

THE 1999 CONSTITUTION AND JUVENILE JUSTICE SYSTEM IN NIGERIA*

Abstract

The 1999 Constitution of the Federal Republic of Nigeria (as amended) forms the legal foundation for the protection of human rights, including the rights of children in conflict with the law. Although it does not specifically establish a juvenile justice system, its provisions on human dignity, fair hearing, liberty, and equality before the law provide the constitutional basis for juvenile justice administration. Sections 33–42 guarantee fundamental rights applicable to all persons, while Section 17(3)(f) mandates state protection of children against exploitation and neglect. These constitutional principles are operationalised through the Child Rights Act 2003, which establishes Family Courts and promotes a child-centered justice process emphasising rehabilitation over punishment. However, non-justiciability of sections 17(3)(f) under chapter II of the constitution, non-recognition of family court as court of record, weak institutional implementation of Child's Rights Act, lack of funding, dilapidation of remand facilities, lack of adequate training of stakeholders involved in juvenile justice administration and the continued detention of minors in adult's facilities erode constitutional ideals. The Constitution's collaboration with national and international instruments such as the Child's Rights Act, Administration of Criminal Justice Act, UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child underscores Nigeria's commitment to a reformative, rehabilitative and rights-based juvenile justice framework. Effective realisation of this vision requires stronger enforcement mechanisms, inter-agency coordination, and a sustained focus on the best interests of the child within the constitutional order.

Keywords: Juvenile Justice System, Constitution, Child's Rights Act, Nigeria

1. Introduction

The Constitution of the Federal Republic of Nigeria 1999 (as amended) is the *grundnorm*, it is the supreme law of the land and it provides the legal basis for the administration of justice and the protection of fundamental rights.¹ Within its framework lie the principles that direct the operation of the justice system, yet the Constitution is silent on the specific treatment of children in conflict with the law. The Nigerian juvenile justice system, which should ideally embody principles of protection, rehabilitation, and reintegration, instead operates within a constitutional and statutory framework that is fragmented and inconsistent across the federation.² The absence of explicit constitutional recognition of juvenile justice institutions creates a structural gap between constitutional guarantees of human rights and the practical realities faced by children in conflict with the law.⁴ Although Section 6 of the Constitution vests judicial powers in the courts, it does not establish *Family* or *Juvenile Court as court of record*; these are instead provided for under subsidiary legislation such as the *Child's Rights Act 2003* (CRA) and state-level *Child's Rights Laws*. Consequently, the operation and effectiveness of juvenile justice mechanisms depend on the level of adoption and implementation of these laws by individual states. The domestication of *CRA* across the 36 states of Nigeria,³ represents

*By **Godwin Emeka NGWU, LLB, LLM BL, PhD**, Head, Department of Private and Property Law, Faculty of Law Enugu State University of Science and Technology, Email: emeka.ngwu@esut.edu.ng; godeme77@gmail.com, Tel: 08069742259; 08140422415; and

***Rosemary Ogechukwu NWEKE, LLB, LLM, BL**, Solicitor and Advocate of the Supreme Court of Nigeria.

¹Constitution of the Federal Republic of Nigeria 1999 (as amended), s 1(1).

²A Ibidapo-Obe, 'The Juvenile Justice System in Nigeria: Problems and Prospects,' *Nigerian Current Law Review*, (1995). Vol. 3, No. 95, p. 55.

³NHRC, 'Child Rights – National Human Rights Commission' (NHRC), www document available at <https://www.nigeriarights.gov.ng/focus-areas/child-rights.html> accessed on 10 Nov 2025 by 4:50pm.

Nigeria's effort to implement international child rights instruments, particularly the *United Nations Convention on the Rights of the Child* (CRC) and the *African Charter on the Rights and Welfare of the Child* (ACRWC).⁴ However, the Constitution's non-justiciable welfare provisions under Chapter II limit the enforceability of state obligations toward children's protection, education, and welfare.⁵ Although Sections 33 to 42 guarantees fundamental rights such as dignity, liberty, and fair hearing, their practical enforcement within the juvenile justice system is often weak. Many children are detained in adult prisons, denied legal representation, and subjected to inhumane treatment—conditions that contradict both the spirit of the Constitution and Nigeria's international human rights commitments.⁶

Thus, the intersection between the Constitution and juvenile justice in Nigeria exposes deep legal and institutional deficiencies. The absence of a constitutionally entrenched juvenile justice framework, recognition of family court as court of record, lack of training of personnel involved in the juvenile justice system and inadequate adherence to the provisions of CRA by the stakeholders involve in child's justice system has resulted in policy inconsistency, judicial inefficiency, and widespread violations of children's rights.⁷ Addressing these issues requires constitutional reform, the harmonisation of child protection laws across states, and stronger institutional mechanisms to ensure that the *best interests of the child* which is the cornerstone of modern juvenile justice are upheld in both law and practice.⁸

2. Legal Instruments for Juvenile Justice System in Nigeria

Nigeria's juvenile justice system is grounded in several regional, international legal instruments and national laws enacted by the National Assembly and State Houses of Assembly. The Child's Rights Act (CRA) 2003 stands as the central framework, complemented by other key legislations addressing children's rights and justice administration.

National Legal Instruments

Constitution of Federal Republic of Nigeria 1999 (as amended): The constitution remains the supreme legal authority, ensuring due process and fundamental rights for all persons, including children. It guarantees rights to dignity, liberty, fair hearing, and privacy, and specifically mandates protection of juveniles during trial by excluding them from public proceedings and safeguarding their identities.⁹

Borstal Institutions and Remand Centres Act 1962: This law provides for the establishment of borstals for offenders aged 16 to 21, emphasizing reformation, training, and discipline rather than punishment.¹⁰

Children and Young Persons Act (CYPA)/Children and Young Persons Laws (CYPL) of various States: - This law is originally colonial statutes, it regulates the welfare, protection, and trial of young

⁴UN Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC); African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) OAU Doc CAB/LEG/24.9/49 (ACRWC).

⁵Constitution (n 1), ch II, s 17(3)(f).

⁶Human Rights Watch, *Nigeria Prison Conditions and Juvenile Justice*: (Report, 2022) www document available at <https://www.hrw.org>, accessed 9 November 2025 at 7:30pm.

⁷A Ibidapo-Obe, (n 2) 59.

⁸CRC (n 4) art 3(1).

⁹Constitution (n 1), ss 34, 35, 36, 37, 42.

¹⁰Borstal Institutions and Remand Centres Act 1962, s 3.

offenders under 17.¹¹ The laws create juvenile courts and prohibit imprisonment or capital punishment for children, though their provisions are largely punitive and have been superseded by the CRA.

Child's Rights Act (CRA) 2003: The CRA harmonises earlier laws like CYPL and aligns Nigeria's system with international standards such as the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.¹² It establishes Family Courts, prohibits imprisonment and death sentences for children, and allows diversionary measures such as supervision, counseling, or community service.¹³ Despite wide adoption, effective implementation remains weak due to infrastructural and institutional gaps.

Administration of Criminal Justice Act (ACJA) 2015: ACJA reinforces child protection by mandating compliance with the CRA, prohibiting death sentences for minors, and promoting rehabilitative sentencing and non-custodial measures.¹⁴

Criminal Code Act 2004 (applicable in southern Nigeria) and the *Penal Code 1960* (applicable in the north) both set the minimum age of criminal responsibility at seven years, though the Penal Code further exempts children under twelve without sufficient maturity.¹⁵

Evidence (Amendment) Act 2023 provides that children under fourteen may give unsworn evidence if intelligent enough to understand the duty of truth, provided such evidence is corroborated.¹⁶

Nigeria Police Act 2020 governs police conduct during arrests and investigations involving children. The CRA complements this by mandating the establishment of specialized police units for child-related cases.¹⁷

International Legal Instruments

United Nations Convention on the Rights of the Child (CRC) 1989:- The international legal framework for juvenile justice is primarily anchored on the **CRC**, which establishes the *best interests of the child* as a fundamental principle in all actions concerning children.¹⁸ The CRC prohibits torture, cruel or degrading treatment, and outlaws the death penalty or life imprisonment for offences committed by persons under 18.¹⁹ It emphasises that detention must only be used as a last resort, for the shortest appropriate time, and that children in custody must be treated with dignity and separated from adults.²⁰ The Convention further guarantees due process rights, including access to legal representation and fair trial standards, highlighting rehabilitation and reintegration as the main objectives of juvenile justice.²¹

¹¹Children and Young Persons Act 1943; Children and Young Persons Laws of various States.

¹²Child's Rights Act (CRA) 2003; United Nations Convention on the Rights of the Child (1989); African Charter on the Rights and Welfare of the Child (1990).

¹³CRA, ss 204–223.

¹⁴Administration of Criminal Justice Act 2015, ss 262, 371, 401–405, 454.

¹⁵Criminal Code Act, Cap C38 LFN 2004, s 30; Penal Code (Northern States) Federal Provisions Act 1960, s 50(a).

¹⁶Evidence (Amendment) Act 2023, ss 175, 209.

¹⁷Nigeria Police Act 2020, ss 31–33; Child's Rights Act 2003, s 206.

¹⁸CRC, art 3.

¹⁹Art 37.

²⁰*Ibid*

²¹CRC, art 40.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules): The Beijing rules complement the CRC by providing detailed procedural and operational standards for handling juvenile cases.²² These Rules stress diversion from formal judicial proceedings, proportionality between offence and response, and the rehabilitation of young offenders through community-based and non-custodial measures.²³ They also require the separation of juveniles from adults in detention and call for ongoing research and policy review to enhance justice delivery.²⁴

United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) focus on early prevention through family, education, and community support systems, urging that formal justice processes be used only as a last resort.²⁵ Together with the **Beijing Rules** and the **Tokyo Rules** (which promote alternatives to imprisonment), they provide a continuum of international standards covering prevention, adjudication, and rehabilitation.²⁶

African Charter on the Rights and Welfare of the Child (ACRWC) 1979: - ACRWC regionally reinforces these principles within the African context. It guarantees the child's right to dignity, protection from abuse, and participation in judicial processes affecting them.²⁷ Article 17 of the Charter mandates special treatment for children in conflict with the law, including separation from adults in detention, access to legal assistance, and protection from torture or degrading punishment.²⁸ The Charter also requires states to set a minimum age of criminal responsibility and to ensure education, survival, and development of every child.²⁹

Together, these national, international and regional instruments establish a holistic juvenile justice system that is focused on prevention, protection, rehabilitation, reformation and reintegration rather than punishment.

3. Institutional Framework

The institutional framework of Nigeria's juvenile justice system comprises correctional institutions, Family Courts, the police, the Ministry of Justice, and non-governmental organisations (NGOs), all working to rehabilitate and protect children in conflict with the law.³⁰ The *Borstal Institutions and Remand Centres Act* establishes remand homes and Borstal institutions for offenders under 21, aimed at reformation through education and vocational training, though their impact is limited by poor funding and inadequate facilities.³¹ The *Child's Rights Act 2003* provides for Family Courts at Magistrate and High Court levels to handle child-related matters, but implementation remains weak across many states.³² The Nigeria Police Force and Ministry of Justice are responsible for investigation, prosecution, and diversion of juvenile cases, with the *CRA* mandating specialised police

²²United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted 29 November 1985) GA Res 40/33 (Beijing Rules).

²³Beijing Rules, rr 5, 17.

²⁴Beijing Rules, rr 13, 30.

²⁵United Nations Guidelines for the Prevention of Juvenile Delinquency (adopted 14 December 1990) GA Res 45/112 (Riyadh Guidelines) paras 1–15.

²⁶United Nations Standard Minimum Rules for Non-custodial Measures (adopted 14 December 1990) GA Res 45/110 (Tokyo Rules).

²⁷ACRWC arts 4–5.

²⁸Art 17.

²⁹Arts 16–17.

³⁰Y Akinseye-George, *Juvenile Justice in Nigeria* (Centre for Socio-Legal Studies 2009) 45.

³¹*Borstal Institutions and Remand Centres Act* Cap B11 Laws of the Federation of Nigeria 2004, s 1.

³²*Child's Rights Act 2003*, ss 149–150; UNICEF Nigeria, *Child Protection System Strengthening in Nigeria: Progress Report* (2021) 23.

units for children.³³NGOs complement government efforts through advocacy, legal aid, and reintegration programmes that promote restorative justice.³⁴

4. The Constitution and Juvenile Justice System in Nigeria

The **Constitution of the Federal Republic of Nigeria 1999 (as amended)** serves as the supreme law governing all aspects of justice administration and the protection of fundamental rights in Nigeria.³⁵It outlines the broad principles underpinning the justice system but remains silent on the specific treatment of children in conflict with the law. Although it does not specifically establish a juvenile justice system, its provisions on human dignity, fair hearing, liberty, and equality before the law provide the constitutional basis for juvenile justice administration. Sections 33–42 under chapter IV of the constitution guarantee that fundamental rights are applicable to all persons including the juveniles (although not specifically mentioned). However, while the Constitution guarantees fundamental rights under Sections 33–42, it is silent on specific juvenile justice principles such as the ‘best interests of the child’ and diversion from formal trials. These principles enshrined in the *United Nations Convention on the Rights of the Child (CRC)* and the *African Charter on the Rights and Welfare of the Child (ACRWC)* are reflected only in the CRA. This creates tension between constitutional supremacy and Nigeria’s international human rights obligations. Also in practice, the constitutional rights to dignity, liberty, and fair hearing are frequently violated in the treatment of children in conflict with the law. Many juveniles are detained with adults, denied legal representation, and subjected to inhuman conditions in police and correctional facilities, contrary to both domestic and international standards.³⁶

Also, section 17(3)(f) under chapter II of the constitution mandates state protection of children against exploitation and neglect. It is important to note that 17(3)(f) under chapter II of the constitution is non-justiciable. Therefore, access to education, welfare, and rehabilitation which are core elements for preventing juvenile offending are guaranteed only as aspirational goals under Chapter II, not as enforceable rights. This limits the preventive and rehabilitative reach of the Constitution within the juvenile justice framework.

Consequently, the Nigerian juvenile justice system, which ought to reflect ideals of protection, rehabilitation, and reintegration, operates within a fragmented and inconsistent constitutional and statutory framework.³⁷The Convention on the Rights of the Child (CRC) comprising of 54 articles is known as the reference law for Nigeria’s Child’s Rights Act and is also regarded as the most comprehensive human rights instrument for juveniles. Many of the provisions in Nigeria’s Child’s Rights Act (CRA), particularly those establishing the Family Court, are commendable. All the 36 states of Nigeria have enacted or adopted similar provisions in their Child’s Rights Laws.³⁸Both the CRA and Child Rights Laws of various States provide that the Family Court shall operate at two levels: as a division of the High Court and as a Magistrate Court. Currently, Family Courts are not independent courts; they exist only as divisions of the Magistrate or High Courts. Any attempt to establish them as standalone courts would be unconstitutional, as they are not expressly recognised under the Constitution of the Federal Republic of Nigeria. This point is reinforced by section 152(5) of the CRA, which provides that appeals from Family Courts at the High Court level lie to the Court

³³*Police Act 2020*, s 4; *Child’s Rights Act 2003*, s 207.

³⁴CLEEN Foundation, *Justice for Children in Nigeria: The Role of Civil Society* (2019) 12.

³⁵Constitution (n 1).

³⁶Human Right Watch, (n 6).

³⁷Y Akinseye-George, *Juvenile Justice in Nigeria* (Centre for Socio-Legal Studies 2009) 45.

³⁸N. 3

of Appeal. However, under Section 240 of the Constitution, only the High Court (not the Family Court) is recognised as a court from which appeals can lie to the Court of Appeal. Consequently, the Family Court must remain a division of the High Court to ensure constitutional compliance.

It is necessary to emphasise that this analysis does not challenge the validity of the *CRA* as a statute. Rather, it highlights that certain provisions such as Section 152(5), may pose constitutional problems if not carefully interpreted. This concern is supported by the Supreme Court's decision in *Adeyemi (Alaafin of Oyo) & Ors v Attorney General of Oyo State & Ors*,³⁹ where the Court distinguished between the constitutional validity of a statute as a whole and the validity of its individual provisions. A statute may be validly enacted, yet some of its provisions may still conflict with the Constitution. To demonstrate genuine commitment to child welfare, it is recommended that the Family Court be elevated to the status of a court of record and formally recognised under the Nigerian Constitution. This would ensure that all cases involving children whether as victims or offenders are adjudicated in the Family Court. Such recognition would also eliminate the current confusion, particularly among law enforcement agencies, regarding the proper forum for cases involving children. For example, the case of a 32 year old man charged with the rape of 11 year old child, which might ordinarily be taken before a Magistrate Court, would instead be properly heard before the Family Court.⁴⁰ Also a constitutional amendment may be required to expressly include the Family Court as a court of record, following the precedent set by the National Industrial Court, which gained constitutional recognition through the Third Alteration Amendment

5. Conclusion and Recommendations

The 1999 Constitution (as amended) provides the *broad human rights foundation* for juvenile justice in Nigeria but lacks *explicit, enforceable, and uniform provisions* addressing the peculiar needs of children in conflict with the law. Its silence on juvenile justice structures as it vests judicial powers in regular courts but does not define the structure or jurisdiction of Family or Juvenile Courts. Consequently, their establishment depends on state-level laws and administrative capacity. In several states, Family Courts are either non-functional or under-resourced, impeding the enforcement of constitutional and statutory rights of children, coupled with non-justiciable welfare provisions and uneven state implementation. This has created significant legal and institutional gaps. To align Nigeria's juvenile justice system with constitutional and international standards, there is a pressing need for constitutional reform, and stronger enforcement of the *best interests of the child* principle. The following measures are necessary:

1. The Constitution should be amended to expressly recognise *juvenile justice* as part of Nigeria's judicial system by providing for the establishment and jurisdiction of *Family Courts*. Such explicit constitutional grounding would strengthen legal protection for children and ensure uniformity in all states.
2. The *Fundamental Objectives and Directive Principles of State Policy* under Chapter II should be made enforceable, at least in part, where they relate to the rights and welfare of children.⁴¹ This would enhance state accountability and promote compliance with the *best interests of the child* principle.⁴²

³⁹(1984) 1 SCNLR 525 at 602.

⁴⁰**Esther Onyegbunam**, 'Pastor Allegedly Impregnates 11-Year-Old' *Vanguard* (12 November 2014) 6.

⁴¹Constitution of the Federal Republic of Nigeria 1999 (as amended), ch II.

⁴²CRC, art 3(1).

3. Functional Family Courts should be established in every state with trained child psychologists, social welfare officers, and child-friendly procedures.⁴³ Adequate funding, infrastructure, and continuous training for judicial officers and court personnel are necessary to operationalise the constitutional right to fair hearing for juveniles.⁴⁴
3. The Constitution should be amended to make education, healthcare, and welfare enforceable rights for children.⁴⁵ These are crucial for preventing delinquency and facilitating rehabilitation, aligning with the *UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)*.⁴⁶
4. An independent *Juvenile Justice Monitoring Commission* should be established to oversee compliance with juvenile justice standards in correctional facilities, police stations, and courts.⁴⁷ It should report annually to the National Assembly and State Houses of Assembly on the treatment of juveniles in custody.⁴⁸
5. The *Legal Aid Council* and relevant ministries should expand child-focused legal aid and diversion initiatives, ensuring that detention is used only as a measure of last resort.⁴⁹ Diversion and restorative justice mechanisms should be institutionalised through community service, family conferencing, and victim–offender mediation programmes.⁵⁰

⁴³Child’s Rights Act 2003, ss 149–150.

⁴⁴A Ibidapo-Obe, (n, 2).

⁴⁵Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 17(3)(a)–(f).

⁴⁶A Ibidapo-Obe, (n, 2).

⁴⁷*Ibid*; Child’s Rights Act 2003, ss 207–210.

⁴⁸Human Right Watch, (n 6).

⁴⁹Legal Aid Council of Nigeria Act 2011, ss 8–9.

⁵⁰United Nations Office on Drugs and Crime (UNODC), *Handbook on Restorative Justice Programmes* (2nd edn, 2020) 17.