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FROM COLONIAL ORDINANCE TO CHILD RIGHTS ACT: A CRITICAL ASSESSMENT OF THE EVOLUTION AND IMPLEMENTATION GAPS IN NIGERIA'S JUVENILE JUSTICE LEGISLATIVE FRAMEWORK

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ABSTRACT

This article critically re-examines the Administration of Juvenile Justice in Nigeria, tracing it's evolution from the Colonial era Children and Young Persons Ordinance 1943 and up to the contemporary Child Rights Act (CRA) 2003.Drawing on the legal transplantation theory, there is argument that the Nigeria's Juvenile Justice system is a clear example of **"fragmented legal transplantation"**, and this fragmentation undermines the effective realization of children's right guaranteed under International treaties, for example Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The central contention that the CRA's domestication requirement is not merely administrative but a constitutional mechanism that sustains the colonial-era fragmentation, rendering the Act a symbolic commitment that denies millions of Nigerian children the protections that international law and national legislation purport to guarantee.

This Article relies on doctrinal analysis, supported by a comparative analysis from India and South Africa. This article *highlights three structural impediment to a uniform child rights protection:* (i)the constitutional allocation of criminal procedure and welfare matters to the state list; (ii)there is no federal enforcement mechanism to enforce the states domestication; and (iii)the side by side operation of conflicting customary and religious legal orders. This article argues that these impediments do not happen per chance as they are but a structural issue, and that they render the Child Rights Act a mere paper work, a legislative aspiration**:rehabilitative in theory while it is retributive in fact.**

The article concludes by proposing dual reform: first, a constitutional amendment fo inclusion of Juvenile Justice on the Exclusive Legislative List, and second, a federal fiscal system initiative adopting a conditional access to certain federal allocations on state adoption and enforcement of the CRA*, with non-complaints state losing eligibility. Absent such reforms, the administration of Juvenile Justice in Nigeria will remain a constitutional failure, leaving millions of children amongst the nation's most vulnerable*

KEYWORDS: Juvenile Justice, Child Rights Act, Children and Young Persons Ordinance, Legal Transplantation, Domestication, Administration of Criminal Justice Act, Constitutional Reform, Nigeria.

INTRODUCTION

Introduction

A lot of issues arise on a daily basis from the concern locally and internationally on the protection of the rights and welfare of children, associating with the level of their vulnerability. More so, with the dilapidating state of Nigeria's economic situation, there is a daily increase in Juvenile delinquency and an escalation of the number of children who are in need of care and protection; as well as exposing children to exploitation, abuse and violence[1].

The treatment of children who come into conflict with the law has long occupied an uneasy space within Nigeria's Criminal Justice architecture- there is **persistent tension between punitive and rehabilitative imperatives**. This is a different area of Criminal law that has undergone relatively straightforward statutory development. The law governing Juvenile offenders in Nigeria reflects a multi-layered history of colonial transplantation, fragmented post 1960 inheritance, and an incomplete incorporation of international child rights instruments. This article examines the multi-layered history- follows the path from the Children and Young Persons Ordinance of (CYPO) 1943 through to the Child Rights Act (CRA) 2003 and the Administration of Criminal Justice Act (ACJA) 2015, with a view to assessing whether the formal legislative evolution has translated into a coherent, attainable Juvenile Justice System.

The central argument advanced here is dual. Firstly, Nigeria's Juvenile Justice Framework reflects a persistent gap between normative ambition and actual implementation-a gap that is deliberate and structurally embedded in the Federal constitutional design. Secondly, this gap cannot be remedied through legislative reform alone; there is need for Federal fiscal allocations over child welfare but the benefits goes only to states that have adopted and strictly enforcing the Child Rights Act. The article asserts that the domestication requirement under the CRA is not merely a technical administrative setback but a statutory system that perpetuates colonial-era legal fragmentation and effectively now a constitutional failure, denying millions of Nigeria children their deserved protection.

The point here is not premier nor in isolation. It is part of a larger, ongoing discussion among legal scholars who study three connected topics: (i)how countries borrow laws from other countries and incorporate them into their own system, (ii)how Federal systems share power between central and their regional governments, (iii)and the fundamental rights of children.

The literature on legal transplantation, particularly the work of William Twining and Alan Watson, has long recognised that laws transferred from one jurisdiction to another often fail to achieve their intended effects when they are not accompanied by appropriate institutional infrastructure and cultural adaptation[2]. The administrations of Juvenile Justice in Nigeria have experienced a reform and it illustrates this dynamic with particular clarity. The Children and Young Peoples Ordinance 1943 was a direct transplant of the English legislation, and the Child Rights Act, while domestically enacted, represents a direct transfer of international standards that has not been fully adopted into Nigeria's legal system.

Comparative constitutional experience further illuminates the current Nigeria predicament. India, despite its own federal complexities, has established a uniform central legislation on Juvenile Justice. While the subject matter is not specifically listed in any of the three lists of the Seventh Schedule, the Union Parliament has exercised its powers under **Entry 97 of the Union List** to enact the Juvenile Justice- Care and Protection of Children Act, 2015, thereby creating a national framework for children in conflict with the law. This competence was confirmed by the Supreme Court in ***Arnit Das v State of Bihar***, which also recognized Parliament's authority under **Entry 13 of the Union List** to fulfill international obligations like the UN Standard Minimum Rules for the Administration of Juvenile Justice[3].

South Africa, in its post-apartheid constitution, has placed child rights in the Bill of Rights, subjecting all provinces to central standards. Nigeria, by contrast, left child welfare matters to the residual and concurrent lists, producing a fragmented and uneven legal landscape. This article draws on these comparative experiences to argue that Nigeria's Federal structure- far from being a neutral administrative arrangement actively obstructs the realisation of children's rights[4].

This article is divided into four main parts. It will commence by looking at the history of Juvenile Justice Laws from the colonial period, it proceeds to then examine the older criminal laws- Criminal code and Penal code; that were used before the Child Rights Act of 2003. This Article went further to analyze the current laws and the problem of states adopting unevenly and problem of application. Finally, it will conclude with suggestions for future legal reforms, including a proposal to amend the constitution to reflect a true concern for the welfare of Juvenile Justice.

COLONIAL ERA: THE CHILDREN AND YOUNG PERSONS ORDINANCE, 1943

Legislative Transplantation and Its Limitations

The premier legal framework dedicated towards Juvenile offenders in Nigeria was the ‘Children and Young Persons Ordinance of 1943’[5]. It was enacted by the colonial administration. It’s application across the protectorate flowed from the order of the Governor-in-Council[6]. The Ordinance was subsequently brought into force in the Colony of Lagos in 1946. It’s application was extended that same year to the Eastern and Western Regions, and from whence a similarly model was introduced for the Northern Region in the year 1958. The main aim of this Ordinance was to make provision for the welfare of young persons, the treatment of young offenders, and the establishment of Juvenile Courts.

Two observations are pertinent to a critical assessment of this Ordinance. Firstly, it represented a direct adoption of an English statutory model into a Nigerian background without meaningful adjustment to enable it fit the traditional and community-based systems of Justice and conflict resolution, and social best interest that were used by Nigeria's various ethnic groups before and

alongside the formal English legal system for addressing Juvenile delinquency, which had historically emphasized restorative, family and community based reactions rather than formal judicial proceedings or custodial confinement.

Scholars of legal transplantation like Alan Watson: Argued that legal adoption are subjectively easy and are a major source of legal evolution, and that Laws can be borrowed without fully understanding their originating language[7].

Another scholar named O**tto Kahn-Freund**: Proposed a situation-sensitive approach, arguing that legal rules are not equally transferable and that success depends heavily on the socio-political context of the recipient country[8].

Scholars of legal transplantation have noted that such direct transplant often fail to achieve their intended goals because they do not consider domestic institutional capacities, cultural standards, and the community network. Secondly, despite the rehabilitative language, the Ordinance was fundamentally a product of, and subordinate to, a colonial penal philosophy. This philosophy placed high emphasis on the maintenance of order and the protection of colonial economic interests over the welfare of the child[9]. Scholarly accounts describe colonial rule as having disrupted pre-existing informal mechanisms of social control. The resultant increase in urban Juvenile delinquency was characterized by colonial administrators as an "ethical dilemma," a framing that justified and produced the legislative intervention of the Children and Young People's Ordinance (CYPO).

THE TRANSITION FROM ORDINANCE TO REGIONAL AND STATE LEGISLATION

The 1943 Ordinance was amended on several occasions during the late colonial period before assuming the status of Cap. 32 of the Laws of the Federation of Nigeria and Lagos 1958[10], the long title of which described it as making provision for the welfare of the young and the treatment of young offenders and for the establishment of Juvenile courts[11]. Following Nigeria's adoption of a Federal system of government, the Ordinance was progressively domesticated as regional and later state, legislation, where it was commonly retained under the title Children and Young Persons Law (CYPL)[12].

This course shows a foundational pattern that shaped Nigerian Juvenile Justice law for the rest of the twentieth century. For a fact that the criminal procedure and child welfare falls and is being handled mostly in the concurrently and residual list of the state, as built in under Nigeria's Federal system, the same colonial law was copied, with variations, into many disparate states. The effect of this was a patchwork of laws instead of a Unified law. As a result, Juvenile Justice law in Nigeria was never one single set of rules, but a group of similar laws that each state could change at any time to fit it's own need[13].

PERSISTENT SHORTCOMINGS OF THE CHILDREN AND YOUNG PEOPLES' ORDINANCE (CYPO) / CHILDREN AND YOUNG PEOPLES' LAW (CYPL) LEGISLATIVE MODEL

Notwithstanding that the CYPO brought genuinely premier ideas into Nigerian law, thereby treating children and young persons as a distinct legal group requiring totally different procedures, language of the court and setting up. This is the Juvenile court, and it operates with it's own authority but the way it actually worked in practice has attracted a lot of criticism[14]. Research on how the CYPO/CYPL system worked throughout the twentieth century revealed that young

offenders have often faced delayed or been denied Police bail, that the practical operations of the Juvenile courts are totally different from it's structural design. The Juvenile Court structures and procedure lacked the minimum protection for these young offenders; holding facilities for these Juvenile lacked a true picture for an actual rehabilitation. This is important because it reflects the physical problems we see happening on a daily basis in the Juvenile Justice System in Nigeria, and for a fact that they are not new, as they go draw interference from the very first law on the subject, and that is exactly what the Child Rights Act 2003 was later, and specifically enacted to fix[15].

THE GENERAL CRIMINAL LAW FRAMEWORK: CRIMINAL CODE AND PENAL CODE

Preceding, and simultaneously with the position of the Juvenile Justice system in Nigeria, adjudicating criminal law and responsibility when it pertains to child offenders generally flowed from the Criminal Code Act and the Penal Code which are applicable in the southern and northern Nigeria respectively. As provided by the Acts, the benchmark for criminal liability is a child “under seven years or above but under twelve years”, except it can be proven by the prosecution that at such a time, such a child has the capacity and knowledge to know that such an act or omission was. Children within that category are incapable of committing an offence- the doctrine of *doli incapax* except on special circumstances which must be specifically proven by a Prosecutor which he must prove that sure a child does not have the full and sufficient capacity and knowledge to know that such an act or omission was wrong[16]. This irrebuttable presumption was given a judicial notice in the recognised case of *R v Owen*, and *C (Minor) v Director of Public Prosecution,* where the court held that the burden of proof lies solely on the prosecution to rebut the fact of the incapacity for a child within that age bracket[17].

Obviously, these provisions reflect some level of protection on criminal responsibility for children of very young ages, there is still a lacuna as there is still shortage for the minimum ages for criminal responsibility as internationally recognised, and calls for a higher standard[18]. It is important to note that the Criminal and Penal codes were originally established as a general instrument and for the purpose of- criminal laws: liabilities and sanctions and has no relation for any special child-care, treatment or rehabilitation for young offenders or establishment of Juvenile courts. From whence, we see a clear picture of complexity, as children are exposed to the ordinary and general concepts of criminal laws and proceedings; criminal responsibilities and liabilities. The side by side operations of these laws and a child- sensitive regime, leaves us at the fence of deciding which among these laws governs child offending acts and operations in Nigeria.

THE CHILD RIGHTS ACT (CRA) 2003 AND SUCCEEDING REFORM

THE CRA AS A DOMESTICATION OF INTERNATIONAL OBLIGATIONS

This is the most major legal frameworks in the administration of Nigerian Juvenile Justice System since 1943. Adopted by the National Assembly, the CRA was aimed to adopt Nigeria’s Obligation under the United Nations Convention on the Rights of the Child 1989 (ratified in 1991), African Charter on the Rights of the Child 1990 (ratified in 2003), which gave these instruments the force of Law in the Nigerian Legal system.

A major overhauling of the CRA is the structural language and concept change from the CYPA/CYPL models: these words; “Juvenile” was replaced with “child offender”, “Juvenile court” to “family court”, “detention” to “custody, borstal homes, approved schools, correctional centres or custody”. The concept of probation was reframed as “child care, guidance and supervision”, signaling a shift towards a more welfare-oriented approach[19].

These substitutions were not merely cosmetics; they reflected conscious and deliberate efforts to replace the use of punitive vocabulary of the colonial era with a modern language oriented towards welfare, correction, and reintegration. This shift in language is entirely with the rehabilitative philosophy enshrined in the Beijing Rules and the United Nations Conventions on the Rights of the Child; both of which insist that the Juvenile Justice System must priorities the dignity, wellbeing, and reintegration of the Juvenile offender over punitive retributions[20].

Significantly, the CRA established the family court as it’s primary forum for adjudicating matters involving children who comes in conflict with the law. Child-sensitive procedures- indoor proceedings and non-custodial dispositions. The best interest of the child is the most paramount consideration in all its actions when dealing with children who come in conflict with the law[21].

THE DOMESTICATION GAP; STATE-LEVEL ADOPTION OF THE CRA

Despite the completeness of the CRA provisions, its application remains fundamentally constrained by the Nigeria’s Federal Constitutional framework. As a Federal enactment, the force of the CRA applies only within the Federal Capital Territory, and for it to have the same binding effect within states, each state through it’s House of Assembly must then domesticate the provisions.

It is over two decades after the enactment of the CRA and commentators have continued to document uneven domestication and uneven application from states which have already formally domesticated the Act and this gap is predominate in the northern part of Nigeria which has a high influence from culture and religion, particularly the Sharia law which have informed resistance to aspects of the CRA framework in aspects like child marriage for example[22].

Although the CRA has been formally adopted in some states across Nigeria, application of the law is still a notable accomplishment, and this is as a result of conflicting legal provisions arising from culture and religious practices, insufficient child-care professional, low public awareness on child rights and welfare programmes[23]. The recent call by the Attorney General for a unified reformation on the Act confirms the existence of domestication problem in Nigeria[24].

The main narrative of this article is the gap in the evolutionary stages of these enactments. The unified right-based structure as promised by the CRA has been undermined by the Nigeria’s federal structure which has reproduced in piece meal, that same character of the colonial-era of CYPO/CYPL model. In some states where the CRA is yet to be domesticated, or where adequate application do not exist the old CYPL is used to govern child care and welfare[25].

THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA) 2015 AND STATE-LEVEL REFORMS

Further procedural reforms were introduced by the ACJA 2015 reforms with implications for Juvenile offenders. Notably are part 43, 452 which makes specific provisions on procedures for trying Juvenile delinquencies and the extension of bail conditions respectively, has advance on the

more limited provisions previously found in the Criminal Procedure Act[26]. The Act also introduced expanded non-custodial sentencing options, probation and community service, which, while not exclusively directed at child offenders, are capable of being applied to strengthen the rehabilitative main focus of the system at the federal level[27].

The Administration of Criminal Justice Act faces a Federalism-related challenge that is parallel, yet differs from, the CRA's adoption problem. It is a Federal enactment, and as such it governs only Federal courts and it operates only in the Federal Capital Territory. It application is limited to state courts-where most Juvenile cases are handled-hinges on the domestication of state-level Administration of Criminal Justice Laws (ACJLs). Although a handful of states have enacted such laws, a comprehensive assessment of their operations concerning Juvenile offenders is lacking, and application is widely reported as uneven[28].

At state levels, more recent reform efforts reveal both the continued vitality and the continuing fragmentation of Nigeria’s legislative landscape. The Delta State Child Rights (Amendment) Law 2024, for example, represents a recent attempt to update a state's domesticated CRA framework in light of evolving standards, but such reforms necessarily remain confined to the enacting state and do not address the absence of equivalent updates in other states[29].

CONCLUSION: RECOMMENDATION FOR A STRUCTURAL REFORM AGENDA

Historically, this article reveals a Juvenile Justice system that has evolved overtime, starting from a colonial-era concerned principally with order and containment, through a general criminal law that offers only a narrow age-based shield against criminal responsibility, and then to a rights-based instrument in Child Rights Act that explicitly is concerned with best interests of the child as guiding the guiding principle; embracing rehabilitation and reintegration, further reinforced by procedural innovations under the Administration of Criminal Justice Act.

As a matter of statutory drafting and doctrinal ambition, Nigeria's evolving Juvenile Justice System conforms favourably with international standards. The Child Rights Act 2003 incorporates the core principles of the **United Nations Convention on the Rights of the Child (CRC)**-particularly as it places more emphasis on the best interests of the child, prohibiting corporal punishment, and the requirement that deprivation of liberty be the last resort. The Act also reflects the rehabilitative philosophy of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (**Beijing Rules)**, which stress the well-being of the Juvenile and the principle of proportionality in responses to offending. Also at the regional level, the **African Charter on the Rights and Welfare of the Child** reinforces these standards. It places the child at the centre of family and community life, mandating that States parties *"prohibit the press and the public from the trial"* of children and ensure that Judicial proceedings are conducted in the whole child's best interests. Together, these international and regional instruments provide a comprehensive framework for a fair, humane, and child-centred justice system-one that Nigeria has nominally embraced in its legislation, even as application challenges persist[30].

The central finding of this article conclusively can be said to be that this evolution is highly undermined by Nigeria Federalism structure. For over two decades the applicability of the foremost instrument CRA remains incomplete and uneven despite its formal status. The practice flows from the CYPL from the colonial-era with documentation deficiencies in bail practice, court room procedures and institutional insufficiency and it strives despite all effort of suppression from the CRA 2003.

This article identifies three interlocking obstacles to uniform Juvenile Justice that must be addressed in any credible reform agenda. Firstly, the constitutional allocation of criminal procedure and welfare matters to the state list automatically breaks the Juvenile Justice system into 36 distinct regimes[31]. This inherited style from the colonial era, was designed to accommodate regional diversity but has had the effect of internalizing legal inequality for children. Secondly, the lack of any central or federal enforcement machinery assist in the attitude of states if they decline to domesticate the CRA if at all apply same as there is no legal sanction attached, and there is no direct or implied federal power of state compliance. Thirdly, the persistence of conflicting customary and religious orders, especially from the northern parts of Nigeria, is a reflection of a multiple legal system as Sharia or customary laws may be invoked to justify a non-compliance of this CRA's provisions[32]. This duplicity that accommodates the Sharia law is not a mere cultural factor but has a background from the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended)[33].

In future, reforms of Juvenile Justice legislative frameworks must address both the substantive content of law and the structural and constitutional mechanism by which the laws are brought into force and its applicability across the federation.

Structural reforms proposed by this article are a constitutional amendment to include Juvenile Justice on the Exclusive List and the non-negotiation of the CRA as a Fundamental Right. This will bypass the discretionary powers of the Houses of Assembly to decline adoption by states, thereby fostering a centralized standard.

The Indian Constitution is a classic example is the Indian Constitution which places "Juvenile Justice" on the Union List. This enables a uniform national legislation, and also is the South African Constitution incorporates child rights in its Bill of Rights, binding all provinces to a single national standard[34].

Secondly, a compulsory Federal funding should be established- creating a financial incentive and it should be tied to state compliance. An example is the Nigerian Universal Basic Education Act, which makes federal education funding dependent on states implementing basic education reforms.

Critics may object that a constitutional amendment is politically infeasible in Nigeria's current climate. The objection here is not without force, but it misunderstands the nature of the argument. The article does not claim that reform must be immediate; but suggests that such reform is necessary and that the obstacles to it are political, not legal. This proposal is a long term goal and its aim is to shape the legislative environment of any civil society.

For the betterment of any society, structural reforms are inevitable and without such structural reforms, Nigeria's Juvenile Justice System will remain static, fragmented in application and still punitive in punishment.

The main rehabilitative aim for these Juvenile offenders as promised by the law will be as a mere administrative convenience, as children will continue to be tried in adult/ regular courts; detained in adult facilities and remain vulnerable to the circumstances that made them delinquents.

This proposal is aspirational, but it is not more ambitious than the actual Justice promised for more than a century by the Nigerian Juvenile Justice Legislations

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