

APPRAISAL OF THE RIGHTS OF CHILDREN IN CORRECTIONAL INSTITUTION:  
SECURITY THREAT TO SOUTH EAST, NIGERIA\*

**Abstract**

*Dearth of Remand and Approved Institutions have necessitated the incarceration of children in adult Correctional Centres, hence defeating the major objective of rehabilitation whose aim is to protect child offenders while in detention and refine him in order to make positive impact. The aim of this work is to advocate for the establishment of Remand and Borstal institution in the South East and for ndi igbo to collaborate with Government and establish Remand and Borstal Institutions for proper rehabilitation of children in the Southeast. The study analyses the legal frameworks that provide for the protection of children in detention centres. It x-rays the effects of incarcerating children in adult prisons. The study finds that incarceration of children in adult prison is a global challenge that is visible in many jurisdictions. The work shows that despite plethora of laws on the protection of children under the juvenile justice, that the rights of children are still violated with impunity. Furthermore, the work reveals further that there are no functional borstals or remand homes in the whole of south east and the few that are there, have gone moribund and must be revamped for adequate protection and security in the State. Furthermore, the paper reveals that child offenders in the western part of Nigeria that have access to be rehabilitated in the right environment are refined and make positive impacts. While, their counterparts in the Southeast that do not have access to Remand homes but that were habilitated in adult prisons turn out to become armed robbers, kidnappers, organ harvesters etc. Accordingly, the study recommends that ndi Igbo, should partner with the Government to establish Remand and Borstal Homes. The revamp of Remand and Borstal institution is very cardinal. Review of extant laws like 1999 Constitution (as amended) is very apposite. Furthermore, implementation of the laws and training of personnel in administration of juvenile justice is very critical for upholding the rights of the child.*

**Keywords:** Children, Remand and Borstal Institution, security, threat.

**1. Introduction**

A report by the African Union on the rights and welfare of the Nigerian children found an estimated 6, 000 children lived in prison and detention centres while the United Nations Children's Fund UNICEF has estimated that more than 1 million children are behind bars around the world<sup>1</sup>. Many are held in abusive and demeaning condition, deprived of education, and denied access to meaningful activities and regular contact with the outside world. While there, in adult prison, they are subjected to sexual abuse such as rape, homosexuality, drug addiction which violate their human rights, and consequently, defeating the major aim of correctional centre which is rehabilitation. Consequently, the correctional institution instead of releasing children that are refined, churn out criminals that threaten the society. Hence, nefarious crimes such as kidnapping, organ harvesting, human trafficking, armed robbery and incessant killing trail the South East. Hence, *ndi igbo*, are not only harassed by *fulani herdsmen* that destroy their farms, rape their women and kill their children but they are equally faced by their own people who are products of correctional centres. It is pertinent to note that insecurity affect the socio economic development of the state; national security protects not only citizen, but also the economic stability of our institutions. We cannot give the state to the government in exchange for security and the government instead of protecting us, turn correctional centres as a breeding ground for criminals. Accordingly, the writer proffers the following research questions to arrive at definite finding and they include the following : firstly, whether child offenders are objects of human rights; secondly, whether incarcerating children in adult prison will rehabilitate them or churn them as criminals; thirdly, whether the *Igbo* nation have been affected by paucity of remand and borstal institutions in the recent times; ourthly, whether, the *Igbos* can partner with the government to erect separate correctional institution for children such as remand homes and borstal institutions; fifthly, whether continuous education is necessary to enhance the quality of professionals that handle these children like the Judges, Police, Correctional Centres staff ; and finally, whether adequate awareness is necessary to be created on the need for separate correctional institutions.

**2. Definition and Legal Status of a Child**

Generally, there is no specific definition of a child, for instance, the Infant Relief Act 1874<sup>2</sup> defines an infant or child as any person who has not attained the age of twenty-one. While the Land Use Act 1978, provides that it shall not be lawful for the Government to grant a statutory right of occupancy to a person under the age of

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<sup>1</sup> www.unicef.org accessed on 29/4/2021

<sup>2</sup> Infant Relief Act 1874 sec 2.

twenty-one and therefore contemplates any person under this age, a minor or a child.<sup>3</sup> Under the common law, any person below the age of twenty-one is regarded as a child. The Constitution of the Federal Republic of Nigeria 1999 and the Convention on the rights of the child provides for eighteen years as the age of majority.<sup>4</sup> The adoption laws of Imo state and the ANPPCAN proposal draft legislation on adoptive age provide for seventeen years. Children and Young Persons Act<sup>5</sup> and the Criminal Procedural Act<sup>6</sup> contemplate a child as any person who has not attained the age of fourteen years. A child can also be referred to as a juvenile under the Children and Young Person's Act and this include a child and a young person.

It is trite to note that children have rights. The mere fact that he is a child clothes him with protection under legal jurisprudence. This notion stems from the fact that children are malleable and can be moulded to make positive impact. In fact, the history of legal status of the child can be traced to Eglantyn Jebb, who pleaded in 1922 through a memorandum, addressed as Save the Children International Union, an organization based in Geneva, asking for the creation of a code for children.<sup>7</sup> The Union was finally formed in 1946, but it was merged with the International Association for Child Welfare (INCW). This merger led to serious lobbying with the United Nations Economic and Social Council (ECOSOC) by pressing for its adoption as the Declaration of Geneva while approving its adoption. ECOSOC posited that the child must be protected beyond and above all consideration of race nationality or creed and also that the child must have a family as an entity.<sup>8</sup> In 1959 the United Nations adopted the Declaration on the Right of the Child (UNDRC)<sup>9</sup> which affirmed the rights of children everywhere to receive adequate care from their parents and the community. Thus, the United Nations Conventions on the Rights of the child (CRC) was finally adopted in 1989.<sup>10</sup> This provided an enabling environment for the United Nations to make convincing attempts to consolidate international law on the basic rights of children to survival education, improved health condition and protection from all forms of abuse and exploitation. The rights enunciated in the African Charter on the Rights and Welfare of the child, which was adopted by the organization of African Unity (OAU), now African Union (AU) in 1990 complemented or reinforced it.

### **3. Rights of Children in Correctional Institution (Borstal and Remand Homes)**

The rights of children in correctional institution can be traced to the concept of juvenile justice which propagates the welfare of the child under its administration. It focuses on the growth, protection and effective participation of child offenders in the society. Child justice ought to be corrective, preventive and advocacy oriented. Under, the child justice system, there are three categories of children namely, children in need of care, children that need protection and children that are beyond parental control. According to Glanville Williams<sup>11</sup> the guiding principle about young person is to have regard to their welfare and punishment may be irreconcilable. Based on this, our law prohibits the imprisonment of children. As far as the young person is concerned he can only be sentenced to a prison term where he is unruly in character or depraved. Whilst in prison he shall not be allowed as far as it is practicable to associate with adult prisoners and death sentence should not be imposed on a child, who has committed an offence punishable with death.<sup>12</sup> The court in *Odidika & Anor v the State* saved a 15 years old boy in association with an adult, robbed with firearms, and was released on the ground that he was under 18 years while the adults counterparts were not saved. This is in tandem with international regional and municipal laws on the protection of children. Hence the Charter<sup>13</sup> provides that in any matter that concerns the child, the basic interest of the child shall be paramount. Accordingly, the concept of juvenile justice is meant to discourage the state from exposing children to formal criminal procedure or subjecting them to any unwarranted ill-treatment, because children do not have the ability or maturity as adults to influence their own social situation or make choices. Other important reasons for the adoption of this concept are perhaps, to discharge inadvertent over-reaction to minors delinquency and to avoid doing or causing any harm to worsen a young person's prospects and not inappropriately using criminal justice interventions where welfare needs are

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<sup>3</sup> Land Use Act.

<sup>4</sup> Constitution of the Federal Republic of Nigeria, 1999.

<sup>5</sup> Children and Young Persons Act(CYPA)Cap. 32,vol.1LFN sec. 2.

<sup>6</sup> Criminal Procedural Act.

<sup>7</sup> NF Uba, *Rights of the Child in Nigeria* (Owerri: Bon Publishers, 2002) p.8.

<sup>8</sup> T.U Onyemachi, 'Children Status and the Law in Nigeria', *African Research Review, An International Multi- Disciplinary Journal Ethiopia* (2010) vol. 4, p. 93.

<sup>9</sup> United Nation Declaration on the Right of the Child adopted in 1989

<sup>10</sup> *Ibid.*

<sup>11</sup> W Glanille, quoted in F. Shmallegger, *Criminal Justice Today: An Introductory-Test for the Twenty first Century* (7<sup>th</sup> edn, United States of America Pearson Education Inc, 2003) p.585.

<sup>12</sup> Africa Charter on the Rights of Welfare of the Child, 1990.

<sup>13</sup> Africa Charter on the Rights and Welfare of the Child 1990 Article 4 (1).

appropriate.<sup>14</sup> Hence, due protection must be accorded to them because children are objects of human right. The court in *Ransome Kuti v Attorney General of the Federation*<sup>15</sup> affirmed that a right is that which stands above the ordinary laws of the land and which in civilized society recognises the existence of human rights as a social fact, that can be viewed as normative responses to experience of oppression and domination. In fact, they represent the minimum living standards for civilized humanity. They are won through struggles of the oppressed against their oppressors.

Plethora of laws at the international, regional and national sphere provide for the protection of children under the administration of juvenile justice, particularly with respect to correctional institutions. In order to adequately, protect the child, the law specifically provides for Borstal and Remand Institution for proper rehabilitation of children. We shall examine the meaning of these institutions for better assimilation of this study. Borstals are institutions, where adolescent offenders receive training in lieu of imprisonment, so that they can be reformed under conditions which are different from prison. The training is exclusively meant for adolescent between the age group of 16 and 21. Only offenders who are found punishable with imprisonment are sent to these schools. After release, the offenders remain subject to supervision and recall, for next two years from the date of his release. While an approved institution is any institution or so declared by the Governor of the state for the purpose of taking into care juvenile offenders or juveniles in need of care and protection.<sup>16</sup> An approved institution is required to provide education to every inmate according to his age and development, and such education must be at least equivalent to that which the juvenile would have received were he attending school in the usual way of education.<sup>17</sup> The Borstal Institution Remand Centre Act,<sup>18</sup> established borstal home, sec. 3 (1) (b) provide that juvenile offenders who were not less than sixteen but under twenty one years of age on the day of their conviction may be detained and given such training as will be conducive to their reformation in borstal institutions. Section 19 of the Centres Regulation, provides that every inmate, while conforming to the rules necessary for well-ordered community life, shall be able to develop his individuality on right line with a proper sense of personal responsibility.<sup>19</sup>

The regulation provides that no inmates shall be admitted into the borstal institution unless accompanied by a warrant, committing him to a sentence of borstal training and the superintendent of the borstal inmates is the person named in the warrant that the offence and the date of sentence are recorded and that the warrant bears the signature of the proper authority. The warrant of committal shall be addressed by the court to the superintendent of the borstal training institutions.<sup>20</sup> Further, it provides that no inmate shall be given or allowed to have any intoxicating liquor except in pursuance of a written order of the medical officer specifying the quantity to be given and the name of the inmate for whose use, it is intended. The rules provide that no inmate shall be allowed to smoke or have in his possession any tobacco except in accordance with the approval of the direction. However, in practice prisoners take harmful narcotics in the prisons. Furthermore, the Regulation states that the inmates shall be prepared adequately for skilful trade when released. However, despite, laudable provisions highlighted above, children within the correctional centres are exposed to abuse which negatively affect their health, many engage in drug addiction which affect them negatively.

#### **4. Legal Framework**

##### **National Framework**

###### ***Constitution of the Federal Republic of Nigeria 1999***

The Constitution has provided copiously for the protection of children against abuse. These rights include the right to life, development rights and dignity of human persons, rights to personal liberty, non-discrimination, freedom of expression, rights to privacy and fair hearing. The child is entitled to be heard in privacy and all records made in the course of the hearing should not be used against him in the future. Furthermore, the Constitution provides that the right of the accused in criminal trial should be extended to the juveniles, thus, section 36 (6) (a) of the 1999 Constitution, provides that an accused has a right to be informed in the language he understands and in detail, of the nature of the offence with which he is accused or charged. This must be done

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<sup>14</sup> Onyemachi, 'Children Status and the Law in Nigeria' (2010) *African Research Review An International Multi-Disciplinary Journal Ethiopia* vol. 4.93-102.

<sup>15</sup> (1985) 2 NWLR (pt.6) 230.

<sup>16</sup> Remand Centre Act, Cap 38 LFN 1990.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid* Article 3 (1).

prior to trial either at the point of arrest or at the beginning of trial that is during arraignment.<sup>21</sup> It provides further, that an accused person must be given adequate time to prepare his defence.<sup>22</sup> Apart from trial rights, it provides for rights to adequate education and health for children. However, these rights are not enforceable because they are enshrined in Chapter (ii) of the 1999 Constitution. It should be noted that Chapter (ii) of the Constitution provides for protection against every form of violence but these rights are not enforceable because of constitutional dichotomy that exists in our present Nigerian Constitution, hence rendering the principle of interdependency of human rights nugatory. In fact, all rights under our Chapter (ii) of the Constitution are mere fundamental objectives and directive principles of state policy that are not enforceable. Apart from that, section 6 (6) (c) of the Constitution oust the jurisdiction of the court on any matter under the said Chapter (ii) of the Constitution and provides inter alia:

The juridical ...shall not, except as otherwise provided by the Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the fundamental objective and directive principles of state policy set out in Chapter(ii) of this Constitution.<sup>23</sup>

In the light of the above, the writer is of the view that all the rights in Chapter (ii) should be pushed to Chapter (iv) so that children can enjoy their fundamental human rights like their counterparts in other jurisdictions.

### ***Children and Young Persons Law (CYPL)***

The Children and Young Persons Act<sup>24</sup>, is the major piece of legislation dealing with matters affecting children and young persons in Nigeria. It's main purpose is to make provision for the welfare, treatment of young offenders and for the establishment of juvenile courts. Under the terms of the CYPL, there are three categories of children who may become involved with the system of juvenile justice and these are: Children in conflict with the law, Children in need of care and protection, and Children beyond parental control. It should be noted that children in need of care and protection are those children that have been abandoned or left destitute by their parents. Children beyond parental control are brought to the attention of the authorities by their parents. There is no legal definition of the group of children that are in conflict with the law but in many such cases, the child is alleged to have engaged in an offence. This Act was first enacted in 1943, for application in any part of Nigeria on the order of the Government in Council. It was specifically enacted for Lagos in 1946 and was extended to the western region of Nigeria by Order in Council No.22 of 1946.

### ***Child's Right Act/Child Rights Laws of Various States of the Federation***

Further, the CRA/CRL established the Child Justice System for children who are in conflict with the law, under the system no child shall be subjected to the criminal justice process or to criminal sanction, but a child alleged to have committed an act which would constitute a criminal offence, if he were an adult shall be subjected only to the child justice system and processes set out in this Act.<sup>25</sup> But then, a child offender shall be handled by a specialized children police unit<sup>26</sup> whilst efforts shall be made by the police, the prosecutor, and the family court to protect the child without resorting to formal investigation, trial or disposition. To this end, efforts shall be made to employ such other means of settlement, including conciliation, supervision, guidance, restitution or compensation.<sup>27</sup> The term "conviction" and "sentence" are prohibited from being used in relation to a child dealt with by the court within the context of the child justice system.<sup>28</sup> Whilst, it enjoins the avoidance of the use of detention at the pre-trial, trial and post-trial stages, except as a measure of last resort, in which case, it must be for the shortest possible period of time.<sup>29</sup> The child justice system further enjoins the use of social inquiry report, which must contain information about the background, school career and educational experience circumstance

<sup>21</sup> *Mukailu v State* (2001) 2 NWLR (Pt. 25) 765 *MAJA v. State* (1980) 1 NCR 212, Kalu Uwadineke D.C. 'A Case for the Demise of the 'Holding Charge' in Nigeria's Criminal Justice 'System', *Benin Journal of Public Law*, vol. 5-7 2007-2009 pp.179-207 on some of these constitutional safeguards to fair trial as therein discussed-See CPA section 179, CPC section 218, *Umaru v The State* (2002) 9 NWLR (Pt.771) 90 at 108-109; *Babaloa v The State* (1989) 7 S.C.:- (Pt.1) 94 at 102.

<sup>22</sup> Section 36 (6) (b) Constitution Federal Republic of Nigeria 1999, see also *Udo v the State* (1989) 3 NWLR 316 *Yanor & Anor v The State* (1965) 1 ANLR 193-316.

<sup>23</sup> The Constitution Federal of Republic of Nigeria 1999(as amended)

<sup>24</sup> Cap 32 LFN and Lagos 1958.

<sup>25</sup> Child's Right Act, Section 204, and the Corresponding provision of the CRLs of the various states *ibid*

<sup>26</sup> *Ibid*, section 207, and the corresponding provisions of the CRLs of the various states, *ibid* section Rule 12.1 of the Beijing *op cit* which provides for specialization within the police.

<sup>27</sup> *Ibid*, section 209 (1) (b) and (2), whilst subsection (3) provides that police investigation and adjudication before the court shall be used only as measure of last resort. See also the corresponding provision of the CRLs of the various States.

<sup>28</sup> *Ibid*; section 21 (1), and the Corresponding Provisions of the CRLs of the Various State.

<sup>29</sup> Section 212 and 215 (1) (d) CRA, and (d) *Ibid* see, also section 223 (2), (4) and (5) in this regard. See the equivalent provisions of the CRLs of the various states *ibid* see Rule 18.2 and 19.1 of the Beijing Rules *ibid*.

in which the child is living and has been committed.<sup>30</sup> Where the child is charged with an offence, the court may order his parent or guardian to give security for his good behaviour,<sup>31</sup> without proceeding to find whether the child committed the act.<sup>32</sup> The system further provides that where the child is found to have committed the offence he was charged with, following disposition measures for dealing with the child offender and/or his parents or guardian may be employed.<sup>33</sup>

- (a) Dismissing the charge<sup>34</sup>
- (b) Discharging him upon his entering into a recognisance<sup>35</sup>
- (c) Placing the child under care order, guidance order and supervision order<sup>36</sup> including:
  - (i) Discharging the child offender by means of a connective order to the care of a guardian and supervision of a relative or any other fit person<sup>37</sup>
  - (ii) Committing the child offender by means of a connective order to the care of a guardian and supervision of a relative or any other fit person<sup>38</sup> or
  - (iii) Sending the child offender by means of a corrective order to an approved accommodation or approved institution<sup>39</sup>
- (d) Ordering the child offender to:
  - (i) Participate in group counselling and similar activities<sup>40</sup> pay a fine, damages, compensation or cost or<sup>41</sup>
  - (ii) Undertake community service under supervision or
- (e) Ordering the parent or guardian of the child offender to:
  - (i) Pay a fine, damage, compensation or costs.
  - (ii) Give security for his good behaviour.
  - (iii) Enter into a recognisance to take proper care of him and sex exercise proffer control over him.
- (f) Committing the child offender to custody in a place of detention provided under this Act, which can be any of the following:

The Act also provides for Emergency Protection Centre which is 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<sup>42</sup>

- (i) *Children Attendance Centre*: Which is a non-residential place at which children shall:
  - (a) Attend on a daily basis or on such days only as may be prescribed on the order of the court which dealt with the case of the child concerned and
  - (b) Be given appropriate care training and guidance, as may be conducive to their reformation and re-socialization and the removal or reduction of their tendency to commit anti-social act and such other acts which violate the criminal law<sup>43</sup>
- (ii) *Children Centre*: Which is a place for the detention of children who are remanded or committed to custody for trial or for the making of a disposition order after trial or awaiting adoption or fostering<sup>44</sup>
- (iii) *Children Residential Centre*: Which is a place where children offenders may be detained and given regular school education and such other training and instruction as may be conducive to their reformation and resocialisation and the removal or reduction of their tendency to commit anti-social acts and such other acts which violate the criminal law.

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<sup>30</sup> Section 220 (2), CRA *ibid* corresponding provisions of the CRLs of the Various States *Ibid*.

<sup>31</sup> *Ibid*, section 220 (3). CRA and the correspond provision of the CRLs of the various states *ibid*.

<sup>32</sup> Sec. 223 (1) (a) – and (e) ---, CRA, *Ibid* noting the restriction on detention in sub-section (2), (4) and (5) CRA *ibid* see the corresponding provisions of the CRLs of the various states, *ibid*. see Rule 18 of the Beijing Rules, *ibid*.

<sup>33</sup> Sec 223 (1) (a), CRA----

<sup>34</sup> Section 223 (1) (b), CRA, *Ibid* and where the child fails to comply with the terms and conditions of the recognizance the court may deal with the child as for the original offence – sections 225 particularly subsection (4) *ibid* see.

<sup>35</sup> Section 223 (1) (c), CRA see----*ibid* see Rule 18.1 (e) of the Beijing Rules of *op cit* on intermediate treatment order.

Section 223 (1) (c) (iii) for approval accommodation and for an approved institution, see section 248, 249 and 250, Act, *Ibid* see the corresponding provision of the CRLs of the various states *ibid*

<sup>36</sup> Section 223 (1) (c) (ii) CRA.

<sup>37</sup> Section 223 (i) © (iii) for approved accommodation, and for an approved institution section 223 (1) (c) (iii), for approved accommodation and for and 250 CRA, *Ibid* see the corresponding provision of the CRLs of their various state, *ibid*.

<sup>38</sup> *Ibid*.

<sup>39</sup> *Ibid*.

<sup>40</sup> *Ibid*.

<sup>41</sup> *Ibid*.

<sup>42</sup> *Ibid*.

<sup>43</sup> *Ibid*.

<sup>44</sup> *Ibid*.

- (iv) *Children Correctional Centre*: Which is a place where child offenders are detained and given such training and instructions 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 violates the criminal law.
  - (v) *Special Children Correctional Centre*: Which is a place where children who are found to be incorrigible or to be exerting bad influence on other inmates detained in a children correctional centre may be detained
  - (vi) *Special Mother's Centre*: Which is a place outside a prison environment in which expectant or nursing mothers are held for purposes of remand re-socialisation or rehabilitation in the society in an atmosphere devoid of the regime of institutional confinement which may be damaging for the proper development of their children.
    - (a) Making a hospital order or an order prescribing some other form of intermediate treatment.
    - (b) Making an order concerning foster care, guardianship, living in a community or other educational setting.
      - (i) Dealing with the case in any other manner in which it may be legally dealt with under this Act.
- However, in relation to the placement of a child in an approved accommodation or government institution placement shall:
- (a) Be a disposition of last resort; and
  - (b) Not be ordered unless there is no other way of dealing with the child, and the court shall state, in writing, the reason or reasons for making the order.

Even then, the family court shall not make an institutional order in respect of a child unless, it is satisfied that there is a vacancy in the approved institution to which it intends to commit the child. An approved institution may refuse to accept or admit a child where there is not vacancy in the institution notwithstanding an order of a court committing the child to that institution. The court is forbidden to impose on any child imprisonment, corporal punishment; and capital punishment, that is, death penalty. However, despite, these lucid provisions, thousands of children languish in prison in Nigeria.

## Regional Framework

### *Organization of African Charter on the Right and Welfare of the Child (OAU Charter on the Rights and Welfare of the Child)*

This Charter<sup>45</sup> provides that everyone is entitled to all the rights and freedoms recognized and guaranteed therein without discrimination of any kind such as race, ethnic group colour, sex, language, religion political or any other opinion, national and social origin, fortune, birth or other status. Further, due to the needs of the child's physical, mental, development, requires particular care with regard to health, physical, mental, moral and social development and requires legal protection in condition of freedom, dignity and security. It provides that in all actions that concern the child undertaken by any person or authority, the best interests of the child shall be the primary consideration. Also, in all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views an opportunity shall be provided for the views of the child to be either directly, or through an impartial representative as a party to the proceedings and those views shall be taken into consideration by the relevant authority. The United Nations Standard Minimum Rules for the Administration of Juveniles (Beijing Rules)<sup>46</sup> and the United Nations Guidelines for the prevention of juvenile justice (The Riyadh Guidelines)<sup>47</sup> provides a desirable balance between Juvenile Justice Administration delinquency prevention which must be embedded in national economic social development, health, educational and youth development policies. The guidelines especially provide for the need for and importance of progressive delinquency prevention policies and systematic study and the elaboration of measures that should be recognized criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to other. The Charter<sup>48</sup> provides for the protection against child abuse and torture. Hence, state parties to Guidelines 5, shall take specific legislative, administration administrative, social and educational measure 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 a parent, legal guardian or school authority or any other person who has the care of the child. Protective measures under this Article shall include effective procedures for the establishment of special monitoring unit to provide necessary

<sup>45</sup> African Charter on the Rights of the Child, 1990.

<sup>46</sup> United Nations Standard Minimum Rules for the Administration of Juvenile (Beijing Rules) adopted 4 to 15 September 1995.

<sup>47</sup> United Nations Guidelines for the Prevention of Juvenile Justice (The Riyadh Guidelines) adopted 14. December 1990.

<sup>48</sup> United Nations Rules for the Protection of Juvenile Deprived of their Liberty 1990

support for the child, as well as other forms of prevention and for identification, reporting referral investigation treatment and follow-up for of child abuse and neglect.<sup>49</sup>

### **International Legal Framework**

#### ***United Nations Convention on the Rights of the Child***

The Convention<sup>50</sup> is the most widely endorsed human rights treaty in history, currently ratified by all the State Parties in the world except United States of America and Somalia. It sets universal standard for the care and protection of all persons including children below 18 years. In fact, it outlines the human rights to be respected and uphold the rights of children. Further, it affirms, the best interest of the child, which includes non-discrimination, participation, implementation of child's right, economic, social and cultural rights to the maximum extent of available resources, the rights to life, survival and development. For instance, where a child is in conflict the with law, the focus should not be on the offence but on the child who would be protected by applying the best method that will save him, so that he will develop his full potentials in order to make positive impact on the society.

#### ***United Nation Rules for the Protection of Juveniles Deprived of their Liberty (the JDLS)***

This instrument<sup>51</sup> defines the specific circumstances in which children can be deprived of their liberty, emphasizing that deprivation of liberty must be a last resort, for the shortest possible period of time and limited to exceptional cases. Where deprivation of liberty is unavoidable, the following conditions should be fulfilled, for instance, priority should be given to speedy trial to avoid unnecessarily lengthy detention periods. Children should not be detained without a valid commitment order, and small open facilities should be established with minimal security measures.

Deprivation of liberty should only be in facilities which guarantee meaningful activities, and programmes promoting the health, self-respect and responsibility of juveniles. Food should be suitably prepared; clean drinking water must be available beddings should be clean and sanitary installations, sufficient clothing, should be suitable for the climate and preventive and remedial medical care should be adequate. Detention facilities should be decentralized to facilities contact should take place in the community and children should have the opportunity to work within the community. The UN Rules on Juveniles Deprived of their liberty serve as an internationally accepted framework intended to counteract, the detrimental effects of deprivation of liberty by ensuring respect for the human rights of children. Accordingly, the RIYADH, BEIJING and JDLS have interrelated strength and can be seen as guidance for a three-strength stage process. Firstly, social policies must be applied to prevent and protect young people from offending (the Riyadh Guidelines) Secondly, a progressive justice system needs to be established for young people in conflict with the law (the Beijing Rules). Thirdly, fundamental rights must be safeguarded, measured and established for social reintegration of young people deprived of their liberty whether prison or other institution (the JDLS). In technical terms unlike the UN Convention on the Rights of the Child, these Rules and Guidelines are not legally binding on countries. They do however present detained guidance based on UN authority and can be referred to equally alongside the UN Convention for lobbying purpose.

## **5. Challenges of Children in Correctional Centre**

### ***Paucity of Remand/Borstal Institution***

One of the greatest challenges to the rights of children in correctional institution is dearth of remand and borstal facilities. Research reveals that there are no functional remand/borstal institutions in the whole of Southeast. Hence, where a court is faced with a juvenile matter and the child offender ought to be remanded but there is no remand home or Approved institution, the court will simply remand him or her in adult correctional institution, due to dearth of funds.

### ***Poverty***

Hunger has exposed a lot of children to juvenile delinquency, for instance many are out of school. In Kano alone as per statistics, about two years back, 3.2 million school children were out of school<sup>52</sup>, some hawking, while many were exposed to other deviant behaviour. The Government should try and improve the economy by

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<sup>49</sup>*Ibid* Article 14.

<sup>50</sup> United Nation Convention on the Right of the Child 1989.

<sup>51</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLS) 1990.

<sup>52</sup> U.Chioma, Gender Based Violence: FG Approves Creation of Specialised Courts For Child Offenders <https://thenigerialawyer.com> accessed on 7/8/2021

providing good jobs, education and necessary amenities that will help to train children because they are the future of this nation.

#### ***Lack of Training of Relevant Officers***

Many of the personnel that come in contact with these children are not trained to understand their rights and give them adequate protection. Relevant laws<sup>53</sup> provide that professional education, in service training, refresher courses and other appropriate modes of instruction shall be initialized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.<sup>54</sup> However, in practice these training are not given, hence exposing them to violence.

#### ***Independent Family Courts in Nigeria***

Despite the provisions of the Child's Right Act for the establishment family courts in every state in Nigeria, many states have not complied with this law. The law provides that child matters shall be taken by only family court. However, in practice, most of child's proceedings are held in ordinary court where the best interest of the child is not considered. At times the judge that precede over adult matters usually handle child without observing the relevant procedures. Hence, the need for separate family court in Nigeria in order to give maximum protection to the children.

#### ***Non-Compliance/Implementation of the Law***

The problem of non-compliance with legal framework has jeopardised the rights of children in correctional institution. For instance, the provisions and political rights provide that in the determination of any criminal charge, the juvenile shall be informed promptly and in detail in a language which he understands, however in Nigeria young persons are arrested without giving notice of arrest to their parents or guardians. The law also provides for private hearing with respect to juvenile matters but in practice most of their proceedings are conducted publicly in the normal courts. The Constitution provides plethora of rights such as rights to fair hearing rights to dignity of human person etcetera however, in practice the courts do not comply with them, hence many child proceedings are conducted in the normal court without upholding the juvenile procedure. The Court in *C.O.P v Uzochinna*<sup>55</sup> was held section 28 of the Area Court Edict 1967 made pursuant to 390 CPC inconsistent with the Constitution forbidding the appearance of Counsel in a court of law in Nigeria. Examination of prosecution witnesses is also provided in sec. 36 (6) (d) which states, that every accused person shall have the right to cross examine prosecution witnesses. In *Tulu v Bauchi N.A*<sup>56</sup>, the Supreme Court elevated this provision to the level of sacrosanctity. Also the interpretation of proceedings, particularly sec. 36 (6) (e) of the 1999 Constitution provides that an accused shall have without payment, the assistance of an interpreter if he cannot understand the language of the court but in practice most of these rights are not observed, jeopardising the rights of the child.

### **6. Conclusion and Recommendations**

The study reveals that there is dearth of Remand and Borstal institution in Nigeria. Currently, there are no functional correctional centres for children and the effect is that children are remanded in correctional institution with adult inmates that violate them. The study further reveals that our Correctional Institutions have become a breeding ground for criminals, hence, terrorising the polity. The work observes that child offenders that come in contact with them are not rehabilitated but are abused; hence, once they are integrated into the society, they become security. Consequently, they engage in nefarious crime like organ trafficking, kidnapping and incessant killing of *ndi Igbo*. The work reveals that leaving children in adult prison does not protect the community because they will relapse to recidivism or re-offend as the case may be. The study recommends that *ndi Igbo* can curb this menace by partnering with the Government to build adequate Remand homes for proper rehabilitation of their children who are the future of *Igbo* race. Apart from partnering with the Government, *ndi Igbo* can reach out to wealthy *Igbo* men and women who can establish adequate remand homes for rehabilitation of child offenders in Southeast. This is cardinal because security of Southeast has been in jeopardy and can only be redeemed by taking adequate measures such as:

***Establishment of Remand and Borstal Institution:*** The dearth of remand and borstal institution can be resolved by establishing them in every state in Nigeria as provided by the Act. It is therefore recommended that at the Federal, State and Local Government should build remand and borstal institution in order to reduce congestion from the prison and prevent adult inmates from violating children.

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<sup>53</sup> Children and Young Persons Act 1958, Child's Right 2003, OAU Charter on the Rights of the Child 1979.

<sup>54</sup> Child's Right Act 22.2.

<sup>55</sup> (1982) INLR 27.

<sup>56</sup> (1965) NMLR 343, *Inrisu v State* (1968) NMLR 88.

**Provision of Fund:** Funds should be channelled into building and establishment of remand and borstal institutions in every state in Nigeria. The Government should fund the Nigerian prison and also build new facilities for them because most facilities are already dilapidated for instance in the whole of eastern region like Abia, Enugu, Anambra, Imo etcetera there is no functional remand home and the few in the west, like Boys Remand Home *Oregun* and Girl's Remand Home *Idiaraba* need to be revamped r to be in tandem with international standards.

**Implementation of Laws:** For there to be effective juvenile justice administration all the laws provided for children's welfare should be implemented. The problem is not the law but with non-implementation of law, for instance the Child Right Act provides for the establishment of the Child Justice System for children who are in conflict with law. Under the system, 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 he shall be subjected only to the child justice system and processes set out in this Act<sup>57</sup>, but then a child offender shall be handled by a specialized children police unit<sup>58</sup>, whilst efforts shall be made by the police, the prosecutor, and the Family Court to dispose of a case of a child offender without resorting to formal investigation, trial or disposition.<sup>59</sup> To this end, efforts shall be made to employ such other means of settlement, including conciliation, supervision, guidance, restitution, or compensation. They also provide that parents shall be immediately notified by the police of their initial contact with the child. The terms conviction and sentence are prohibited from being used in relation to a child dealt with by the court within the context of the child justice system; whilst it enjoins the avoidance of the use of detention, at the pre-trial, trial and post-trial stages, except as a measure of the last resort, in which case, it must be for the shortest possible period of time. The child justice system further enjoins the use of social inquiry reports, which must contain information about the background of the child including the social and family background, school career and educational experience, circumstances in which the child is living, and conditions under which the offence has been committed. Where the child is charged with an offence, the court may order his parent or guardian to give security for his good behaviour; or to pay damages or costs, or to give security for his good behaviour without proceeding to find that the child committed the Act. The system further provides that, where the child is found to have committed the offence he was charged with disposing measures such as dismissing the charge, discharging the child offender and placing him under care guidance order etcetera. However, despite the laudable provisions of the Act, the rights of the child are rarely complied with respect to the police, they do not have functional specialised children unit as recommended by the Act neither do they resort to alternative dispute resolution to solve the needs of the child. The courts do not often make use of social enquiry report as provided by the Act. All these anomalies can only be corrected by the government taking adequate measures to implement the law.

**Institutional Reforms and Capacity Building:** The Nigeria juvenile justice agencies- police, courts, remand homes, approved schools, borstal and prisons-lack adequate and qualified workers that are able to meet the needs, concerns and aspirations of juvenile offenders. Therefore, adequate provisions should be made in the law for the establishment of well equipped, properly staffed approved institutions in each state. They should provide educational and vocational training, to properly feed and clothe inmates, and to provide adequate health care, sanitation and personal hygiene, bed space, and recreational facilities for institutionalized offenders. In all cases, institutionalization or custodial treatment of juvenile offenders should be a last resort.

**Education and Vocational Studies:** Free education and access to vocation training should be made accessible to every child in order to make them useful citizens. Parents and guardians that expose their children to hawking and child labour should be punished severely for not allowing them viable education, the law should emphasize the central and critical role of education in human development and self-actualization. This role underlined by the United Nations Guideline such as teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child's own and human rights and fundamental freedoms, promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential.

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<sup>57</sup> Child Right Act section 204 and the corresponding provisions of the CRLs of the various States.

<sup>58</sup> *Ibid* section 207 and the corresponding provisions of the CRLs of the various States.

<sup>59</sup> *Ibid* section 209 (1) (a) and the corresponding provisions of the CRLs of the various States.