to cater for the problems of children within the system. Government should build new correctional institutions and rehabilitate existing ones to check overcrowding, poor living conditions, and inadequate infrastructure.

6. **Training of Staff of the Child Justice System:**

The CRA provides for specialised training and re-training on the welfare of the child for personnel of the child justice system, which include the judges, magistrates, assessors, social welfare developmental officers, and specialised police for children. Lack of adequate and unqualified personnel leads to lack of expertise and a challenge to the realisation of the goals or purposes of the child justice system, which is geared towards treatment of criminal mentality and rehabilitation. Job progression will also be encouraged for the judges of the Family Court to the Appeal court and Supreme court, to avoid the

problem of appeals from the Family court to non-specialised judges at the Court of Appeal.

7. **Funding and Effective Functioning of Government Commissions, Agencies and Department for Protection of Rights of the Child:** High prevalence of abuse, trafficking and child labour and generally breaches of the fundamental rights thrive in the society. Government should properly fund and ensure effective management, support, mandates, evaluation, monitoring of various government agencies, commissions and departments concerned with child welfare, protection of child victims, and enforcement of breaches of the rights of the child in Nigeria.
8. **Good Governance and Eradication of Poverty:** Social and economic rights of the child are violated due to bad governance leading to poor economic conditions. There is need for the promotion of various social and economic policies on free and good health, free and compulsory education, and acquisition of skills for the child, parental employment, security of lives and property, and good economy to curb violence and abuse on children, child labour, and prevent child delinquency. Child abuse of all forms has a basic socio-economic and political undertone. Poverty is the cause of victimisation and exploitation of the child. Government therefore should shun corruption and utilise the country's human and material resources to improve the economy and the lives of the people, since these conditions negatively impact the child and so long as there is poverty and destitution in the Country, it will be difficult to eradicate child labour.
9. **Strategic Impact litigation:** The researcher advocates for strategic impact litigation to be adopted by NGOs, groups, organisations and individuals to protect the rights of the child. Strategic impact litigation involves bringing cases before a court by public interest or other ways with the aim of effecting broader and significant changes in the

society and to bare lasting mark. This method is used in many jurisdictions such as South Africa and India. There is need therefore for public enlightenment towards enforcement of rights and litigation, as the courts will through its decisions promote the rights of the child. It will reduce crime against children to the barest minimum and prompt the government to do the needful.

10. Advocacy and Creation of Awareness: Lack of enforcement of breaches of the rights of the child in Nigeria, is largely based on lack of awareness of the fundamental rights of the child, and when and where to enforce breaches of the rights. Again child abuse prevalent in the Country is shrouded in ignorance of people. Advocacy and awareness is important in this struggle, since the courts can only promote the rights of the child, when such cases come before the court for justice. It is advocated that government agencies, non-governmental organisations and the entire civil society should sensitize the masses, especially the poor and those in the rural area on their rights and on the importance of enforcement of the right when breached. Children should be educated on ways to ventilate the breaches of their rights, for proper legal action to be taken.

11. Free Legal Aid Services: It is advocated that government should properly fund the Legal Aid Council in order to enable them reach out to the indigent children in the society effectively.

12. Judicial Activism: Courts should be proactive and progressive minded in interpreting provisions of rights of the child as was seen in the courts in the selected jurisdiction examined in this work. The courts an through their decisions actualise the justiceabilty of the social, economic and cultural rights.

13. Inclusion of allocation for Child Welfare in the National Budget: In some countries, fund for the welfare of children are included in the budget. Nigerian

Government should develop interest in the welfare and protection of the child by making proper monetary allocation in the budget for child welfare. This will better equip the Family Courts, institutions, agencies and departments for the welfare, protection and promotion of the rights of the child. .

14. **Rendering of Assistance by Organisations and Groups:** Non-governmental organisation, churches, groups, individuals should assist in protecting the rights of the child by extending help desk in various communities, so as help children who may not be unable to reach the police or who are abused by parents and guardian to make reports.

15. **Excess of the Police should be checked and curbed:** It was revealed in this research that the police subject children to inhuman and degrading treatments, illegal detention, arraignment before regular courts and the consequent incarceration in the prisons. The activities of the police should be supervised by government to ensure that the rights of the child are not violated by the police within the justice administration. The Specialised police unit required under the CRA to attend to children should be established in all police divisions to save children from the horrible experiences encountered. People should also sue for breaches of fundamental rights by the police, so that the courts can help to promote and protect the rights of the child within the criminal justice system.

16. **Eradication of Harmful Religious and Cultural Practises:** Cultural values and practises affect the realisation of the protection of the rights of the child. The non-adoption of the CRA in most Sharia States is rooted in some practises prevalent in their religion and custom, as it relates to marriage, adoption and other matters. Discrimination in inheritance and acts such as female genital mutilation are harmful practises that violate the rights of the child. The researcher is advocating that high rate

of public litigation on such customs should be encouraged, so that such values will be eradicated.

17. **Amendment of the Criminal Codes:** The age of criminal responsibility under the criminal codes set at seven years is low when compared to what is obtainable in India, United Kingdom and other jurisdictions. There is need for an amendment to raise the age.

18. **Amendment of the Child Rights Act:** The researcher recommends the inclusion of the specific rights of the disabled children in the ACT, as was provided in the UNCRC and the laws of the selected jurisdictions examined in the work. The Act should also be amended to include more concerned people in the list of persons to bring the children in need of care and protection to the Family Court. The Act should also be amended to provide for one or two assessors for the constitution of the court.

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APPENDIX

Interview Conducted by the Researcher on Judges and Magistrate and the Court Registrars at the Family Courts, Regular High and Magistrate Courts; Staff of the Government Ministries in Charge of Child Welfare; Prisons Staff in Lagos State, Anambra State and Abuja Respectively in May and June 2018.

Igbochere Lagos

Question: How many Family Courts are in Igbochere Court Lagos?

Answer: There are four Family Courts at Igbochere.

Question: Do the Courts handle civil and criminal matters concerning children?

Answer: The Courts handle criminal cases concerning child offender. Child offenders are handled in one out of the four Family courts in High Court Igbochere. The courts also deal with adoption, guardianship, child care, fostering and child protection matters.

Question: Do the courts conduct proceedings in public?

Answer: No, most of the matters are done in chambers, and the press are not allowed.

Question : Do the courts send children to correctional institutions or to prisons?

Answer: Children are sent to correctional institutions: , while some are sent to prisons, for example, the child offender in an ongoing case come from Kirirkiri prison to court. The correctional institutions are: Oregu-boys remand home, Adigbe remand home in Ogun State, Idi-araba remand home in Yaba Lagos for girls, and Oregun remand home in Ogun State for boys. When a child becomes eighteen years old, he or she is brought to the magistrate court by the welfare worker to obtain an order of the court to release him or her once the child is of good character.

Questions: where do the welfare officer come from?

Answer: The welfare officers are from Ministry of Youth and Sport, and social development at Ala-Awusa .

Question: How many assessors does the court sit with?

Answer: Three of the courts sit with two assessors while one of the courts sit with only one assessor.

Question: Do the court function with specialised personnel?

Answer: No, there are no specialised staff from the government ministry, only regular court personnel are available at Igbochere.

Ikeja, Lagos

Question: Do the Court handle civil and criminal matters concerning children ?

Answer: The Court can handle all categories of children, however mostly custody, adoption and family cases are entertained in the Family courts.

Question : Do you send children to correctional institutions or to prisons?

Answer: The court send children to correctional institutions within Lagos State Oregun, Idi-Araba, and Adigbe..

Question: How many assessors do you sit with?

Answer: The four family courts sit with two assessors

Question: Do you have specialised personnel?

Answer: The personnel are regular court staff and Social welfare and developmental officers from the Ministry of Youth and Sport, and social development at Ala-Awusa .

. Question: Are new Family Courts in accordance with the CRL currently under construction in Lagos State?

Answer: Not aware.

Question: What categories of children are brought to the Family court

Answer: Matters concerning all categories of children can come to the court.

Question : How many Family Courts are in Ikeja Court.

Answer: There are Four Family courts at the high and magistrate court levels.

Kirikiri Prison, Apapa Lagos

QUESTION: Are there child offenders remanded in prison and how many?

Answer: Children are not kept in prison, but in a separate institution

Question: Are they undergoing trials or awaiting trial

Answer: Some of the children are undergoing trial while of some of them are awaiting trial.

Question: Which courts try these child offenders?

Answer: They are tried at regular High Court Igbochere and High Court Ikeja criminal division, and at the Magistrate Courts.

Anambra State

Ministry of Social Welfare, Children and Women Affairs, Anambra State

Social welfare department

Question: Do staff of the department work with the Family Court and in what ways?

Answer: Yes, as assessors, and to get information about the child through investigations in a welfare report.

Question: Do activities of the department cover children in the State and what categories of children?

Answer: All categories of children, especially children in need of care and protection, and family issues.

Question: Where do they keep children in need of care and child offenders in Anambra State.

Answer: Presently children in need of care are kept at the new home at Abagana or at the Orphanages owned by the State or by groups and individuals partnering with the State, while the child offenders are sent to prisons.

Rehabilitation Department

Interview with the HOD of the department

Question: Do a correctional institution for rehabilitating children exist in Anambra State

Answer: Yes, it is called Temporary Shelter/social welfare Centre situate at Abagana.

Question: What categories of children are kept there?

Answer: It is for boys and girls, and is for rehabilitating child offenders, children in need of care and protection, children beyond parental control, children in homes with marital crises, and drug addicts.

Question: How do you admit children in the home

Answers: They are rescued from the road during raid while hawking, begging, loitering without help or indulging in criminal activities on the streets, by the police or social welfare workers.

Question: What rehabilitation measures exist in the above mentioned home?

Answers: Counselling, health care, faith based-care, formal primary and secondary education skills acquisition-tailoring, bead making, soap making, confectionaries, leather works, phone repairs and ICT.

Question: Are there specialised personnel in the home?

Answer: There are care givers, social workers, and psychologists. The home also corroborates with Nawfia Psychiatrist Center, Government owned hospitals, individual and group sponsors. There are also other homes by individuals, groups and NGOs, as well as the orphanages homes at Awka and at local government levels.

Child Development Department

Question: Do you go to the Family courts in the State for matters concerning children.

Answer: Yes we go to the Family court as assessors, and as child development workers.

Question: Where are children in need of care and protection kept?

Answer: Some are released to parents and guardian as the case may, while others are rehabilitated in the State correctional institutions.

Question : Where are child offenders kept?

Answer: child offenders are usually sent to prisons due to lack of correctional institutions in the State.

Family / High and Magistrate Courts

Question :How many Family courts exist in Anambra State

Answer: Family Courts are established in every Magisterial district and Judicial division in Anambra State.

Question: Are there permanent structures for Family courts in Anambra State?

Answer: No, regular courts are used; however the Family Courts sit at the judge or magistrates chambers at designated days.

Question: Do the courts sit with assessors

Answer: Yes, they sit with assessors from the Ministry of Social welfare, children and women affairs

Question: How many assessors?

Answer: Two assessors for each court sittings.

Answer: Does the Family Courts try child offenders?

Answer: Yes, they are mostly tried at the regular Courts; the Family courts do more of custody and adoption cases and children in need of care and protection.

Question: Where are the child offenders remanded in Anambra State

Answer: Some are taken to correctional institutions in other States, such as Kaduna, Enugu and others, while some with grievous offences are in prisons, and those with minor offences are released at the police station. The police sometimes inflate the ages of the children when they commit serious offences especially with adults to bring to within the jurisdiction of the court.

Prisons

Question: How many child offenders are in the prisons?

Answer: There are no child offenders in the prisons. Children remanded in prison custody are above eighteen years.

Question: where are child offenders kept in Anambra State

Answer: Not aware.

Abuja

Family/High and Magistrate Courts

Question: Do functional Family Courts exist in the FCT?

Answer : Yes, Family Courts are established both at the High and Magistrate Court Levels.

Question: Do the Family courts sit with assessors and how many?

Answer: Yes, the Family courts sit with two assessors.

Question: What categories of children are handled at the Family Court?

Answer: All matters relating to children, most especially adoption, custody and maintenance matters.

Question: Where are child offenders remanded?

Answer: Child offenders are usually sent to the Kaduna Remand homes, and in some cases to the prisons.

Kuje Prisons

Question: How many child offenders are in Kuje prisons?

Answer: Children are no longer sent to Kuje prisons, they are kept at Kaduna remand home.