

THE ETHICAL ROLE OF LAWYERS AND THE RIGHTS OF JUVENILE OFFENDERS UNDER NIGERIAN LAW

Fatima Iftisan Umar*
Maryam Muktar**

Abstract

This paper reviews the legal professionals' responsibility to ensure, through the application of law, that the rights of juvenile offenders are adequately protected in Nigeria. It outlines the legal regime relating to juveniles, with particular focus on the Child Rights Act (CRA) 2003, guaranteeing international and domestic protection of rights through the United Nations Convention on the Rights of the Child. The existence of these provisions notwithstanding, juveniles still suffer systematic hindrances to trial in adult courts, inappropriate detentions, and lack of adequate legal representation in Nigeria. A case study methodology is employed focusing on juvenile offenders in Kano State in order to bring to light the challenges they face, with a view to emphasizing ethical dilemmas faced by lawyers who fail to advocate for the rights of juveniles. The study shows systemic failures within the legal profession, such as ineffective legal representation and ethical breaks by lawyers, which constitute violations of juvenile rights. The paper exposes these ethical lapses and expresses the need for specialized training of lawyers, uniform application of the CRA across Nigeria, establishment of courts and detention facilities specifically for juveniles,

* Studies Fellow, National Judicial Institute, Abuja. Email: Ifteesahn@gmail.com

** Assistant Studies Fellow, National Judicial Institute, Abuja. Email: maryam.muktar@gmail.com

better ethical standards, closer monitoring, and increased access to legal representation for juveniles. The recommendations ensure a non-punitive yet rehabilitative juvenile justice system where there is equal treatment and opportunity for rehabilitation of the young offender; while at the same time protecting the legal and ethical duties of lawyers within the justice system in Nigeria.

1. Introduction

Juvenile justice is a sensitive issue in Nigeria, and it requires careful attention and diligence in view of the fact that offenders are vulnerable and have special development needs. Bearing in mind the international conventions and the Nigerian statutes on this subject, lawyers have a unique ethical duty to ensure that juveniles are not subjected to unfair dealing. This paper examines the ethical duties of Nigerian lawyers in regard to juvenile offenders and stresses the importance of application of standards of both domestic and international juvenile rights.

2.0 Conceptual Clarification

2.1 The Concept of Juvenile Justice

In legal discourse, a "juvenile" is generally described as one who has not reached the age of majority, defined as the upper age limit beyond which a person is no longer considered a minor in the eyes of the law.¹ This category varies among different states but generally falls under the age of 18 years. The category of juveniles has grave implications in terms of the legal aspect, most especially with regard to the rights involved, handling within the justice system, and rehabilitation opportunities. Various international frameworks, such as the United Nations Convention on the Rights of the Child, identify the juvenile population as needing specialized protection

¹ Linda P Elrod and Robert S Ryder, *Juvenile Justice: A Social, Historical, and Legal Perspective* (Jones & Bartlett Learning 2020).

and care. It also reminds that the CRC, ratified by Nigeria, has specific development needs of the juveniles, and it emphasizes principles of rehabilitative measures rather than punitive ones.²

Juveniles are distinguished from adults by age and a legal and moral pledge to priority on their reintegration and personal development.³ Most legal systems, including Nigerian law, recognize the rehabilitative potential of the juvenile years through the establishment of special rights and protections. This includes the right to legal procedures appropriate for their age and access to social services directed toward reform and readjustment rather than punishment, in line with ethical standards on protection of the best interest of the juvenile offender. This approach is in concert with international norms and best practice toward humane and effective juvenile justice systems.

2.2 Juvenile under Nigerian Law?

The classification of the juveniles under Nigerian law is guided by the Child Rights Act, CRA 2003, where a child is defined as any person below the age of 18.⁴ It was meant to bring the legal regime of Nigeria in step with standards set by the United Nations Convention on the Rights of the Child following its ratification by the country in 1991. Under CRA, children have various protections while giving special considerations to the offenders who are juveniles because of the special needs they face in growth and development, and who can easily be rehabilitated⁵.

² Naomi Hendel, 'United Nations International Children's Emergency Fund (UNICEF)' in Katalin Ligeti and others (eds), *International Conflict and Security Law: A Research Handbook* (TMC Asser Press 2022) 719-731.

³ Ekow N Yankah, 'The Right to Reintegration' (2020) 23(1) *New Criminal Law Review* 74.

⁴ Abdulmumini Garba, *Nigeria's Federalism and the Implementation of the Child Rights Act 2003* (2020).

⁵ CP Iloka, CMG Aghadinuno, and OC Obikeze, 'Protecting the Right of the Child in Criminal Proceedings in Nigeria: An Appraisal of the Legal Framework' (2023) 8 *AFJCLJ* 125.

CRA draws a line between the prosecution, detention, and rehabilitation of juvenile offenders from that of adult offenders. It categorically states that adjudication of juveniles should be done within juvenile courts and not in the normal criminal courts, and detention can only be made in facilities designed for rehabilitative purposes and not correctional facilities. The juvenile status in Nigeria is given attention through the Criminal Code and Penal Code, which include provisions that actually restrict the severity of sentencing and consider rehabilitation instead of punitive measures for juvenile offenders. Such legislative provisions notwithstanding, inconsistencies in enforcement often undermine juvenile rights.⁶

One of the major concerns and challenges is that application within states in Nigeria is not uniform, considering that the CRA is a federal law. However, the constitutional framework in Nigeria makes it possible for each state to decide whether or not to adopt it.⁷ It therefore means that about two-thirds of Nigerian states have duly adopted the CRA, meaning juvenile justice standards remain inconsistent while most of those that have not adopted it resort to using ancient local legislation which may not provide much protection for juveniles. These resource constraints, especially in the underfunded areas, inhibit the building of adequate facilities and programs for juvenile rehabilitation, hence limiting the functionality of the CRA and creating avenues through which juvenile offenders are exposed to unsuitable punitive measures.⁸

⁶ TT Olonisakin, AJ Ogunleye, and SO Adebayo, 'The Nigeria Criminal Justice System and Its Effectiveness in Criminal Behaviour Control: A Social-Psychological Analysis' (2018) 3(6) *International Journal of Accounting Research* 28.

⁷ David Ogunniyi, 'The Challenge of Domesticating Children's Rights Treaties in Nigeria and Alternative Legal Avenues for Protecting Children' (2018) 62(3) *Journal of African Law* 447.

⁸ Ibid 7

2.3 Rights of a Juvenile Offender

Different rights are accorded to juvenile offenders under Nigerian law with a view to protecting their welfare and guaranteeing equitable treatment. The safeguards entrenched in the Child Rights Act of 2003, among other international conventions, indicate a determination to keep making a difference in handling juvenile offenders separately from adults, looking into vulnerability and their potential for rehabilitation.⁹ Fundamental rights of juvenile offenders include a right to a fair hearing, the right to legal representation, freedom from torture or cruel and inhuman treatment, and a right to privacy in the procedures of the law and during custodial procedures. These rights are also well protected under international standards such as the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, which Nigeria is a state party to.¹⁰

One of the basic rights of a juvenile offender is the right to a fair trial; procedures in juvenile courts have to be handled with considerations appropriate for their age. According to the CRA, juveniles have to be tried in specialized juvenile courts, not in ordinary criminal courts. This makes sure juveniles are put through judicial procedures that suit their development in cognition, emotion, and social maturity, shielding them from adversarial features of adult criminal trials. Under the CRA, juvenile court procedures shall be conducted in a way that is consistent with the seriousness and the developmental stage of the juvenile involved in order to minimize trauma and maximize rehabilitation. International standards, mentioned, for instance, within the CRC stipulate that all children have a

⁹ M Kadilu, *Protecting the Rights of Detained Juvenile Delinquents: Tanzania's Compliance with International Standards* (Doctoral thesis, Mzumbe University 2018).

¹⁰ Mojeed Adigun, 'The Implementation of the African Charter on Human and Peoples' Rights and the Convention on the Rights of the Child in Nigeria: The Creation of Irresponsible Parents and Dutiful Children?' (2019) 51(3) *The Journal of Legal Pluralism and Unofficial Law* 320.

right to be heard, that their views must be given due weight in court, hence identified a clear need to involve the juveniles in their court matters¹¹.

Legal representation is a fundamental right for juvenile offenders. CRA provides that there should be legal representation for juveniles, so that their rights are well represented and the disadvantage of inexperience with the legal system is minimize.¹² Legal representation navigates the complexities of juvenile justice, arguing for alternatives to detention, assisting rehabilitation processes, and protecting juveniles from extremely harsh sentencing. Access to legal representation is central tenet of discharge of their obligation under the CRC. The latter instrument strongly affirms the right of the child to the assistance of counsel in any judicial proceeding.¹³

The protection against cruel, inhuman, or degrading punishment is regarded as a fundamental right of a juvenile offender. The Nigerian law prohibits corporal punishment, consistent with the CRC and African Charter; the law spares juveniles from penalty without considering one's age and developmental stage. It has been reported that some juveniles in Nigeria are still subjected to harsh punishments, including physical maltreatment, in detention conditions. These practices violate Nigerian law and international standards emphasizing rehabilitation and not retribution in handling juvenile offenders.¹⁴

Another fundamental protection accorded to juvenile offenders under the CRA is protection of privacy. The right infers the closure of juvenile court proceedings to the public and the concealment of identity, both to avoid stigma and promote the successful rehabilitation and social reintegration of

¹¹ Ibid 5

¹² Ibid 5

¹³ DR Mokotedi, *The Development of the Constitutional Right to Legal Representation of Children in Civil Matters* (Master's thesis, University of Pretoria 2021).

¹⁴ JM Mbaku, 'International Law, African Customary Law, and the Protection of the Rights of Children' (2019) 28 *Mich St Int'l L Rev* 535.

the juvenile offender. Publicity of juvenile cases saves the juveniles from facing the social implications of legal activity so that they can have a fruitful future ahead. Article 40 of the CRC has mentioned that in the case of juveniles, privacy should be given importance so that their dignity and reputation are not harmed unnecessarily, which is very crucial in the case of a juvenile's development and rehabilitation process.¹⁵

The focus on rehabilitation and not punishment, especially in cases of detention, forms one of the foundational tenets of rights for the juvenile under Nigerian law. The CRA states that a juvenile shall be detained in any young offenders' institution and not in an adult correctional institution. Such facilities should provide education, vocational training, and psychosocial services that ensure the juvenile is reintegrated into society as a productive member. The focus on rehabilitation, in turn, corresponds to international standards, which call for a system sensitive to the specific needs of juveniles and oriented toward their personal development and reintegration. Detention oriented toward rehabilitation aims at minimal recidivism by addressing the very root causes—such as a lack of education or social support—that might have contributed to the criminal activity of the juvenile.¹⁶

In Nigeria, systemic failures consistently thwart the kind of protection to which juvenile offenders are entitled under established rights. Uneven enforcement means juvenile offenders regularly pass through ordinary criminal courts rather than juvenile courts, undermining the specialized procedure serving their development. Similarly, a large number of juveniles are being detained in adult facilities not equipped to provide requisite rehabilitative services. This puts them at risk of being exposed to potentially

¹⁵ Ivana Radić, 'Importance of the Protection of Privacy of Juvenile Suspects or Accused Persons in Criminal Proceedings in the Context of the EU Law' (2020) 4 *EU and Comparative Law Issues and Challenges Series (ECLIC)* 576.

¹⁶ Wilfred Diriwari, 'Nigerian Juvenile Justice System and the Resocialisation of Young Offenders' (2023) 20(4) *South Asian Journal of Social Studies and Economics* 261.

harmful environments and punitive treatment. These exposed lapses create significant ethical concerns for solicitors and legal practitioners handling juvenile clients in the course of their work, to the extent that such solicitors and their lawyers could become accomplices in the commission of acts that infringe on the rights of juveniles.¹⁷ Failure to act with due diligence to support arguments for a case to go on trial in juvenile court or failure to make representations against inappropriate conditions of detention would constitute a breach of the ethical duties imposed upon the code of conduct of the profession. Systemic failures have pointed to the defects in Nigeria's juvenile justice system and have joined in echoing calls for reforms that can ensure juvenile rights are respected both in the legal and practical contexts.¹⁸

2.4 Case Study: The Kano Juveniles

The situations of the young offenders in Kano reflect several challenges facing children in Nigeria's justice system. Indeed, the regime under CRA has not been consistently applied since the enactment in 2003, especially in states like Kano. Kano is one of the most densely populated states in Nigeria, and the recidivism of keeping juveniles, particularly those below the age of 18 years, in facilities meant for adults has flouted national and international norms on juvenile justice.

Most human rights bodies, coupled with a number of media reports, have indicated a disturbing trend in the state of Kano where juveniles are regularly tried in normal criminal courts instead of the provided juvenile courts.¹⁹ This denies the juveniles age-specific court procedures as enshrined in the CRA, hence exposing them to risks typical for adult offenders. One of the classic examples of how juveniles have been regularly institutionalized together with adult offenders is in the detention of minors

¹⁷ Jonathan Herring, *Legal Ethics* (Oxford University Press 2023).

¹⁸ *Ibid* 17

¹⁹ ED Mallam, *Boko Haram Insurgency and Human Rights Violation in North Eastern Nigeria* (Doctoral thesis, Kampala International University 2019).

at Kano Central Prison. Such practices constitute a serious contradiction to the corrective aims of juvenile justice and enhance recidivism rates with added psychological harm²⁰.

The problem of inadequate access to juvenile courts is compounded by a general lack of good legal representation for many juvenile offenders. In fact, the availability of legal assistance for juveniles and the promotion of their interest are restricted in Kano, especially in the rural areas where a chunk of juveniles are being detained. "Attorneys representing youth in Kano report significant barriers to providing adequate representation, including a general lack of training related to juvenile justice laws, very limited familiarity with the Child Rights Act, and lack of resources to investigate and defend cases effectively". Moreover, Kano society's attitude regarding juvenile crime is often punitive rather than rehabilitative, and this further complicates the ability of lawyers to mount effective defenses for their young clients.²¹

This sets up a critical ethical dilemma that lawyers experience while operating in Kano and areas alike. It is the lawyers' duty to guard justice and professionally represent juvenile offenders to ensure their rights, as provided for in the CRA, are upheld. In Kano, the great majority of juvenile offenders pass through trials without legal representation, and many face severe conditions, including being given sentences not proportional to the offence committed. This would indicate a failure on the part of the legal profession to uphold its ethical responsibility to protect vulnerable populations and further a justice system based more on rehabilitation than on punitive measures.

²⁰ AM Ahmed and S Tura, 'Role of Informal Reformatory Schools on Reformation of Juveniles: A Periscope on the Public Perceptions in Kano Metropolis' (2023) 1(2/018) *Journal of Integrated and Interdisciplinary Studies on Africa and the Middle East* 216.

²¹ MA Sha'aban Ado, *The Right to a Fair Hearing and Legal Representation of the Indigents: A Case Study of Legal Aid Scheme in Kano State, Nigeria* (Doctoral thesis, Kampala International University 2018).

Issues such as this are rooted in the systemic problem in juvenile justice across Nigeria. Lawyers in Kano, like others across the country, often have backlogged cases, scarce resources, and societal pressures for more convictions. The above-identified factors lead to ethical slips resulting in juveniles being treated as adults and denied the rehabilitation they deserve.²²

Challenges are pointers that, through lawyers, a lot can be done to further the rights of juvenile offenders in Kano to bring about change. Without one clear ethical commitment by the legal profession, Courts will continue to dismantle the protections afforded juveniles with serious consequences for these vulnerable individuals and hinder their potential for rehabilitation. The legal experts should have focused on the interests of the juveniles, whereby one should side with the juveniles by their right to access the juvenile courts, proper legal representation, and challenge the existing punitive measures.²³

2.5 Ethical Flaws of Lawyers in Juvenile Representation

The ethical obligations of lawyers in handling juvenile offenders in Nigeria are central to the integrity of the criminal justice system. It is a breach of ethical conduct for legal practitioners to fail in upholding the rights of juveniles and to perpetuate a system that has absolutely no regard for at-risk children in terms of welfare and rehabilitation. Lawyers are to ensure that juveniles are not assessed through adult courts or conditions of

²² SMA Muhammad, *Fair Hearing and Legal Representation of the Indigents: An Assessment of Legal Aid Scheme in Kano State, Nigeria* (Doctoral thesis, School of Law 2018).

²³ ANwozor, 'The Politics of Intergovernmental Relations: Assessing the Many Phases and Challenges of Nigeria's Judicial System' in *Nigerian Politics* (2021) 125.

detention that may not be suitable. Omission of this duty amounts to critical ethical issues that undermine some core principles of justice.²⁴

The ethical problem here is that lawyers allow minors to be arraigned in adult criminal courts against the legal provisions of Nigeria, particularly the Child Rights Act, CRA 2003. Under the CRA, juvenile delinquents are to be judged in special juvenile courts designed to handle only unique needs and susceptibility of children.²⁵ However, the same court procedures relating to adults are still used on many youths. The sentences are made even harsher on such individuals, and this is a contravention of their rights to a fair hearing. Regarding this, the lawyers further violate the rights of these youngsters by not rectifying this procedural fairness problem.

Goldfarb surmises that one of the most glaring ethical violations in the representation of juveniles occurs when the lawyers fail to contest the illegal criteria for detention. Juveniles incarcerated in adult correctional facilities are exposed to risks of associating with adult criminals, thus setting grounds for negative long-term impacts on juvenile psychological development. Lawyers are, therefore, under an ethical commitment to make certain that juvenile clients are placed in appropriate facilities that are oriented toward rehabilitation rather than punishment. Whenever lawyers fail to ensure such conditions, they completely undermine the basic tenets of restorative justice upon which juvenile law is premised.²⁶

One of the critical ethical insufficiencies is that many juvenile offenders have been enormously affected by a lack of proper legal representation. Many juveniles have not been accorded proper legal representation either

²⁴ Katherine Lapp, 'Young Adults & Criminal Jurisdiction' (2019) 56 *Am Crim L Rev* 357.

²⁵ MA Abdulraheem-Mustapha, 'Legal and Institutional Frameworks on Child Justice Administration in Nigeria' in *Child Justice Administration in Africa* (2020) 155.

²⁶ Richard Goldfarb, *The Price of Justice: The Myths of Lawyer Ethics* (Turner Publishing Company 2020).

due to financial constraints or due to a shortage of qualified personnel in the juvenile justice system. Most lawyers are not well equipped to handle juvenile cases, which require a broad understanding of both the legal frameworks and the psychological needs of offenders during their developmental years. A lack of specialized training may lead lawyers to fail to provide adequate legal representation due to failure to consider factors that mitigate such as age, background and a potential for rehabilitation in arriving at an appropriate sentence.²⁷

Furthermore, societal biases about youthful offenders often spill over into the approach made by the defense attorneys. There seems to be a prevailing opinion that youngsters committing crimes must be dealt with harshly, particularly in assaultive conduct cases. These prejudices may lead attorneys to give less vigorous defense or not to challenge disproportionate charges. According to Goldfarb, these prejudices create and maintain systemic injustices by limiting the lawyer from looking beyond the offense and highlighting the rehabilitative possibilities of the youth.²⁸

The moral failures in the representation of juveniles would also have implications for public confidence in the legal profession. Lawyers who fail to protect the rights of juveniles reinforce the view that the legal system does not care about the needs of particularly vulnerable groups. This erodes public confidence in the justice system and tarnishes the reputation of the legal profession. It is a fact that, by the Rules of Professional Conduct in Nigeria, lawyers have a duty and responsibility to advance the best interests of their clients as well as advance the interests of justice in a non-partisan manner.²⁹

²⁷ AL Pillay, AL Kramers-Olen, and WN Gowensmith, 'Inequities in Forensic Mental Health in South Africa and Recommendations for Service Development' (2023) 22(4) *International Journal of Forensic Mental Health* 326.

²⁸ Ibid 26

²⁹ Sylvester Udemezue, 'An Appraisal of Professional Legal Ethics and Proper Conduct for Lawyers in Nigeria' (2020) Available at SSRN 3842835.

These infractions make it imperative that the NBA has to be more committed and fastidious about ethics, and put more emphasis on juvenile justice. The NBA should, therefore, advance more comprehensive training on the rights of juvenile offenders and the meaning of ethical advocacy.³⁰ Lawyers should devote themselves to rehabilitation rather than punishment, thereby taking steps that reduce or eliminate violations of rights applicable to juveniles within their practice. To build a decent and humane legal system, there is a dire need for lawyers to apply ethics in practice through advocating for protection and rehabilitation of juvenile offenders in Nigeria.

3.0 Conclusion and Recommendations

The commitment that needs to be made by lawyers in defending the rights of juvenile offenders in Nigeria is huge, demanding the highest ethical standards and a commitment to defending the rights of vulnerable groups. As has been depicted by case scenarios in Kano and elsewhere, challenges are huge, hence indicating the need for urgent reforms both in legislation and practices. It should now enable lawyers to take their work seriously, a fact that will be serving justice administration and making such systems humane and rehabilitative as well. Respecting the rights of juvenile offenders enhances the integrity of the Nigerian legal system and supports essential justice and human dignity principles.

This will involve some reforms: The NBA should introduce juvenile rights and ethics training for lawyers on the CRA, juvenile rehabilitation, and compliance with international standards. This training would enable lawyers to offer sufficient representation for juvenile offenders. Application of the CRA should be uniform in all states to ensure that its protection is the same throughout the country, hence enabling lawyers to argue the rights of juveniles with consistency.

³⁰ Federico Garcia, 'Inside the NBA: Black Dandyism and the Racial Regime' (2018) 51(2) *The Journal of the Midwest Modern Language Association* 103.

Furthermore, there should be a separate juvenile court and separate detention facilities to support rehabilitation rather than punishment. Such facilities should provide compulsory education, vocational training, and psycho-social support for helping them get back into society. Lawyers should be held liable under stringent ethical standards in case of misconduct to safeguard the rights of juveniles. Monitoring boards should be established to review complaints and impose punitive measures wherever needed. Such reforms will ensure equal justice, increased legal representation for less privileged juveniles, and rehabilitation as major keys toward the improvement of juvenile justice in Nigeria.