1. DEFINITION OF TERMS

The word juvenile is derived from the Latin ‘Juvenalis’ which connotes youthfulness.

It is defined in the United Nations Minimum Rules for the Treatment of Juveniles (Beijing Rules) as a child or young person who, under the respective legal system, may be dealt with for an offence in a manner that is different from an adult.

The Black’s Law Dictionary defines a juvenile as a person who has not reached the age (usually 18) at which one should be treated as an adult by the criminal justice system.

Thus, the concept of juvenile in relation to criminal law is marked by consideration of the age at which the person can be treated as an adult by the criminal law. This age varies in different legal systems but is usually pegged at 18.

The Children and Young Person’s Law thus defines juvenile to include a child and a young person, and fixes the age of a child as someone who has not attained the age of 14 years and the young person as having attained 14 years but not yet up to 17 years (Section 2 CYPL, Enugu State).

The Child’s Rights Act simply defines a child as anyone under the age of 18 years.

The Black’s law dictionary further defines juvenile delinquency as antisocial behaviour by a minor especially behaviour that would be criminally punishable if the actor was an adult, but instead is usually punished by special laws pertaining only to minors.
Juvenile justice system is further defined as the collective institutions through which a youthful offender passes until any charges have been disposed of or the assessed punishment has been concluded. It is the system comprising of juvenile courts (both the judges and lawyers), law enforcement (police) and corrections (probation officers and social workers).

A juvenile delinquent is a minor who is guilty of criminal behaviour, usually punishable by special laws not pertaining to adults. He can also be referred to as juvenile/youthful offender.

The Beijing Rules did not define or use the word delinquent and rather defined an offence as “any behaviour (act or omission) that is punishable by law under the respective legal system while a youthful offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.

While the definition of an offence is generally acceptable and agrees with the notion that what is an offence is not universal but is simply what the legislature considers to be an offence, the definition of a youthful offender may raise a question. One may wonder whether a person alleged to have committed an offence can rightly be called a youthful offender. Is it appropriate to call a suspected offender a youthful offender when he has not been adjudged to be an offender by a judicial body?

Thus the idea of juvenile refers to the young or to the youth but when combined with the idea of delinquency and offence or wrongdoing refers to youths who are in conflict with the law while the juvenile justice system encompasses the structures of law enforcement and justice which relate to young people who are in conflict with the law.

This system just like the criminal justice system exists to ensure that the laws and its consequent justice is observed in the society, but in this sense, with the youths as its target.

The Child’s Rights Act 2003 does not use the word juvenile but rather the term “child justice administration”.

2. HISTORICAL OVERVIEW OF THE JUVENILE JUSTICE SYSTEM
The problem of youthful intransigence and wrongdoing is as old as history itself, having been mentioned in the oldest law code, the Code of Hammurabi and in the Mosaic Code and later in the Law of the Twelve Tables.

The Code of Hammurabi prescribed strict punishments for conduct by children considered to be wrong. Such punishments included cutting off the tongue (paragraph 192), putting out the eyes (paragraph 193) and hewing off the hand (paragraph 195). The proscribed conducts included deserting his adoptive home (para. 193), rejecting his adoptive mother or father (para. 192) and striking the father (195).

Under the Law of Moses, a stubborn and rebellious child who will not obey the voice of his father or mother and who will not hearken after he is chastened, would be taken to the elders of the city on the accusation of being a glutton and a drunkard and will be stoned to death by the men of the city (Deuteronomy 21:18-21). Equally a priest’s daughter who becomes a prostitute and thus defiles herself and disgraces her father was also to be burned in the fire (Leviticus 21:9).

The Roman Laws of the 12 tables recognized the state’s collective responsibility for the welfare of juveniles who have no clear sense of responsibility. Table IV, Law 1, gave the father the right of life and death over his son born in lawful marriage, and also gave him the power to render him independent, after he has sold the child three times.

Table VII, Law IV provides that if anyone who has arrived at puberty, secretly, and by night, destroys or cuts and appropriates to his own use, the crop of another, which the owner of the land has laboriously obtained by plowing (sic) and the cultivation of the soil, he shall be sacrificed to Ceres, and hung. However, if he is under the age of puberty, and is not yet old enough to be accountable, he shall be scourged, in the discretion of the Praetor, and shall make good the loss by paying double its amount. (this was an exception to the capital punishment which this offence attracted)

Emperor Justinian codified the Roman Laws in the period AD 529-534 and this codified law recognized the state’s collective responsibility for the welfare of juveniles who have no clear sense of responsibility. Thus Section XX, paragraph 6 of the 12 Tables recognizes tutoring for disadvantaged youths. It provides “It is agreeable to the law that the person under the age of puberty should be under tutelage, so that persons of tender years may be under the government
of another.” It defined Puberty for males as commencing on the completion of their fourteenth birthday while women are considered fit for marriage on the completion of their twelfth year (section XXII)

Historically there has been no great difference in the way children and adults were handled for crime or wrongdoing. English common law did not distinguish between juvenile and adult crimes and juvenile and adult systems. However, it had the doli incapax defence which recognized the age of criminal responsibility as 7 years and as such any child below the age of 7 years was incapable of committing a crime while a person between the age of 7 and 13 years was presumably incapable of doing so. But once a child attains the age of 7 years and was shown to be aware of the crime he was committing, there was no difference in the way the juvenile was treated compared to how an adult was treated.

In common law, parental responsibility for their children’s behaviour led to the modern parental responsibility laws or “contribution to the delinquency of a minor” clause or unfit parent law. The common law practice of conditional suspension of punishment also led to the concept of probation.

The 19th century witnessed an increase in juvenile delinquency due to factors like increased use of child industrial labour, growth of urbanization, influx of immigrants and rise of illegitimate births.

In America, the Boston City Council created the 1st state institution for juvenile correction – Boston House of Reformation in 1826. Other states supported juvenile reform homes were also established in other states. Civil society organizations and philanthropic societies also established institutions for juvenile corrections.

The enlightenment of the 18th and 19th century brought in scientific methods and reason and the middle of the 19th century saw enlightened discussions in America on principles of juvenile justice. Women and social work reformers known as ‘child savers’ pushed for more rehabilitative measures for juvenile delinquents. This led to the juvenile court Act of 1899 that created the first juvenile court in Cook County Illinois USA.
The territory called Nigeria consisted of many ethnic groups with different methods of social control and crime prevention and punishment. Even though there were three major ethnic groups Igbo, Hausa and Yoruba, all the ethnic groups had their own customary systems.

With the advent of colonialism beginning with the conquest of Lagos in 1861, the British created the criminal justice system of which the juvenile justice system is an integral part. According to Alemika, the legal system created by the British was an instrument of oppression designed to take control of “deprived and destitute natives, including children, so they do not constitute a threat or nuisance to the colonial order”.

The advent of colonialism and the growth of urbanization created new social problems such as over-population resulting from rural-urban drift. This in turn led to an unconscious creation of an urban under-class populace that increasingly began to neglect the welfare of their offspring, owing to growing poverty in their midst. Consequently, many of these urban poor children resorted to violence, crime and other youthful misdeeds.

In response, the colonial government and Christian Missionary organizations set up "approved schools" and remand homes to cater for delinquent juveniles.

The Children and Young Person’s Act was initially enacted as a colonial ordinance in 1943, and severally amended in 1945, 1947, 1950, 1954 and 1955. It provided for the welfare of the young and the treatment of young offenders and for the establishment of juvenile courts. The law was promulgated by states as state law since children matters are not matters on the exclusive legislative list.

Nigeria ratified the Convention on the Rights of the Child in 1991 and under this treaty had obligation to domesticate its provisions in our municipal legislation. However, every attempt to promulgate a law with the progressive provisions of the CRC failed due to religious and cultural opposition to its provisions.

This state of affairs which was occasioned by the fact that child matters are not contained in the exclusive legislative list and by the provisions of section 12 of the 1999 Constitution on domestication of treaties finally led to the passage of a Child’s Right Act in 2003 not as a federal Act but as an act applying to the Federal Capital territory with the states being urged to enact the same law in their respective states.
3. JUVENILE JUSTICE ADMINISTRATION IN NIGERIA

There are two juvenile regulatory systems running concurrently in Nigeria, the Children and Young Person’s Law regime and the Child’s Rights Act regime.

The Children and Young Persons Law operates in the states that have not yet passed the Child’s Rights Act as a state law. These states as at the time of compiling this lecture summary are Adamawa, Bauchi, Borno, Gombe, Kaduna, Kano, Katsina, Kebbi, Sokoto, Yobe and Zamfara.

International law recognizes the special status of children and since 1924 when the League of Nations adopted the Geneva Declaration on the Rights of the Child; many international instruments have been adopted regulating the treatment and rights of children in conflict with the law.


The International Covenant on Civil and Political Rights as well as the Child’s Rights Convention also contain binding provisions on treatment of juvenile offenders.

The Beijing Rules makes ample recommendations on the minimum standard to be maintained in an effective juvenile justice system. Its practical provisions span the area of investigation and prosecution, adjudication and disposition and both institutional and non-institutional treatment of juvenile offenders.

In evaluating the Nigerian juvenile justice system in both the Children and Young Person’s law states and the Child’s Rights Act states we will use the provisions of the Beijing Rules as the yardstick or benchmark for this evaluation. Even though Enugu state has just recently passed its
own child rights law, we will use the provisions of the Children and Young Persons Law of Enugu State as representative of all CYPL laws of the remaining states.

A. **Investigation and Prosecution** – the Beijing Rules provide that upon the apprehension of a juvenile, his or her parents or guardian shall be immediately notified of his arrest, and where such immediate notification is not possible, the parents or guardians shall be notified within the shortest possible time thereafter\(^1\). Equally the issue of release shall, without delay, be considered by a judge or other competent official or body\(^2\). Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to him or her, with due regard to the circumstances of the case\(^3\). Interactions which may cause harm to the child may include the use of harsh language, physical violence or exposure to the environment\(^4\). This initial contact with the law enforcement is important because it might profoundly influence the juvenile’s attitude towards state and society as well as being pivotal to the success of further interventions. Such initial contact should thus be handled with compassion and firmness\(^5\). The Rules also makes provision for use of diversion in juvenile justice administration. Diversion involves removal from criminal justice processing and, frequently, redirection to community support services\(^6\). This is done with the intention of removing the stigma of conviction and sentencing. Diversion would be appropriate usually when the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.\(^7\)

Thus, the Rules provide that consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority\(^8\). The police, the prosecution and agencies dealing with juvenile cases should

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1 Rule 10.1 Beijing Rules
2 Rule 10.2 ibid.
3 Rule 10.3 ibid.
4 Commentary to Rule 10 Beijing Rules
5 Ibid.
6 Commentary to Rule 11 Beijing Rules
7 Ibid.
8 Rule 11.1 Beijing Rules
therefore be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, according to criteria laid down for that purpose in the legal system.\textsuperscript{9} It further provides for specialization within the Police and stipulates that police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained in order to enable them best to fulfil their functions. In large cities, special police units should also be established.\textsuperscript{10}

Finally, it provides that detention shall be used only as a measure of last resort and for the shortest possible period of time.\textsuperscript{11} Wherever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.\textsuperscript{12} When juveniles are detained pending trial they are entitled to all rights and guarantees of the UN Standard Rules for the Treatment of Prisoners\textsuperscript{13} and shall be kept separate from adults and detained in a separate institution or in a separate part of an institution also holding adults.\textsuperscript{14} While in custody, juveniles shall receive care, protection and all necessary individual assistance be it social, educational, vocational, psychological, medical and physical which they may require in view of their age, sex and personality.\textsuperscript{15}

**EVALUATION OF THE PROVISIONS OF THE CHILDREN AND YOUNG PERSON'S LAW OF ENUGU STATE ON INVESTIGATION AND PROSECUTION**

This law has only three of its sections dedicated to the functions of the police in relation to an arrested juvenile.

In section 3 it provides for the issue of bail. Thus where a juvenile is apprehended with or without warrant, and cannot be brought forthwith before a court of summary jurisdiction, the police officer in immediate charge of the police station to which the juvenile is brought, shall inquire into the case and in any case shall release such juvenile on a
recognizance being entered into by him or by his parent or guardian, with or without
sureties, for such an amount as may in the opinion of the officer, secure the attendance of
the juvenile upon the hearing of the charge\textsuperscript{16}. Bail will not be granted if the charge is one
of homicide or other grave crime or it is necessary in the interest of such juvenile to
remove him from association with any reputed criminal or prostitute or the officer has
reason to believe that the release of such juvenile may defeat the ends of justice.\textsuperscript{17}
In section 4 it provides that where an arrested juvenile is not released on bail, he shall be
detained in a remand home, until he can be brought before the court, unless the police
officer certifies that it is impracticable to do so, or that he is of so unruly or depraved a
character that he cannot be safely so detained or that by reason of his state of health or his
mental or bodily condition it is inadvisable so to detain him\textsuperscript{18}.
Finally, it provides in section 5 that it shall be the duty of all police officers and prison
officers to make arrangements for preventing, so far as is practicable, a juvenile while in
custody, from associating with an adult charged with or convicted of any offence\textsuperscript{19}
Note equally the provision of section 7 of the CYPL that “A court on remanding or
committing for trial, a juvenile who is not released on bail, shall instead of committing
him to prison, commit him to custody in a place of detention provided under this law and
named in the committal order to be there detained for the period for which he is
remanded or until he is thence delivered in due course of law. Provided that in the case of
a young person it shall not be obligatory on the court so to commit him if the court
certifies that he is so unruly a character that he cannot be safely committed, or that he is
of so depraved a character that he is not a fit person to be so detained”\textsuperscript{20}. The place of
detention provided under the CYPL is the remand home\textsuperscript{21}

\textsuperscript{16} Section 3 Children and Young Persons Law of Enugu State
\textsuperscript{17} Ibid.
\textsuperscript{18} Section 4 ibid.
\textsuperscript{19} Section 5 ibid.
\textsuperscript{20} Section 7 ibid.
\textsuperscript{21} Section 15 ibid. Note also the provision of paragraph 4 of this section which provides that “where no remand
home is conveniently situated a juvenile ordered to be detained in custody may in the discretion of the police
officer or officer of the court as the case may be, be detained in an approved institution, prison or police station or
any other suitable place or in the custody of such persons as the police officer or court may think proper”. This
implies that even though the remand home is the stipulated and choice place for remanding juveniles for trial, it is
not exclusive and its use for pre-trial remand depends on it being conveniently located.
Comparing the provisions of the CYPL to the standards enumerated in the Beijing Rules reveals that the provisions fall short of the modern standards for investigation and prosecution of juveniles, mainly in its failure to provide for specialization in the police force in respect of police officers who deal regularly with children involved with the law or who investigate offences committed against children. It equally fails to provide for the use of diversion in the treatment of juvenile offenders, fails to provide sufficient protection for the child from harmful contact with the police as well as provide for the notification of the parents of the arrested juvenile as soon as he is arrested or so soon afterwards as is reasonably possible.

Concerning the granting of bail or considering the issue of release of the juvenile on his entering into a recognizance, the CYPL lays down the conditions that will warrant a denial of the application for bail. Thus, it is apparent that under the CYPL, pre-trial detention is a common practice once the stipulated conditions are met. However, a dispassionate analysis of the conditions will reveal that a certification by the police officer that it will not serve the interest of justice to release the child on bail may be too vague and may merely provide a reason for the police officer to deny bail to a juvenile even on flimsy grounds. The Condition that bail is to be denied because it is necessary to remove the child from the influence of a prostitute or criminal, may however meet the requirement that pre-trial detention should be used only as a measure of last resort and for the shortest possible period depending on the surrounding circumstances.

EVALUATION OF THE PROVISIONS OF THE CHILD’S RIGHTS ACT IN RESPECT OF INVESTIGATION AND PROSECUTION

The provisions of the Child’s Rights Act amply reflect the standards outlined above in the Beijing Rules. The Act basically reproduces the provisions of the Beijing Rules and its commentaries on investigation and prosecution, with a few modifications. This is provided in sections 207, 209, 211 and 212 of the CRA Act 2003. Section 207 in compliance with Rule 12 of the Beijing Rules provides for the establishment, in the Nigeria Police Force, a specialized unit of the force, to be known as the Specialized Children Police Unit consisting of officers who frequently or exclusively deal with children or are primarily engaged in the prevention of child offences. Their
functions include the prevention and control of child offences, the apprehension of child offenders and investigation of child offences.\textsuperscript{22}The members of this Unit are to be continually trained and instructed specially for the functions conferred on them by the Act\textsuperscript{23} (considering the centralized nature of the Nigerian Police Force, we will examine in another discourse how possible it is to enforce this provision of the CRA and to call upon the appropriate authorities to implement this provision of the CRA)

Section 209 repeats the provisions of Rule 11 of the Beijing Rules on diversion. In addition to empowering the police, prosecutor or any other person dealing with a case involving a child offender to dispose of the case without resorting to formal trial by using other means of settlement as provided in the rules is also mandates such officers to encourage the parties to settle the case using the means of settlement provided in the section\textsuperscript{24}. In addition to providing that diversion can be employed when the offence involved is if a non-serious nature and the family, the school or other institution involved has reacted or is likely to react in an appropriate or constructive manner as provided in the commentary to the Beijing Rules, it provides another situation in which diversion can be used, namely, where the offence involved is of a non-serious nature and there is need for reconciliation.\textsuperscript{25} It finally adds that police investigation and adjudication before the court shall be used only as measures of last resort\textsuperscript{26}(This provision raises the question of what other method the Police will use to determine whether there is a need to even divert the case or proceed to trial, if investigation is used only as a measure of last resort)

Section 211 repeats the entire provisions of Rule 10 of the Beijing Rules and also its commentary on what are possible acts that can harm a juvenile

Section 212 rehashes the provisions of Rule 13 of the Beijing Rules on detention pending trial which can only be used as a measure of last resort and for the shortest possible period of time. It however also provides that where the court authorises an apprehended child to be kept in police detention, the Court shall certify that by reason of circumstances specified in the certificate it is impracticable for the Court to secure that the apprehended

\textsuperscript{22} Section 207 ibid.
\textsuperscript{23} Section 207 (3) ibid.
\textsuperscript{24} Section 209(1) (b) ibid.
\textsuperscript{25} Section 209(2)(a) ibid
\textsuperscript{26} Section 209 ibid.
child be moved to a state government accommodation\(^{27}\) or in the case of an apprehended child who has attained the age of 15 years, the court must certify that no secure accommodation is available and that keeping him in some other authority’s accommodation would not be adequate to protect the public from serious harm from the child\(^{28}\) Unless the Court so certifies as stated above, it shall secure that the apprehended child is moved to a State Government accommodation (in other words, pre-trial police detention is used only as a matter of last resort)

It is therefore apparent that the Child’s Rights Act is in conformity with the contemporary standards in Juvenile justice in relation to investigation and prosecution. It is however important to note that the diversion measures provided for under the Act does not provide for the option of diversion to community service, which would have required for the consent of the child and for a review authority which can determine the genuineness of the consent so given by the child to such diversion. This failure to make provision for such a means of diversion may be considered as having limited the options available to authorities who handle offences committed by juveniles.

B. ADJUDICATION AND DISPOSITION –

The Beijing Rules provide that where diversion has not occurred in the case of a juvenile offender, the child must be dealt with by a competent court according to the principles of a fair and just trial.\(^{29}\) A fair and just trial envisages “due process” safeguards like presumption of innocence, presentation and examination of witnesses, right to remain silent, right to appeal, etc.\(^{30}\) Such proceedings must be conducive to the best interest of the juvenile, conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and express himself or herself fully.\(^{31}\)

During proceedings the juvenile is entitled to be represented by legal adviser or to apply for free legal aid where it is provided for.\(^{32}\) The parents or guardians of the juvenile are entitled to participate in the proceedings and may be required by the competent authority

\(^{27}\) Section 212 (3)(a) ibid.
\(^{28}\) Section 212(3)(b) ibid.
\(^{29}\) Rule 14.1 Beijing Rules
\(^{30}\) Commentary to Rule 14 Beijing Rules
\(^{31}\) Rule 14.2 ibid.
\(^{32}\) Rule 15.1 Beijing Rules
to attend if it is in the interest of the juvenile. They may also be denied participation if it is in the interest of the juvenile to exclude them.

The Rules further recognize the importance of social inquiry reports about the social and family background and circumstances in which the juvenile is living, school career, educational experiences or the conditions under which the offence has been committed to legal proceedings involving juveniles. Thus, in all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

Four principles that will guide the authority in its disposition are

1. The reaction taken shall always be in proportion not only to the circumstances and gravity of the offence but also to the circumstances and needs of the juvenile as well as needs of the society.

2. Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and limited to the possible minimum.

3. Deprivation of personal liberty shall only be for situations where the juvenile is adjudicated of a serious act involving violence against another person or persistence in committing other serious offences and only if there is no other appropriate response.

4. The guiding factor in the consideration of the juvenile’s case shall be the well-being of the juvenile.

The use of capital punishment as a disposition measure is prohibited and subjecting of juveniles to corporal punishment is also disallowed in compliance with article 7 of ICCPR and the Declaration on the Protection of All Persons from Being Subjected to

33 Rule 15.2 ibid
34 Commentary to Rule 16.1 ibid.
35 Rule 16.1 ibid
36 Rule 17(1)(a) Beijing Rules
37 Rule 17(1)(b) ibid
38 Rule 17(1)(c) ibid
39 Rule 17(1)(d) ibid.
40 Rule 17(2) ibid.
41 Rule 17(3) ibid.
Torture and Other Cruel, Inhuman or Degrading Treatment as well as Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The power of the competent authority to discontinue the proceedings at any time if circumstances become known to it which would make a complete cessation of the intervention appear to be the best disposition of the case is also provided for in the Rules.

The Rules recommend a large variety of disposition measures like care, guidance and supervision orders, probation, community service orders, financial penalties, compensation and restitution, intermediate treatment and other treatment orders, orders to participate in group counselling and similar activities, orders concerning foster care, living communities or other educational settings. Most of these measures are community-based correction measures which rely on and depend on the community for effective implementation.

It is equally prohibited to remove a juvenile from parental supervision, whether partly or entirely, unless the circumstances of his or her case makes it necessary to do so.

In adjudication and disposition, the placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period. This is because the negative effects of loss of liberty and separation from the usual social environment are more acute for juveniles than adults because of their early stage of development.

Juvenile cases should from the outset be handled expeditiously, without unnecessary delay as the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition of the offence, both intellectually and psychologically as time passes.

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42 Rule 17(4) ibid.
43 Rule 18.1 ibid
44 Rule 18.2 ibid.
45 Rule 19.1
46 Commentary to Rule 19
47 Rule 20.1 Beijing Rules and Commentary
Records of juvenile offenders shall be kept strictly confidential and closed to third parties and access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons like researchers.\textsuperscript{48} such records of juveniles should not be used in adult proceedings in subsequent cases involving the same offender.\textsuperscript{49}

Juvenile justice personnel must maintain necessary professional competence and for this reason there must be professional education, in-service training, refresher courses and other modes of instruction for them.\textsuperscript{50} There should also be a fair representation of women and minorities in juvenile justice agencies to reflect the diversity of juveniles who come into contact with the juvenile justice system.\textsuperscript{51}

**EVALUATION OF THE PROVISIONS OF THE CHILDREN AND YOUNG PERSONS LAW IN RESPECT OF ADJUDICATION AND DISPOSITION**

The Children and Young Persons Law provides for a juvenile court for the purpose of hearing and determining all matters relating to juveniles. The Court is constituted by a magistrate sitting with such other persons, if any, as the Chief Judge shall appoint.\textsuperscript{52}

The court sits either in a different building or room from that in which the ordinary sittings of the court are held, or on different days or at different times from those at which the ordinary sittings are held except in cases where the juvenile is charged jointly with any other person not being a juvenile.\textsuperscript{53}

The procedure for the juvenile court is set out as follows.\textsuperscript{54}

1. The court should explain to the juvenile as soon as possible in simple language the substance of the alleged offence

\textsuperscript{48} Rule 21.1 Beijing Rules
\textsuperscript{49} Rule 21.2 ibid.
\textsuperscript{50} Rule 22.1 ibid.
\textsuperscript{51} Rule 22.2 ibid.
\textsuperscript{52} section 6(1) CYPL Enugu State
\textsuperscript{53} (Section 6(2) ibid.
\textsuperscript{54} Section 8 ibid.
2. After explaining the substance of the alleged offence, the court shall ask the juvenile whether he/she admits the offence.

3. If the juvenile does not admit the offence, the court then hears the evidence of the prosecution witness and at the end of the evidence-in-chief of each witness, the court shall ask the juvenile or in the case of a child, the parent or guardian of the child, whether he wishes to put any question to the witness.

4. If the juvenile wishes to make a statement instead of asking a question, he is to be allowed to do so.

5. If the court thinks a prima facie case has been made out, the evidence of the witness for the defence shall be heard and the juvenile shall be allowed to give evidence or to make any statement.

6. If the juvenile admits the offence or the court is satisfied that the offence is proved, the juvenile shall be asked if he desires to say anything in extenuation or mitigation of the penalty or otherwise.

7. The court is required to obtain a social inquiry report into the juvenile’s general conduct, home surroundings, school records and medical history as may enable it to deal with the case in the best interest of the juvenile before making its decision on how to deal with the juvenile.

The various disposition measures provided under the CYPL include:

1. dismissing the charge
2. discharging the offender upon his entering a recognizance
3. discharging the offender and placing him under the supervision of a probation officer
4. committing the offender by a committal order to the care of a fit person
5. committing the offender by a committal order to an approved institution
6. ordering the offender to be whipped
7. ordering the offender or the parent or guardian of the offender to pay a fine, or damages or costs
8. ordering the parent or guardian of the offender to give security for his good behaviour

55 Section 14 ibid.
9. committing the offender to custody in a place of detention (remand home) for a period not exceeding 6 months

10. if the offender is a young person not up to 17 years order him to be imprisoned unless in the opinion of the court he can be suitably dealt with any other way either by probation, fine, corporal punishment etc. if ordered to be imprisoned he must not be allowed to associate with adult prisoners

The Children and Young Persons Law further provides that no child shall be ordered to be imprisoned and that no young person shall be ordered to be imprisoned if in the opinion of the court he can be suitably dealt with in any other way whether by probation, fine, corporal punishment, committal to a place of detention or to an approved institution or otherwise.

Equally, a young person ordered to be imprisoned shall not be allowed to associate with adult prisoners

It further provides that where a juvenile is found guilty of an attempt to murder, or of manslaughter, or of wounding with intent to do grievous bodily harm the court may order the offender to be detained for such period as may be specified in the order, and where such order is made the juvenile shall, during that period be liable to be detained in such place and under such conditions as the governor may direct and shall be deemed to be in legal custody while so detained

The most glaring infraction of contemporary juvenile justice administration standards as set down in the Beijing Rules, is the provision of the CYPL providing for offenders to be whipped as a disposition measure. This clearly offends against Rule 17(3) Beijing Rules and also offends against article 7 of ICCPR and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment as well as Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Equally comparison of the disposition measures provided for under the CYPL with those under

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56 Section 12(1) ibid
57 Section 12(2) ibid.
58 Section 12(3) ibid.
59 Section 13 ibid.
60 Section 14(f) ibid.
the Beijing Rules will reveal that the disposition measures under the CYPL are so limited compared with what obtains under the Beijing Rules.

However, the provisions of sections 12 and 13 of the CYPL even though they do not conflict with the requirement of Rule 17 of the Beijing Rules on the restriction and deprivation of the liberty of a juvenile, the fact that these provisions distinguish between the child and the young person has the effect that a child who is recognized under most state laws and international documents as being under 18 years will be denied the protection against imprisonment once he is up to 14 years and is now in the category of a young person.

EVALUATION OF THE PROVISIONS OF THE CRA IN RESPECT OF ADJUDICATION AND DISPOSITION

The CRA provides for the establishment of a court to be known as the Family Court for the purpose of hearing and determining matters relating to children.

The court has exclusive jurisdiction in any matter relating to children as specified in the Act.61. This however does not affect the jurisdiction of the normal criminal courts to try cases or offences by adult offenders as specified in other laws or in Part 3 of the Act.62

The court exists at two levels – an upper level as a division of the High Court at the High Court level and at a lower level as a magistrate Court, at the magistrate level.63

The unlimited jurisdiction of the Court extends to any criminal proceeding involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a child, against a child or against the interest of the child64.

The criminal proceedings under the Courts jurisdiction include those under the original jurisdiction of the court or those brought at the High Court under its appellate or supervisory jurisdiction.65

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61 Ibid. S. 162(1)
62 Ibid. S. 162(2)
63 Ibid. S. 150
64 Ibid. S.151(1)(b)
65 Ibid. S.151(2)
The court at the high court level has jurisdiction to deal with all offences punishable with death, or terms of imprisonment for a term of ten years and above\(^{66}\). It also has jurisdiction over appeals from the court at the magistrate level\(^ {67}\).

Appeals lie to the Court of Appeal from the decisions of the Court at the high Court level in the same manner appeals lie in respect of matters decided by the high court\(^ {68}\).

The court at the magistrate level has jurisdiction to try offences and to deal with all matters not specifically assigned to the Court at the High Court level by the Act\(^ {69}\).

Appeals from the decision of the Court at the magistrate level lies to the Court at the High Court level in the same manner as decisions lie from the decisions of the magistrate Court to the High Court of the state\(^ {70}\).

The Chief Justice of Nigeria has the duty of making rules regulating the procedure in the court, the parties entitled to participate in any proceedings, the fees to be charged and the court forms to be used in proceedings\(^ {71}\).

The Act provides that the provisions of any written law relating to the practice and procedure in Magistrate or High Court, which is not inconsistent with the provisions of the Act shall have effect in proceedings before the court\(^ {72}\). This effectively means that the rules of court of both the high court and magistrate court should guide the proceedings in the respective courts as long as they are not inconsistent with the provisions of the Act.

The Court at the High Court level is duly constituted if it consists of a judge and two assessors, one of whom has attributes of dealing with children and matters relating to children preferably in the area of child psychology education\(^ {73}\)

\(^{66}\) Ibid. S. 152(4)(b)

\(^{67}\) Ibid. S. 152(4)(c), (d), and (e)

\(^{68}\) Ibid. S. 152(5)

\(^{69}\) Ibid. S. 153(4)

\(^{70}\) Ibid. S. 153(5)

\(^{71}\) Ibid. S. 161(1)

\(^{72}\) Ibid. S. 161(2)

\(^{73}\) Ibid. S. 152(3)
At the magistrate level the Court is duly consisted if it consists of a magistrate and two assessors, one of whom shall be a woman and the other person who has attributes of dealing with children and matters relating to children, preferably in the area of child education. The court’s constitution is important in the light of the Court’s decision in Madukolum v. Nkemdiolin as to when a court is properly vested with jurisdiction to try a case in terms of its constitution. Thus, where any of the assessors is clearly lacking in his qualifications, this might render the proceedings a nullity. This therefore calls for serious meticulousness by the Chief Judge in appointing the assessors of the court.

The Act further provides that in constituting a court handling a matter concerning a child, considerations ought to be given to the circumstances and needs of the child, particularly the age, sex, religion or other special circumstances of the child. The personnel of the Court are also to be afforded professional education, in-service training, refresher courses and other modes of instruction to promote and enhance the necessary professional competence they require. Such trainings are to be tailored to reflect the diversity of the children brought before the court and the diversity and complexity of matters dealt with by the court. This provision can be said to be in compliance with Rule 1.6 of the Beijing Rules which refers to the necessity of constantly improving juvenile justice bearing in mind the need for consistent improvement of staff services. The provision reads “Juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the COMPETENCE OF PERSONNEL involved in the services, including other methods, approaches and attitudes (emphasis mine).”

**PROCEEDINGS OF THE COURT**

The Beijing rules stipulates that the juvenile justice system shall emphasize the well-being of the juvenile as one of the fundamental objectives or aim of juvenile justice.
Thus, the CRA provides as a guiding principle of the Court that proceedings in the Court shall be conducive to the best interest of the child and shall be conducted in an atmosphere of understanding, allowing the child to express himself and participate in the proceedings\textsuperscript{81}.

It further provides that the principle that should guide the court in its determinations in any matter relating or affecting a child at all stages of the proceedings is that of conciliation of the parties involved or likely to be affected by the result of the proceedings including the child, the parents or guardian of the child, and any other person having parental or other responsibility for the child\textsuperscript{82}.

In such proceedings the Court is also expected to encourage and facilitate the settlement of the matter in an amicable manner\textsuperscript{83}.

The second objective of juvenile justice which is the “principle of proportionality” is codified in the CRA where it provides that where a child offender is brought before the court, the court shall ensure that the reaction taken is always in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and needs of the child and the needs of the society\textsuperscript{84}.

The Act further provides that the procedures established by the child justice system of the Act should respect the legal status of the child, promote the interest and well-being of the child and avoid harm to the child, having regard to the situation of the child and the circumstances of the case\textsuperscript{85}.

Fundamentally it stipulates that in the trial of a child under the Act, the observance of the child’s right to fair hearing and compliance with due process shall be observed\textsuperscript{86}

The well-being of the child is to be the guiding factor in the consideration of his case\textsuperscript{87}.

\begin{thebibliography}{9}
\item \textsuperscript{80} Ibid. Rule 5.1
\item \textsuperscript{81} CRA 2003, S. 158, S. 214(2)(b), S. 215
\item \textsuperscript{82} Ibid. S.151(3)(a)
\item \textsuperscript{83} Ibid. S.151(3)(b)
\item \textsuperscript{84} Ibid. S. 215(b)
\item \textsuperscript{85} Ibid. S. 214(2)
\item \textsuperscript{86} S. 214(1)
\item \textsuperscript{87} S.215(1)(e)
\end{thebibliography}
EXERCISE OF DISCRETION BY THE COURT

The Act expressly makes provision for exercise of discretion by any person who makes determination on child offenders as an important feature of effective, fair and humane juvenile justice administration. This section is in pari materia with Rules 6.1 and 6.3 of the Beijing Rules. This exercise of discretion is intended to enable those who make determinations to take actions considered to be most appropriate in each individual case.

This exercise of discretion however is to be attended with checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. This is best achieved through the instruments of accountability and professionalism. This is the rationale for the special qualifications and training emphasized by subsection 2 of this section as valuable means of ensuring the judicious exercise of discretion in juvenile justice matters.

POWER OF COURT TO DISCONTINUE ANY PROCEEDINGS AT ANY TIME

In compliance with Rule 17.4, the Act provides for the power of the Court to discontinue any proceedings at any time if circumstances arise which make discontinuation the best way to dispose of the case.

RESTRICTION OF THE CHILD’S LIBERTY

This is provided for in section 215 (1)(c) and (d) and rehashes the provision of Rule 17 (1)(b), (c) and (d) of the Beijing Rules.

RIGHTS OF THE JUVENILE OFFENDER

International human rights instruments recognise certain essential elements of a fair and just trial and these are emphasized in the Beijing Rules and codified in the Act. These include basic procedural safeguards as

1. Presumption of Innocence
2. The right to be notified of the charges

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88 Ibid. S. 208
89 Section 215(2) ibid
90 Beijing Rules, Rule 7
91 Section 210 CRA 2003
3. The right to remain silent,
4. The right to the presence of a parent or guardian
5. The right to legal representation and free legal aid\textsuperscript{92}

Another right which is considered very important in juvenile justice system is the right to privacy. This is because criminological research has demonstrated that young persons are extremely susceptible to stigmatization and that permanent identification of young persons as “delinquent” or “criminal” is bound to produce deleterious and harmful effects.

Thus, the Act makes it an offence for any person to publish the name, address, school, photograph or anything likely to lead to the identification of a child whose matter is before the court, except to the extent required by the Act. Any offender is liable on conviction to a fine of fifty thousand naira or imprisonment for a term of five years or to both such fine and imprisonment\textsuperscript{93}. \textit{This complies with the provisions of Rule 8 of the Beijing Rules}

Records of a child offender shall also be kept strictly confidential and closed to third parties and made accessible only to persons directly concerned with the disposition of the case at hand or other duly authorised persons. Such records cannot be used in adult proceedings in subsequent cases involving the same child offender\textsuperscript{94}.

\textbf{ATTENDANCE AT COURT PROCEEDINGS}

This also recognises one of the exceptions to the rule that trials are to be conducted in public as a safeguard to fair hearing as provided for in the 1999 Constitution. Thus, the Act provides that only certain people are allowed to attend the court. These are the members of the court, the parties to the case, their solicitors and counsel, parents or guardians of the child and other persons directly concerned in the case. Members of the press are expressly excluded from attending the court\textsuperscript{95}.

\textit{It is important to contrast the above provision with that obtains under the CYPL where the law exempts bona fide representatives of a newspaper or news agency from the people}

\textsuperscript{92} CRA 2003, S. 155
\textsuperscript{93} CRA 2003, S. 157
\textsuperscript{94} Ibid. S. 205(3)
\textsuperscript{95} Ibid. S. 156
excluded from attending proceedings of juvenile courts. Thus, under the CYPL press men are allowed to cover juvenile court proceedings but this is not permitted under the CRA. This provision under the CRA is of course more in keeping with the global best standards that protects the privacy of the child.

Parents or guardians of a child offender charged before the court has a right of attendance and participation at all stages of the proceedings and the court even has the power in appropriate circumstances to make an order to enforce the attendance of a parent or guardian. The court may also, where it considers it not to be in the best interest of the child for his parent or guardian to attend, make an order to exclude the parent or guardian from attending.96 This complies with Rule 15.2 of the Beijing Rules

PROMPT AND EXPEDITIOUS HANDLING OF CASES

This is provided under section 215(3) of the Act and complies with Rule 20.1 of the Beijing Rules

This is also a right enshrined under the Child’s Right Convention.97

EVIDENCE OF A CHILD

The Act allows the reception of the unsworn evidence of a child in both criminal and civil proceedings.98

This further expands the provisions of the Nigerian Evidence act which provides that if a child who has not attained the age of 14 years is called as a witness, such child shall not be sworn and shall give evidence otherwise than by oath or affirmation, if in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of his evidence and understands the duty of speaking the truth.99

Also a child who has attained the age of 14 years shall give sworn evidence in all cases except where by reason of age or unsound mind the court considers that he is prevented from

96 Ibid. S. 216
97 CRC article 40(2)(b)(ii)
98 Ibid. S. 160
99 Evidence Act 2011, S. 209(1)
understanding the questions put to him or from giving rational answers to them or where he declares that taking any oath is unlawful according to his religious belief or because of his want of religious belief, the court is of the opinion that he should not be admitted to give evidence upon oath.\footnote{Ibid. S. 209(2)}

However, such unsworn evidence of a child on behalf of a prosecution cannot be used to found a conviction unless it is corroborated by some other material evidence supporting the testimony.\footnote{Ibid. S. 209(3)}

A child can still be proceeded against under the Criminal Code\footnote{Criminal Code, S. 191} for perjury if he wilfully gives false evidence in such circumstances that he would, if the evidence had been given under oath, been guilty of perjury and is liable to seven years imprisonment if found guilty.\footnote{Evidence Act 2011, S. 209(4)}

This provision of the Act seems to be in conflict with the evidence act as the Act’s definition of a child is someone who has not attained the age of 18 years. Thus by virtue of the Act’s provision relating to unsworn evidence of a child, the evidence of a child of 17 years may be given unsworn while the Evidence Act provides for the evidence of a child who attained the age of 14 years to be on oath, except for where the child is disqualified as a witness by reason of disease of mind or body or tender age or where the child lacks a religious belief or declares that taking of any oath is unlawful under his religious belief. The seeming conflict may however be resolved by noting that while the Evidence Act uses the mandatory “shall” in enacting this provision, the CRA uses the permissive “may”.

Also, subsection two of this section seems to contain an error where it provides for the deposition of a child’s sworn evidence to be taken for the purpose of any proceeding, as if that evidence had been given on oath. This is incomprehensible as a sworn evidence is an evidence taken under oath and there would be no reason to take it as is if it had been taken on oath. The drafters most likely intended to write a child’s “unsworn” evidence instead.

\section*{COURT PROCEDURE}

\footnote{Ibid. S. 209(2)}\footnote{Ibid. S. 209(3)}\footnote{Criminal Code, S. 191}\footnote{Evidence Act 2011, S. 209(4)}
When a child is arraigned before the court, the court shall, as soon as possible, explain to him and his parents or guardian in a language the child and his parent or guardian understands, the substance of the alleged offence\textsuperscript{104}.

The Court has the power to finally dispose of cases brought before it subject to the exclusive jurisdiction of the Court at the High Court level to deal with offences punishable with death, without seeking for the parent’s consent that the child should be dealt with in the court\textsuperscript{105}.

After reading the charge and explaining the substance of the charge to the child, if he does not admit to the facts of the alleged offence, the court shall then proceed to hear the evidence of the witnesses in support of the facts\textsuperscript{106}.

At the close of evidence of each witness, the court shall ask the child or where it sees fit, the parent or guardian of the child, whether he or she wishes to put any questions to the witnesses\textsuperscript{107}.

Where the child instead of asking questions, wishes to make a statement after a witness’ evidence, the child would be allowed to do so and the court will then have the duty of putting to the witness any questions as appear to be necessary. The court may also put to the child any questions as may be necessary to explain anything in the statement of the child\textsuperscript{108}.

Where it appears to the court that a prima facie case is made out against the child, it would proceed to hear the evidence of the witnesses of the defence, and the child will be allowed to give evidence if he desires or to make any statement\textsuperscript{109}.

Where the child admits the offence, or if after hearing the evidence of both sides, the court is satisfied that the offence is proved, the court shall then ask the child if he desires to say anything in explanation of the reason or reasons for his conduct\textsuperscript{110}.

Before deciding on how to deal with a child offender against whom an offence has been proven or who has admitted the offence with which he is charged, the court is required to obtain

\textsuperscript{104} Section 217(1) CRA
\textsuperscript{105} S.217(2)
\textsuperscript{106} S.217(3)
\textsuperscript{107} Ibid.
\textsuperscript{108} S.217(4)
\textsuperscript{109} Ibid. S.217(5)
\textsuperscript{110} Ibid. S.217(6)
information as to the child’s general conduct, home surroundings, school records, medical history\textsuperscript{111} and may put to the child any question arising out of such information\textsuperscript{112}. In cases of non-minor offences a social enquiry report on the background of the child, the circumstances in which he is living, the conditions under which the offence was committed, the child’s social and family background, school career and educational experience, carried out by the appropriate officers should also be obtained. This is to help the court deal with the case in the best interest of the child\textsuperscript{113}.

The court after receiving such information may before deciding on how to deal with the child offender, put any question arising from the information above to the child\textsuperscript{114}.

In order to secure such information as mentioned above, or for special medical examination or observation, the court has the power to remand the child on bail or to a place of detention\textsuperscript{115}.

Where the case has been proved to the satisfaction of the Court or where the child admits the offence and the Court is of the opinion that a remand is necessary for purposes of inquiry or observation, the court may cause an entry to be made in the Court records that the charge is proved and that the child has been remanded for enquiry or observation\textsuperscript{116}.

Any Court to which the child is remanded can, without further proof of the commission of the offence make any order in respect of the child which could have been made by the remanding Court.\textsuperscript{117}

The provisions regulating the procedure of the Family Court in the trial of juvenile offences, clearly creates an atmosphere of understanding in which the child is free to express himself or herself. By making concessions to allow the child who is not ready to ask questions to make a statement and also the provisions requiring the court to find out whether the juvenile has any contributions to the proceedings, the law thus recognizes and complies with the Beijing Rules requirement in Rule 14.2

\textsuperscript{111} Ibid. S.217(6)(a)
\textsuperscript{112} Section 217(6)(b)
\textsuperscript{113} Ibid. S.219
\textsuperscript{114} Ibid. S.217(6)(b)
\textsuperscript{115} Ibid. S.217(7)
\textsuperscript{116} Ibid. 217(8)
\textsuperscript{117} Ibid. S.217(9)
METHODS OF DISPOSITION BY THE COURT

Where the court is satisfied that the child actually committed the offence, the Act provides the various ways the court may deal with the case. These include

1. Dismissing the charge; or
2. Discharging the child offender on his entering into a recognisance
3. Placing the child under care order, guidance order and supervision order and this includes, discharging the child offender and placing him under the supervision of a supervision officer, committing the child offender by means of a corrective order to the care of a guardian and supervision of a relative or any other fit person, or sending the child offender by means of a corrective order to an approved accommodation or approved institution
4. Ordering the child offender to
   a. Participate in group counselling and similar activities
   b. Pay a fine, damages, compensation or costs, or
   c. Undertake community service under supervision; or
5. Ordering the parent or guardian of the child offender to
   a. Pay a fine, damages, compensation or costs; or
   b. Give security of his good behaviour; or
   c. Enter into a recognisance to take proper care of him and exercise proper control over him; or
6. Committing the child offender to custody in a place of detention provided under the Act; or
7. Making a hospital order or an order prescribing some other form of intermediate treatment
8. Making an order concerning the foster care, guardianship, living in a community or other educational setting\textsuperscript{118}

The Act in compliance with international standards provides that the placement of a child in an approved accommodation or government institution shall be a disposition of last resort\textsuperscript{119} and

\textsuperscript{118} Section 223(1) CRA 2003
\textsuperscript{119} Section 223(2)(a) ibid.
shall not be ordered unless there is no other way of dealing with the child\textsuperscript{120}. The court is also required to state in writing, the reason(s) for making the order\textsuperscript{121}. \textit{This is in line with the provisions of Rule 17.C of the Beijing Rules}

A court is also prohibited from making an institutional order in respect of a child unless it is satisfied that there is a vacancy in the approved institution to which it is committing the child\textsuperscript{122}. An approved institution may however refuse to admit a child where there is no such vacancy in the institution regardless of the Court’s order committing the child to the institution.\textsuperscript{123}

Note however, that the Act further provides that notwithstanding the above provision, where a child is found to have attempted to commit treason, murder, robbery or manslaughter, or wounded another person with intent to do grievous harm, the Court may order the child to be detained in such place and on such conditions as the Court may direct, for such period as may be specified in the order\textsuperscript{124}

Where the Court decides that the case would best be disposed of by imposition of a fine, damages, compensation or costs, the court shall order the fine, damages, compensation or costs so awarded be paid by the parent or guardian of the child instead of the child, unless the court is satisfied that the parent or guardian of the child cannot be found or if the parent or guardian has not condoned the commission of the offence by neglecting to exercise due care, guidance and control over the child.

The parent may appeal against such an order of court at the High Court level or Court of Appeal.

\textit{Unlike the CYPL, the CRA definitely provides for a wide range of disposition measures and this makes it easier to fulfil the objectives of juvenile justice administration. It equally ensures that all the prohibited measures of disposition are explicitly outlawed.}

\textbf{RESTRICTIONS ON COURT PROCEEDINGS, SENTENCING AND PUNISHMENT}

\begin{footnotesize}
\begin{enumerate}
\item Section 223(2)(b) ibid. \textsuperscript{120}
\item Ibid. \textsuperscript{121}
\item Section 223(4) ibid. \textsuperscript{122}
\item Section 223(5) ibid \textsuperscript{123}
\item Section 222 ibid. \textsuperscript{124}
\end{enumerate}
\end{footnotesize}
The Act prohibits the court from using the terms “conviction” and “sentence” in relation to a child dealt with by the court and wherever a law or enactment refers to a person convicted, a conviction or a sentence, in the case of a child shall be interpreted as a reference to a person found guilty of an offence, or to a finding of guilt or order made upon such a finding, as the case requires.\textsuperscript{125}

The court is also restricted from imposing certain punishments. These restrictions are;

a. Imprisonment;

b. Corporal punishment

c. Death penalty\textsuperscript{126}

In dealing with a child offender one of the recognized principles is that the personal liberty of the child is to be restricted only after careful consideration of the case and of alternative means of dealing with the child and should be limited to the possible minimum\textsuperscript{127}.

Thus, the Act provides that a child should not be deprived of his personal liberty unless he is found guilty of a serious offence involving violence against another person, or persistence in committing other serious offences, and there is no other appropriate response that will protect the public safety\textsuperscript{128}.

Where a child is also found to have attempted to commit treason, murder, robbery or manslaughter, or wounded another person with intent to do grievous harm, the court may order the child to be detained for such period as may be specified in the order\textsuperscript{129}.

According to the Riyadh guidelines

\begin{quote}
“The institutionalization of young persons should be a measure of last resort and for minimum necessary period, and the best interests of the young person should be of paramount importance. Criteria authorizing formal intervention of this type should be
\end{quote}

\begin{footnotes}
\item[125] CRA 2003, S. 213(2)
\item[126] Ibid. S. 221
\item[127] Ibid. S. 215(1)(c)
\item[128] Ibid. S. 215(1)(d)
\item[129] Ibid. S. 222(1)
\end{footnotes}
strictly defined and limited to the following situations: (a) where the child or young person has suffered harm that has been inflicted by the parents or guardians; (b) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians; (c) where the child or young person has been neglected, abandoned or exploited by the parents or guardians; (d) where the child or young person is threatened by physical or moral danger due to the behaviour of the parents or guardians; and (e) where serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and neither the parents, the guardian, the juvenile himself or herself nor non-residential community services can meet the danger by means other than institutionalization.”

Where the child admits to one or more of the offences charged against him, and the court does not release him on bail, the court is mandated to remand him to a state government accommodation.

When the child thus remanded is already being looked after by the state government, that state government shall be designated by the court as the Authority to receive the child. In other cases, the authority to receive him, would be the state government within which it appears to the court the child is residing or in which the offence or one of the offences was committed.

Anyone acting on behalf of the state government designated as the receiving authority has power to detain the child.

The Court has the power after consultation with the receiving state government, to require the government to comply with a security requirement, only if the child has attained the age of 15 years and is charged with or has been found to have committed a violent or sexual offence, or an offence punishable with imprisonment for a term of fourteen years or more if committed by an adult. Such a security requirement may also be imposed in the case of a child who has attained the age of 15 years and has a recent history of absconding while remanded in a state

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130 Guideline 46
131 Section 218(1) ibid.
132 Section 218(2)(a) ibid.
133 Section 218(2)(b)
134 Section 218(3) ibid.
135 Section 218(5)(a) ibid.
government accommodation and is charged with or has been found to have committed another offence punishable with imprisonment while so remanded.\footnote{136 Section 218(5)(b) ibid.}

The security requirement requires the state government to place and keep the child in a secure accommodation.

Such a security requirement can be imposed only if the court is of an opinion that the security requirement is the only way to protect the public from serious harm from the child\footnote{137 Section 218(5)(c) ibid.} The Court must state this its\footnote{138 Section 218(6)(a) ibid.} opinion\footnote{139 Section 218(6)(b) ibid.} and has the duty to explain to the child in ordinary language why it is of such opinion, where it imposes a security requirement. This reason by the court for coming to such an opinion shall be specified in the warrant of commitment and entered into the court Register.\footnote{139 Section 218(6)(b) ibid.}

Where the security requirement is not imposed on the state government while remanding the child, the court may after consulting with the government require the child to comply with certain conditions which could have been imposed if the child was being admitted to bail. The court also has a duty to explain in ordinary language to the child, the reason for imposing the condition, and cause such a reason to be specified in the warrant of commitment and entered in the court register.

Even where there is no security requirement imposed on the state government, the court may still, after consultation with the government, impose on that government, requirements for securing compliance with any condition imposed on that child as if he were admitted to bail, or stipulating that he shall not be placed with any named person.\footnote{140 Section 218(9) ibid.}

The state government may apply to the court to vary or revoke any such condition and requirement imposed either on the government or the child and the court is empowered to grant the application.\footnote{141 Section 218(11)}

\textbf{On a general note, it is apparent that the CRA complies with the requirements of the Beijing Rules in respect of adjudication and disposition of cases.}
C. NON-INSTITUTIONAL AND INSTITUTIONAL TREATMENT OF OFFENDERS

The Rules provide that the juvenile justice system should make adequate provisions for implementation of non-institutional orders of the competent authority either by the authority itself or by any other authority. Such provisions may include power to modify the non-institutional orders from time to time as the competent authority deems fit. Equally at all stages of the proceedings, effort should be made to provide juveniles with necessary assistance such as lodging, education or vocational training, employment or any other assistance which are helpful and practical, in order to facilitate the rehabilitative process. It further stresses the need for a rehabilitative orientation of all work with juvenile offenders especially with non-institutional treatment. For this reason, it considers co-operation with the community indispensable for carrying out the directives of the competent authority. It thus provides that volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting, and as far as possible, within the family unit.

From the above provisions, one can deduce that non-institutional treatment entails the necessary actions and assistance which are directed towards contribute effectively to or facilitate the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

INSTITUTIONAL TREATMENT

The objectives of institutional treatment as set out in the Rules is to provide care, protection, education and vocational skills, with a view to assisting the juvenile to assume socially constructive and productive roles in society. As such it stipulates that juveniles in institutions shall receive care, protection and all necessary assistance be it social, educational, vocational, psychological, medical and physical that they may require because of their age, sex, and personality and in the interest of their wholesome

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\(^{142}\) Rule 23.1 Beijing Rules
\(^{143}\) Rule 23.2 Beijing Rules
\(^{144}\) Rule 24 ibid.
\(^{145}\) Rule 25 ibid.
\(^{146}\) Rule 25.1 Beijing Rules
\(^{147}\) Rule 26.1 ibid.
development. It is important to provide medical and psychological assistance for institutionalized drug addicts, violent and mentally ill young persons. Equally juveniles in institutions shall be kept separate from adults and detained in a separate institution or in a separate part of an institution holding adults. Young female offenders in institutions should not be discriminated against and they deserve special attention as to their special needs and problems. Their fair treatment must be ensured. It equally provides that parents or guardians of the juvenile should have a right of access to the institutionalized juvenile. The need to provide adequate academic or vocational training to institutionalized juveniles in order to ensure that they do not leave the institution at an educational disadvantage also warrants fostering inter-ministerial and inter-departmental co-operation.

The rules recommend the use of conditional release at the earliest possible time in appropriate circumstances instead of serving a full sentence. The conditions on which the release is predicated may include requirements relating to “good behaviour” of the offender, attendance in community programmes or residence in half-way houses etc. The need for care of the juvenile after institutionalization warrants the formation of a net of semi-institutional arrangements like half-way houses, educational homes, day-time training centres to assist juveniles in their proper re-integration into society.

EVALUATION OF THE CYPL IN RESPECT OF NON-INSTITUTIONAL AND INSTITUTIONAL TREATMENT

a. NON-INSTITUTIONAL TREATMENT

The CYPL does not make any explicit provisions for non-institutional treatment of juveniles. However, it contains a provision on the appointment of probation officers. The use of probation officers arises when a juvenile is charged with any offence other than homicide and

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148 Rule 26.2 ibid
149 Commentary to Rule 26 ibid.
150 Rule 26.3 ibid.
151 Rule 26.4 ibid
152 Rule 26.5 ibid.
153 Rule 26.6 ibid.
154 Rule 28 ibid.
155 Commentary on Rule 28 ibid.
156 Rule 29 ibid.
the court is satisfied that the charge is proved, but makes an order discharging the offender conditionally upon his entering into a recognizance to be of a good behaviour and to appear to be further dealt with when called upon at any time during such period, not exceeding 3 years and where the recognizance entered into contains a condition that the offender be under the supervision of a probation officer or such other person as may be named in the order. Such is called a probation order. \[157\]

**INSTITUTIONAL TREATMENT**

In relation to Institutional treatment the CYPL provides for the establishment of remand homes which are to serve as a place of detention for juveniles not given bail by the police, juveniles committed for trial without being given bail and for juveniles of whom the court has made a final disposition at the end of trial committing them to custody in a place of detention provided by the law. \[158\]

It further provides that where a remand home is not conveniently situated a juvenile to be given an institutional treatment may in the discretion of the police officer or officer of the court be detained in an appropriate institution, prison or police station or any other suitable place or in the care and custody of such person as the police officer or court may think proper. \[159\]

The provision of remand homes for institutional treatment of juveniles as commendable as it is, is not sufficient to meet contemporary global standards in juvenile justice. An examination of the Children and Young Persons (Remand Homes) Rules also reveals some flaws for example provisions which provide for corporal punishment as part of the disciplinary measures to be employed in the reman homes.

**EVALUATION OF THE CRA IN RESPECT OF NON-INSTITUTIONAL AND INSTITUTIONAL TREATMENT**

**NON-INSTITUTIONAL TREATMENT**

The basic provision of the CRA in respect of non-institutional treatment is that providing for the making of a supervision order in respect of a child.

\[157\] Section 17 (4) and (5) CYPL
\[158\] Section 15 CYP
\[159\] Section 15(4) ibid.
Where a child is charged with an offence, other than homicide and the Court is satisfied that the charge is proved, the Court may make an order discharging the child offender conditionally on his entering into recognisance, with or without sureties to be of good behaviour; and to appear to be further dealt with when called upon at any time during such period not exceeding three years, as may be specified in the order. A recognisance so entered into by thee juvenile shall, if the Court so orders, contain a condition that the child offender be under the supervision of person as may be named in the order during the period specified in the order and such other conditions for securing such supervision as may be specified in the order.

INSTITUTIONAL TREATMENT

The CRA reproduces the provisions of the Beijing Rules on the objective for institutional treatment of juveniles\textsuperscript{160}, the need to provide protection and all necessary assistance to institutionalized juveniles\textsuperscript{161}, the need for fair treatment of institutionalized female juveniles\textsuperscript{162}, the right of parents or guardians of institutionalized juveniles to have access to the child,\textsuperscript{163} the need for Inter-Ministerial and Inter Departmental co-operation for the purpose of providing adequate academic or vocational training for institutionalized children\textsuperscript{164} and the need to make use of conditional release to the greatest possible extent and at the earliest possible time.\textsuperscript{165}

The Act further provides for the following approved institutions in section 248 and 249

1. Children attendance centre which is a non-residential place at which children shall attend, on a daily basis or on such days only as may be prescribed, on the order of the court\textsuperscript{166}
2. Children centre which shall be a place for the detention of children who are remanded in or committed to custody for trial or for the making of a disposition order after trial, or awaiting adoption or fostering\textsuperscript{167}
3. Children residential centre which shall be a place in which child offenders may be detained and given regular school education and such other training and instructions as may be conducive to their reformation and re-socialization and the removal or reduction,

\textsuperscript{160} Section 236(1) CRA 2003
\textsuperscript{161} Section 236(2) ibid.
\textsuperscript{162} Section 236(3) ibid.
\textsuperscript{163} Section 236(4) ibid.
\textsuperscript{164} Section 236(5) ibid.
\textsuperscript{165} Section 237 ibid.
\textsuperscript{166} Section 250(1)(a) ibid
\textsuperscript{167} Section 250(2) ibid
of their tendency to commit anti-social act and such other acts which violate the criminal law.\textsuperscript{168}

4. Children correctional centre which shall be a place in which child offenders may be detained and given such training and instructions as will be conducive to their reformation and re-socialization, and the removal or reduction, in term, of their tendency to commit anti-social acts and such other acts which violate the criminal law.\textsuperscript{169}

5. An Emergency Protection Centre which shall be a place in which a child taken into police protection or in respect of whom an emergency protection order is made shall be accommodated until the expiration of the order.\textsuperscript{170}

6. Special children correction centre which shall be a place to which children, who are found to be incorrigible or to be exercising bad influence on other inmates detained in a children correctional centre may be detained.\textsuperscript{171}

7. Special Mothers Centre which shall be a place in which expectant and nursing mothers are held for purposes of remand, re-socialization and 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.\textsuperscript{172}

Section 258 and 259 further provide for the release of and post-release provision of a child ordered to be detained in a Children Correctional Centre.

Apart from its rehashing of the ample provisions of the Beijing Rules on institutional treatment, the CRA goes one step further to make ample provisions for approved institutions which are tailored to meet the objectives of institutional treatment which is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society. By definition these approved institutions fulfil these laudable objectives.

\textsuperscript{168} Section 250(3) ibid
\textsuperscript{169} Section 250(4) ibid
\textsuperscript{170} Section 250(5) ibid
\textsuperscript{171} Section 250(6) ibid
\textsuperscript{172} Section 250(7) ibid