Elusive Justice? An Assessment of Child Justice in the Tripartite Court System in Nigeria

Iyabode OGUNNIRAN[1]

Abstract: Objectives: There are three courts with different theoretical underpinning administering child justice in Nigeria. The Juvenile Court is premised on the rehabilitative ideal but researches have shown that the apparatus to fulfill this ideal is non-existent. The Sharia Court composition is radically different and the procedure used in such courts follow strict Islamic legal precepts. Invariably, child offenders are not given adequate protection guaranteeing justice. **Prior Work:** This article assesses child justice in these courts to determine the extent of protection of child offenders. They are young, immature and very vulnerable. Over the years, various studies have demonstrated the need for change in the above courts. **Value**: Based on law, the article examines the provisions creating the new Family Courts. These provisions accord with international juvenile justice standards established to grant justice to such offenders. The Family Court, just as it is being used for several purposes in other jurisdictions, is a recent development in Nigeria. **Implications:** This article assesses the structure and procedure of this new court and proposes it as being best suited for child offenders.

Keywords: Juvenile court; family court; sharia court; justice; protection

1. Introduction

Nigeria is one of the countries in Sub-Saharan Africa comprising 36 states and the Federal Capital Territory, Abuja. There are Southern and Northern Nigeria with a population of about 174 million and over 250 ethnic groups.[2] The country was colonized by Britain and it introduced the Juvenile Courts in 1943.[3] The court was

[1] Senior Lecturer, Department of Public Law, Faculty of Law, University of Lagos, Nigeria. Corresponding author: iyogunniran@yahoo.com.

[2] Info please http://infoplease.com/country/nigeria.htm?pageno=2 (last visited 17 June 2014).

[3] The Children and Young Person Ordinance was promulgated in 1943 for the welfare and the treatment of young offenders. It was an adaptation of the 1933 Children and Young Persons Act in Britain. In 1945, there were three Regions, whilst Juvenile Courts were established in the Western and Eastern Regions, ten states in the Northern Region were not using the courts. The states were Bauchi, Benue, Borno, Gongola, Kaduna, Kano, Kwara, Niger, Plateau and Sokoto (Obilade, 2005, p. 217). These States later voluntarily created Juvenile Courts, for instance, Kano state created Juvenile Courts with the enactment of Kano State Juvenile Courts Edict 1987.

premised on the rehabilitative ideal. Due to the immaturity of the child, the court should focus on helping the child to live a productive life; the state should act as *parens patriae* and to create a special forum where the child could be understood so as to develop the ability to take responsibility for his or her action (Mcnamme, 1999ab, pp. 8-9, 18-19; Behrman et al., 1996, p. 6). The courts were designed more like social welfare agency and proceedings were to be confidential to avoid stigmatizing the child (Clarke, 2005, p. 667). Conversely, in Nigeria, both the structure and procedure contradict this original ideal (Solebo, 2004, p. 36). In addition, the courts preferred sending such offenders to custodial institutions for rehabilitation (Nwanna & Akpan, 2003, pp. 91-93). Extensive researches carried out across the country showed that these institutions have not been able to provide the infrastructure and environment that would help such offenders lead productive lives (Okagbue, 1996, p. 269; Alemika & Chukwuma, 2001, pp. 70-76; Nwanna & Akpan, 2003, pp. 113-115).[1]

Based on therapeutic jurisprudence, Family Courts were created in 2003.The role is to heal and preserve the family by addressing legal as well as underlying personal and social problems (Reuters, 2003, p.2101). It has exclusive and unlimited jurisdiction in all matters relating to children, with a well delineated jurisdiction and a structure that enhances professionalism. The courts are infused with a catalogue of international justice standards such as legal rights for the children, discretion and non-custodial disposition methods. In respect of the latter, two novel provisions are to be explored, counseling and community service. The courts are to be guided by principle of reconciliation of the parties and amicable settlement of the disputes.[2] Hence, the courts are grounded in international child-oriented justice, focusing on early reintegration of child offenders into the society to assume

[1] For the 1996 Study, Nigeria was divided into six zones: these are South West (Oyo and Edo); North Central (Benue, Kogi and Plateau); South East (Anambra, Akwa Ibom and Rivers); North West (Sokoto and Niger); North East (Kano and Borno) and Cosmopolitan zone (Lagos, Port Harcourt and Kaduna). In the 2011 Study, the states covered were Abia; Adamawa; Bauchi; Benue; Delta; Ebonyi; Edo; Enugu; Imo; Kaduna; Kano; Lagos; Ogun; Plateau and Rivers. For the 2003 Study, the country was divided into six zones. These are: North West zone (Kaduna and Kano); North East Zone (Borno and Adamawa); North Central Zone (Plateau and Federal Capital Territory); South West (Lagos and Oyo); South East (Imo and Enugu) and South -South Zone (Cross River and Rivers).

[2]Nigeria signed and ratified the Convention on the Rights of the Child (Children"s Convention) in January 1990 and April 1991 respectively. In order to fulfill its international obligation, the country enacted the Children"s Convention as the Child Rights Act in 2003. Presently, twenty six states have adopted the Act as their Child Rights Laws. Report from Sharon Oladiji, Project officer, Child Protection and participation Section UNICEF, U.N. House Central District, Abuja, Nigeria.

constructive roles (Van Bueren, 1992, pp. 381-382). More than ten states have introduced Family Courts to enhance their child justice.

During colonial rule (1885-1960), sharia legal system was allowed in several states in Northern Nigeria as a native law and custom (Galadima, 2003, p. 126). After independence in 1960, Sharia remained operative in those states as a class of customary law and applied to Islamic personal law (Akingbein, 2004, p. 392). In 2002, Zamfara State officially adopted the Sharia legal system, followed by 11 other Northern States (Fabamise, 2004, p. 375).[1] Consequently, sharia law guides the civil and criminal affairs in those states. Of interest here is that the Supreme Council of Sharia has directed the Sharia states not to establish the Family Courts. According to the Council, "*the court will demolish the very essence of Islamic culture…by ousting the jurisdiction of sharia courts in all matters relating to children."*[2] Two of the 12 states have created Family Courts with parallel jurisdiction with the Sharia Courts in all matters relating to children. But the two courts are different in terms of judicial personnel and procedural justice. Apparently, they will reach different decisions on issues concerning offenders. Fearfully, the Sharia Courts sitting as Family Courts may not be able to guarantee the child offender adequate protection as stipulated in the law creating the Family Courts.

This paper assesses child justice in the tripartite court system in Nigeria. The Juvenile Courts were created to fulfill the rehabilitative ideal. However, the present structure and procedure in the courts lacked this content. Equally, researches have shown that the institutions are devoid of infrastructure and conditions that promote the ideal. The Family Courts have been established based on therapeutic jurisprudence. They are infused with international juvenile justice standards to ensure the earliest reintegration of the child offender to the society to assume constructive role. The Sharia Courts have been elevated to the status of Family Courts. The paper argues that due to the training of the judicial personnel and the procedure in these courts, they may not be able to ensure the guarantees for protection in the family courts. It is our contention that the Family Court is best suited for child justice.

[1] Sharia Courts (Administration of Justice and Consequential Changes) Law of Zamfara State. The other States are Niger; Bauchi; Borno; Gombe; Jigawa; Kaduna; Kano; Katsina; Kebbi; Sokoto and Yobe.

[2] Nigeria: Shariah Council against Child Rights Act http://www.wluml.org/node/2408 (last visited 17 June 2014).

This paper briefly traces the history of Juvenile Courts as well as analyses the structure and procedure in the courts within the context of some studies conducted on the situation of juvenile justice. It considers the rationale behind the creation of Family Courts and the international juvenile standards to ensure adequate protection for child offenders appearing before it. It states the historical background of Sharia Courts and its present parallel jurisdiction with Family Courts. The paper concludes that the Family Courts have the necessary impetus to ensure child justice.

2. Juvenile Courts in Nigeria

The Progressive Era reformers established Juvenile Court based on the rehabilitative ideal. The philosophy of the court was not based on the criminal act; rather it focused on the circumstances of the child. The court did not merely determine whether the child committed the crime, but sought to understand why the child committed it and how to help the child live a healthy productive life. (Mcnamme, 1999a, pp. 8-9). The state became *parenspatriae,* as Judge Julian Mark explained, the most important distinction the Juvenile Court instituted was "*the conception that (when) a child broke …the law (he or she) was to be dealt with by the state, as a wise parent would deal with a wayward child.*" (Mcnamme, 1999b, pp. 18-19). Proponents of the Illinois statute rationalized that children have different level of understanding compared to adults. They needed a special forum in which they could be understood. This was relevant as it related to their ability to take responsibility for their actions. (Behrman et al., 1996, p.6). The courts were expected to fulfill the complicated roles of societal disciplinarian that can punish and parental substitute that can treat, supervise and rehabilitate (Schwartz et al., 1999, p. 128). This ideal influenced other jurisdictions, including Britain. When it colonized Nigeria, Juvenile Courts were equally established to adjudicate on matters concerning juvenile offenders.

2.1. Child Justice in the Juvenile Courts

The structure of the courts was designed like a social agency, to treat the child. Hence, the procedure were to be informal and flexible.

2.1.1. Structure

The court is constituted by a Magistrate sitting with such other persons, if any, as the Chief Judge may appoint.[1] The Magistrate sits with two assessors, one of whom is always a woman. Whilst the Magistrate considers the issues of law, in all other issues, the decision of the assessors counts (Akerele, 1972, p. 69). According to part 2 Children and Young Persons Law, the offenders are referred to as juvenile offenders. As noted above, the philosophy underpinning juvenile justice system is the welfare of the child with the primary goal of helping the child to live a productive life. One of the guarantees to protect the child was the structure of the court which was distinctly different from other criminal courts, operating more like a social agency than a court (Clarke, 2005, p. 667). Conversely, a former Magistrate in one of the Juvenile Courts in Nigeria, Solebo (2004, p. 36) lamented, "*in practice, it is difficult to protect children in view of the present location of the court, although they are in separate location from regular courts sittings, there are other offices around the court complex where several people come to transact business.*"

In addition, no other person other than members and officers of the court and the parties to the case, their solicitors and counsel and other persons directly concerned in the case, except by the leave of court, shall be allowed to attend. Sec. 6 (6) of the above law also makes exception for *bona fide* representatives of a newspaper or news agency The objective was to protect the offender against stigmatization, hence hearings were confidential and access to records was limited (Feld, 1999, p. 338). According to Solebo (2004, p. 36), in contrast, "*there is no waiting room for children and their parents or guardians to stay while waiting for their cases to be heard. Therefore, they sit in the open and people around hear their names when called. The identities of the children are disclosed in print or electronic media even when the case is sub judice. The penalty for contravening the law is N100 (less than USD $1). This penalty is therefore inadequate and unlikely to deter anyone form flagrantly violating the law.*"

As indicated above, the essence of creating Juvenile Courts was for the whole trial to be conducted in an environment where the child could understand his or her act

[1] Sec. 6 (1) Children and Young Persons Law. The regional governments adopted the Children and Young Person Ordinance as part of their laws. When the regional structure was changed and states were created, the various states retained the original as the Children and Young Persons Law. The paper adopts the Children and Young Persons Law, Cap.C10 Laws of Lagos State 2005.

and as well be protected as much as possible. The contrary is the situation in many Nigerian Juvenile Courts.

2.1.2. Procedure

To fulfill the rehabilitative ideal, principles of psychology and social work rather than formal rules should guide court personnel. The court should collect as much information as possible about the child: his life history, character, social environment and individual circumstances. The assumption was that a scientific analysis of the child's past would reveal proper diagnosis and cure. The overall inquiry gave little weight to the offence committed since the misconduct itself was a faulty indicator of what the child needed (Clarke, 2005, p. 668). A subjective determination of the needs of the juvenile offenders replaced the strict rules of evidence. They were not convicted as criminals but adjudicated upon as delinquents. They were not sentenced to prison or reformatory but committed to the care of a probation officer or an institution (Behrman et al., 1996, pp. 6-7).

Comparatively in Nigeria, the Juvenile Courts preferred to send offenders to the custodial institutions based on the rehabilitative model. In the 1996 NIALS study, from the experience of judicial officers, the disposition methods frequently used at the juvenile courts are corporal punishment 20 (37 percent); probation/fine 6 (11.1percent); prison 10 (18.5 percent), approved school/remand home 14 (25.9 percent) and Borstal 3 (5.6 percent). From this study, 50 percent of the disposition methods were the custodial institutions (Okagbue, 1996, p. 269). Similarly, in the 2003 CRP study, most of the juveniles about 131(76.6 percent) were convicted or sentenced after trials. Out of 162 respondents, 2 (1.2 percent) were under probation; 111 (68.5 percent) were put in remand centres; 1 (0.6 percent) was in approved school; 19 (11.7 percent) were in Borstal and 5 (3.1 percent) were in the prisons. About 138 (85.1 percent) were placed in custodial institutions. (Nwanna and Akpan, 2003, pp. 91-93).

According to Holland & Mlyniec (1995, p. 1797), two types of treatment were considered necessary in order to fulfill the rehabilitative objective in these institutions. First, for an effective rehabilitation programme, measures such as: education; vocational training; individual and group counseling, psychiatrist and psychological treatment are necessary. In the 2001study, institutionalised juvenile respondents were interviewed on their treatment at the various custodial institutions. 329 (85.9 percent) of the juvenile reported that they had received

advice and counseling from the custodial officers. However, less than half 180 (48.3 percent) of the juveniles had access to education. Also, 197 (52.8 percent) had access to vocational training. According to the study, these figures did not indicate the quality of training provided. Observations during the field work for this study showed that the workshops lacked serviceable equipment and those available were obsolete and could not be used because of poor maintenance and under-funding (Alemika & Chukwuma, 2001, pp. 70-76).

Focus Group Discussions was done with juvenile offenders in the 2003 CRP study. The discussions highlighted gross inadequacies in the provision of educational facilities in Approved Schools, Remand Homes and Borstal.[1] There was inadequate staff to teach and instruct the juveniles. One of the inmates from the North Central Zone responded when asked which of the services they wanted to be improved, "*apart from food we need education. I have forgotten all that I was taught since I came here. They should bring somebody to teach us here. We also need books and novels to help us*" (Nwanna & Akpan, 2003, pp. 113-114). Hence, apart from counseling which was reported on a positive note, educational and vocational facilities were inadequate or non-existent. It is apparent that the first objective of rehabilitation has failed.

Second, a rehabilitation programme should be conducted in a condition that accords with the concept of decency. For instance, there shall be nonuse of corporal punishment; no disciplinary isolation, lack of mechanical restraints and overcrowding. In addition, provision of adequate medical and dental care (Holland & Mlyniec, 1995, p. 1797). In the 2003 study, through a Focus Group Discussions conducted on the juveniles offenders in the institutions expressed dissatisfaction with the feeding and wished it could be improved. Discussions on bedding demonstrated gross inadequacies in the supplies of beddings. The beddings were either too old or unhygienic that they were infested with bed bugs and lice. This was evident on the skins of the inmates which were infested with scabies which indicated poor hygienic environment or beddings. It was noted that the common problem with the institutions was overcrowding. Kaduna Borstal which was built to

[1] Remand Centre is a place of detention of persons who are not less than sixteen years but under twenty-one years of age pending trial or sentence, Borstal institutions are for offenders who are not less than sixteen on the day of conviction but under twenty-one years of age may be detained. Borstal Institutions and Remand Centres Act, Cap. B11 Laws of the Federation of Nigeria 2004. The Prison Act states that juveniles under sixteen years of age are to be separated from adults, Prisons Regulations, Cap. P29 Laws of the Federation of Nigeria 2004. Approved Institutions are established for juvenile offenders for education, training and developing a good conduct.

accommodate 119 inmates had 245 inmates at the time of this study (Nwanna & Akpan, 2003, pp. 113-115).

In the North East zone, the Remand Home was an open place; so, juvenile offenders were chained and handcuffed for security reasons. The use of corporal punishment was common. The juvenile offenders at the Kaduna Borstal mentioned that offences such as attempts to escape, fight or stubbornness could attract horse whipping, frog jumping, labour or lock up in the guardroom for three days. Furthermore, researchers in Enugu and Cross River States observed that juveniles were not separated from adult hardened criminals. One of the juvenile discussants in North Central Zone said, "*it may have been better if we were kept in a borstal or young people's home. This is because we would be staying with our peers and age-mates only, unlike here where we mix up with people of different ages*." Worse still, there were no custodial institutions in Enugu, Cross River, Imo and Federal capital Territory (FCT) (Nwanna & Akpan, 2003, pp. 110-115).As discovered by (Woodland et al 2005, p. 12), juvenile offenders in adult prisons are affected by the lack of appropriate medical services. Also, they lack educational programmes that address their physical and sexual development. Even so they have nutritional needs that are related to their physical development as well as vision and dental concerns that typify changes in adolescence.

Consequently, there were agitations on the extent of child justice in the juvenile courts. In 1991, a National Workshop was held to review the juvenile justice administration. The consensus observation was that the courts should de-emphasize custodial treatment and shift towards informal, non-custodial and community-based methods.[1] Despite this view, from the above researches, the courts continued to use the custodial institutions and the offenders were subjected to processes devoid of justice. Invariably, family courts were created in 2003.

Presently, whilst some states (Lagos State) have abolished the juvenile courts, others have retained it.

[1] Report of the National Workshop on the Review and Application of the Children and Young Persons Law 21-26 July 1991, Central Hotel, Kano, Nigeria.

3. Family Courts in Nigeria

The argument for Family Courts is the joining of legal areas directly involving a family functioning (Gordon, 1977, pp. 9-14). Courts effectiveness increase when it resolves a family's legal problems in as few appearances as possible. Informal processes, social service agencies and resources are coordinated to produce a comprehensive resolution tailored to meet the individual's family needs (Babb, 1998, pp. 30-60).

The philosophy of a Family Court is principled on the theory of therapeutic jurisprudence. Advocates argue that when society chooses to intervene, it must be done well and with some measure of public accountability. The Family Court model not only aspires to avoid law-produced harm, but also attempts to heal and preserve the family by addressing legal problems and underlying personal and social problems. The role of the Family Court is not only to adjudicate on issues but also to assist in restoring family stability (Reuters, 2003, p. 2101).

In a similar vein, there is considerable support in the literature for pursuing rehabilitation for child offenders in a Family Court context. A significant relationship exists between family environment and delinquency, although family risk factors are not the only predictors of delinquency. Recidivism has also been shown to be related to family environment, children who are victims of abuse or even witness family violence are at high risk for increased aggression and behavioural problems. (Ohio Family Court Feasibility Study).

Family Courts are now considered as specialized courts across the world with the aim of offering professional service to stabilize and preserve the family. It has become a key component of the legal reforms packages implemented in civil law countries (Garoupa et al., 2010, pp. 54-66). In view of the therapeutic philosophy and specified nature of Family Courts, such courts were established in Nigeria in 2003. They are vested with civil and criminal jurisdictions in all family-related issues such as custody, adoption, inheritance, divorce and child justice administration in Nigeria. Offenders are referred to as child offenders (part XIII Child Rights Act).[1]

[1] By virtue of sec. 6 (5) (e) of the 1999 Constitution, the Family Court at the High Court level is a superior court of record, that is, it is similar to any High Court, appeal can move from it to Court of Appeal and Supreme Court. At the Magistrate Court level, the Family Court is similar to just any other Magistrate Court. Cap. C23 Laws of the Federation of Nigeria 2004.

3.1. Child Justice in the Family Courts

The court provides legal rights for child offenders and professionalism of the judicial personnel.

3.1.1. Structure

In sec. 149 of the Child Rights Act, Family Courts are established for the purposes of hearing and determining matters relating to children. Sec. 162 states, the courts have unlimited and exclusive jurisdiction in any criminal proceedings relating to child offenders. By secs. 149, 150, 153 (5), the courts operate at two levels, Magistrate Court at the Magistrate level and High Court at the High Court level. Appeal lies from the Magistrate Court level to the High Court level. At the Magistrate level, the court is duly constituted if it consists of a magistrate and two assessors. One of the assessors shall be a woman. The other person is required to have attributes of dealing with children, for instance, a person with knowledge in child psychology. In the same vein, the High Court shall be duly constituted if it consists of a judge and two assessors. In sec. 153, there is no requirement of a woman assessor, though one of them must be educated in child psychology.

The above structure will better protect the child offender. First, a well-delineated jurisdiction will enhance coordination. Secondly, this structure emphasizes professionalism in the child justice administration. For instance, in secs. 152 (1) (b) and 153 (1) (b), assessors shall be persons with education in child psychology. In the Magistrate and High Court, their ranking shall not be below Senior Child Development Officers and Chief Child Development officers respectively. Officers with such backgrounds will better understand the socio-psychology of such offenders and proffer right interventions to protect them.

According to sec. 206 (1), the personnel of the court shall be afforded professional education, in service training, refresher courses and other modes of instruction to promote and enhance the necessary professional competence they require. The contents of such education, training and courses shall reflect the diversity of the children and complexity of matters dealt with by the court. This is to raise new crop of judicial personnel who will better appreciate the paradigm shift of a child-oriented justice and well informed to implement all the novel provisions introduced to protect child offenders. Further, they will be favorably disposed to alternatives to detention as the intention of advocates of family court was for the courts to promote family stability.

3.1.2. Procedure

The Family Courts grant rights to child offenders. In pre-2003, these rights were scattered in different legislations with no specific guidelines, hence they were adult-interpreted. The problems of violation of procedures experienced by adult offenders in the larger criminal justice were equally transferred to this class of offenders. (Ajomo & Okagbue, 1991, pp. 284-292). The Family Courts are now guided by rights stipulated in the Child Rights Act to make the interpretation child sensitive. These are legal representation, fair hearing and incorporation of novel guiding principles in adjudication.

3.1.3. Legal Representation

The child offender has the right to legal representation. This is to assure him or her of legal assistance.[1] The importance of legal representation is critical as a child lack the mental, intellectual or financial capability to engage the services of a counsel. A United Nations Institute for Training and Research report found that the right to counsel can even be more important for children because of informality of child proceedings. Such informality can lead to deviation from the required international procedural safeguards (Van Bueren, 1992, p. 393). In sec. 201 (e), this right is complemented with legal aid.

3.1.4. Fair Hearing

Section 214 (1 and 2) provide that the child offender has the right to fair hearing and compliance to due process in his or her trial. This concept is also in the Constitution and the Nigerian courts have severally pronounced on it as permeating the entire justice system.[2] However, in the Family Courts, the child can participate in proceedings and the courts are to respect his or her legal status.

3.1.5. Novel Guiding Principles

Proceedings in the Family Courts must take cognizance of two factors. First, sec. 215 (1) (a) states, it must be conducive to the "best interest of the child" and conducted in an atmosphere of understanding, "allowing the child to express himself and participate in the proceedings." The best interest principle and participatory rights of children are international standards guiding children's rights, including child justice. The best interest approach is to avoid arbitrary decisions

[1] Sec. 210 (e) Child Rights Act, sec. 39 1999 Constitution of the Federal Republic of Nigeria Cap. C23 Laws of the Federation of Nigeria 2004.
[2] *Ajagungbade III v AdeyeluII* (2001) 16 NWLR (pt. 738)126.

with respect to the child's essential needs and the best interest standard will use the child's physical and psychological well-being as its cornerstone. (Conward, 1998-1999, p.43) On participatory rights, the underlying philosophy is that a child who is capable of forming his or her own views is given the right to express those views freely and due weight shall be given to it according to the child's age and maturity. (McGoldrick, 1991, p. 141).

Secondly, by sec. 215 (1) (b), "the reaction taken is always in proportion not only to the circumstances and gravity of the offence, but also to the circumstances of the child and needs of society." The well-being of the child is the guiding factor in the consideration of the case, the reaction envisages is an admixture of both "justice" and "welfare" model for the proper functioning of child justice system. (Adeyemi, 1992, pp. 396-397). The overarching principle is the need for a comprehensive understanding of a child's personal development, including the interaction with his or her environment before considering social reaction for certain behaviour. (Schabas & Sax, 2006, p.81).

3.1.6. Application of Discretion

By virtue of sec. 208, the Family Court magistrates and judges are to exercise discretion in adjudication and follow up dispositions. This shall be guided by the special needs of such a child and the variety of measures available. The use of discretion is premised on the fact that rules without discretion cannot fully take into account the need for tailoring results to unique facts and circumstances of particular cases, hence ensuring individualized justice. (Davis, 1979, pp. 25-26).To promote the use of discretion, sec. 208 (2) provides that every person who exercises discretion shall be specially qualified or trained to exercise the discretion judiciously and in accordance with his functions and powers.

3.1.7. Disposition Methods

Family Courts are to use custodial and non-custodial disposition methods. The custodial methods include: sending the child offender by means of a corrective order to an approved accommodation or approved institution; committing the child offender to custody in place of detention provided under the Act, making a hospital order or an order prescribing some other form of intermediate treatment and making an order concerning foster care, guardianship, living in a community or other educational setting.[1] The non-custodial methods are: the court may dismiss

[1] Sec.223 (1) (c) (iii), 1 (f), (1) g, (1) h Child Rights Act.

the charge against the child offender or discharge the child offender on his entering into a recognizance; the court may place the child offenders under the care order, guidance order and supervision order; including (i) discharging the child offender and placing him under the supervision of a supervision officer; or (ii) committing the child offender by means of corrective order to the care of a guardian and supervision of a relative or any other fit person.[1]

Whilst the above provision are also used in the Juvenile Courts, there are two novel non-custodial methods for the courts. The child offender can be ordered to participate in group counseling or undertake community service under supervision.[2] It is our contention that these provisions have widen the ambit of non-custodial disposition methods for the Family Courts. First, "*counseling entails when a person occupying regularly or temporarily the role of counselor, offers or agrees explicitly to offer time, attention and respect to another person or persons temporarily in the role of client*" (Dryden, 1989, p. 4 quoting from British Association of Counseling (BAC) 1985). However, children are different from adults and need an entirely different counseling strategy. They require verbal counseling skills as well as other strategies such as storytelling, taking them on an imaginary journey with the objective of creating a participatory environment for the child. The counselor must not hold on to pre-determined agenda but allow for flexibility to give priority to the child's goals (Geldard & Geldard, 2005). Ogunniran (2013, p. 15) argues that this method is workable and is a welcome development. First, from the nature of juvenile offending in Nigeria, status offences are prominent. Counseling sessions can be used for both the offenders and their parents. Secondly, the social welfare officers can undertake this service. Consequently, there is a ready institutional framework with minor adjustments.

As regards the second non-custodial option, a community service is a sanction of the court requiring the offender to undertake the performance of a certain number of hours of unpaid work for the good of the community. It views the community as a victim, hence requires reparation and restitution in kind. Due to personalized individual placement, it affords the offender the opportunity to enhance his feelings of self-worth and self-respect (Klaus, 1998).The effective use of community service in the family courts will reduce the use of custodial sentences, avoid the various abuses of child offenders in the institutions and ultimately accord with the

[1] Sec. 223 (1) (c) (i&ii) *ibid.*
[2] Sec. 223 (1) (d) (i &iii) *ibid.*

international standards of earliest reintegration of such offenders into the society (Ogunniran, 2013, p. 15).

Overall, in the exercise of its jurisdiction, sec. 151 (3) (a) and (b) states, the Family Courts are to be guided by the principle of reconciliation of the parties involved or likely to be affected by the result of the proceedings, including the child, the parents or guardian or any person having parental responsibility or other responsibility for the child. The court is also required to encourage and facilitate the settlement of any matter before it in an amicable manner. Ultimately, the Family Courts have been positioned to ensure justice for child offenders. The structure emphasizes professionalism and coordination. Similarly, the procedure accords with justice safeguards in international human rights law. Counseling and community service will translate into a child-oriented justice fostering reintegration of the offenders to assume constructive roles in the society.

Presently, more than ten states have created Family Courts. Ondo State is constructing a Family Court Complex. Lagos State has restyled the Juvenile Courts at the magisterial level to Family Courts. Appeals go to the Family Courts at the High Court level. The state is also building new courts with modern facilities to ensure effectiveness. Some states have also introduced the legal framework to use in the courts. The Ondo State Family Court Practice Directions.[1] Anambra State Family Court (Procedure) Rules.[2] Several states continue to organize training courses for the judges and magistrates in the family court so that the officers can be properly grounded and appreciate the philosophical basis of this new court. In view of all these positive developments, Family Courts are better poised to ensure child justice. This writer agrees with the Committee on the Rights of the Child Concluding observations on Nigeria whereby it recommends the establishment of Family Courts in all states and ensure they are provided with adequate human and financial resources to operate.[3]

[1] Supplement to Ondo State of Nigeria Official Gazette, No 10 vol.35, 13 May 2010.
[2] Anambra State ASL No14 Family Court (Constitution of Membership of High Court Level) order 2008; ASL 15 Family Court (Constitution of Membership at Magistrate Court Level) order 2008 and ASL 1: Family Court (Procedure) Rules 2009.
[3]Fifty-fourth session of the Committee on the Rights of the Child, Concluding observations: Nigeria. CRC/C/NGA/CO/3-4, 11 June 2010, p. 28.

4. Sharia Courts or Family Courts?

Historically, Islam entered Nigeria around the 11th century and spread across the country. It has its own distinctive legal system and for almost a century, the Borno Empire was the front runner of Islam and Sharia legal system. But by the 15th Century, sharia had spread to the neighboring states of Kano and Katsina which subscribed to its cause. The Fulani Jihad and the establishment of the Sokoto Caliphate in the 19th Century further consolidated the influence of the sharia legal system (Junaid, 2005, pp. 234-235).

During colonial rule (1885-1960), sharia legal system was allowed in several Northern States as a native law and custom. For instance, section 2 of the Native Court Ordinance (1914) provided that native law and custom included Islamic Law (Fabamise, 2004, p.380). The Native Courts (Protectorate) Ordinance (1933) equally empowered native courts to administer the native law and customs prevailing in the areas of their jurisdiction (Galadima, 2003, p. 126). After independence in 1960, Sharia remained operative in Northern Nigeria as a class of customary law and was recognized under section 315 of the Constitution as an existing law and applied to Islamic personal law (Akingbein, 2004, p. 392).

However, in 2002, Zamfara State officially adopted the Sharia legal system. This was quickly followed by 11 other Northern States (Fabamise, 2004, p.375). The preamble to the Zamfara State legislation (as in most others) provide for "*establishment of sharia courts to exercise all civil and criminal jurisdiction (subject only to the provisions of the Constitution and any other laws vesting certain courts with exclusive jurisdiction over certain causes and matters)*".[1] Hence, sharia law guides the civil and criminal affairs in these Northern states.

The Supreme Council of Sharia has rejected the establishment of Family Court as it will "*demolish the very basis and essence of the Sharia and Islamic culture…establishment of a family court that ousts the jurisdiction of sharia courts in all matters relating to children is unacceptable to Muslims*."[2] Consequently, out

[1] Sharia Courts (Administration of Justice and Consequential Changes) Law of Zamfara State.
[2] Nigeria: Shariah Council against Child Rights Act http://www.wluml.org/node/2408 (last visited 17 June 2014).

of the 12 sharia implementing states, only two have established a supposedly 'family courts'.[1]

Curiously, these two states have created Family Courts and Sharia Courts with parallel jurisdiction. Jigawa state establishes a Family Court for the purposes of hearing matters relating to children. However, by sec. 142 (1) Jigawa state Child Rights Law 2007, the court shall consist of High court, Sharia Court of Appeal, Magistrate Court and Sharia Court. Furthermore, in sec. 142 (9), appeal shall lie from Magistrate to High court and from Sharia to Sharia Court of Appeal. Similarly, in sec. 150, Borno State Child Rights Bill 2006, Family Courts are of two levels: High court/Sharia Court of Appeal and Magistrate court/Upper Sharia court. In these instances, it is implicit that the Sharia and Magistrate courts have concurrent jurisdictions; hence litigants can appear before either of the courts. Presently, by sec. 7 (a) and (b) Sharia Courts in Jigawa (Law No. 7 of 2000), all Muslims and any other person whether adult or children in such states are subject to the full jurisdiction of Sharia courts. Hence, it is most likely that Sharia courts will continue to adjudicate on matters relating to the children.

Some critical issues arise from the provision for Family Courts (Magistrate and High Court levels) and Sharia Courts to exist side by side in the same legislation. First, the latter courts are entirely different from the former. By sec.1 of the Sharia Courts in Jigawa, a Sharia court is properly constituted if presided over by a single Sharia court Alkali. Also, in sec. 11 (2), such a person must have considerable experience in the knowledge of Islamic Law or a distinguished scholar of Islamic Law. Conversely, in sec. 142 (4) Jigawa State Child Rights Law , Magistrate and Sharia courts shall sit with two assessors who are persons of unquestionable character and have competence in matters relating to children. In a similar vein, in sec. 153 (1) Borno State Child Rights Bill, Magistrate and Sharia courts shall sit with assessors, who shall be officers not below the rank of Senior Child Development Officer as shall enable the court to effectively perform its functions under this Law. It is clear that judges with different educational backgrounds operate in the two courts. Whilst one is trained in Islamic Law, the other is trained in Common Law and Nigerian Laws. It will not be surprising that decisions on the same issue affecting a child offender will be poles apart.

[1] Out of the twelve, Jigawa has adopted the CRA and in Borno, it is still a bill. Report from Sharon Oladiji, Project officer, Child Protection and participation Section UNICEF, U.N. House Central District, Abuja, Nigeria.

In Sharia Courts, applicable laws and rules of procedure for the hearing and determination of all civil and criminal proceedings before the courts are as prescribed under Islamic Law.[1] In actual fact, the Committee on the Rights of the Child Concluding observations noted with concern the application of death penalty to persons below 18 years under Sharia law. Conversely, Family Courts are guided by norms of international human rights and child justice standards. Whilst the Family Court adjudicates on the premise of a child oriented justice ensuring the reintegration of the offender into the society. This is at variance with the Islamic concept of justice where punishments are to be strictly applied (Ogunniran, 2010, pp. 68-69). The germane issue in this regard is whether a child offender appearing before the Sharia Courts is guaranteed the protection in the Family Courts. The answer is probably in the negative.

5. Conclusions

The assessment of child justice in the three courts shows varied dimension of justice available to child offenders. Apparently, the present structure and procedural deficiency in the Juvenile Courts can no longer safeguard justice. The collapse of the custodial institutions is also very visible. It is our contention that the Juvenile Courts should be abolished in all the states that are presently using it. There is seeming need for non-institutional disposition methods.

The Family Courts is poised to ensure justice. However, there is need for continuous training of judicial personnel so as to understand the theoretically underpinning behind the courts. Such training will also include exposition on the meaning of children rights and its application to conform to international standards. Significantly, the establishment of these courts may be expensive in the short term as it requires a lot of political will. It entails building of infrastructure, developing practice procedure and continuous training of personnel amongst others. Nevertheless, as discussed above, the benefits are tremendous to the child offenders and the writer urges the other states, in line with the Committee's recommendation to establish the court for adequate protection.

There is need for continuous sensitization in the sharia-implementing states that the Family Court phenomenon is about better guarantee of justice to the offender. In

[1] Sec.10 Sharia Court in Jigawa. These are the Holy Quran, the Hadith and Sunnah of Prophet Mohammed, Ijmah, Qiyas, MasalahatMursala, Istihsan, Istishab, Al-urf, mashul-Sahabi and shar'uKablana.

our view, there are two options open to the stakeholders in these states, establish Family Courts or train the Sharia Courts Alkali. Hopefully, with constant workshops and conferences, these Alkalis will understand and appreciate the protective measures and apply it accordingly. This writer aligns with the view of An-Naim, (2002, p. 3) "*human agencies today should decide how to realize the underlying rationale of the text of the Quran and Sunna as sound social policy in the seventh-century Arabia and seek to articulate an equivalent purpose in the modern context*." There are always contemporary social, economic and political changes. One of such is the child-oriented justice which can translate into adequate protective measures for child offenders.

6. Acknowledgment

I want to thank the School of Law, University of Reading UK, where I am currently on Sabbatical Leave for the use of their Library. This paper was presented at a Global Conference on Child Justice in Africa, 7th to 8th November 2011 Kampala, Uganda. It has since been updated to accommodate other issues in the court system for child offenders in Nigeria.

7. References

Adeyemi, A. A.(1992). Juvenile justice: evaluation, policies and programmes. In Okonkwo, C.O. (Ed.), *Contemporary Issues in Nigerian Law Essays in Honour of Judge Bola Ajibola*, pp. 396-397. Lagos: Toma Micro Publishers.

Akerele, M. E. (1972). An assessment of the judicial process concerning juvenile delinquency. In Elias, T.O. (Ed.). *The Nigerian Magistrate and the Offender*, pp. 69-73. Lagos: Faculty of Law.

Akingbein, G. (2004). The antonyms of sharia and human rights: Nigeria's perspective. InIbidapo-Obe, A.& Yerima, T.F. (Eds.), *International Law, Human Rights and Development, Essays in Honour of Professor Akindele BabatundeOyebode,* (pp.388-403) Faculty of Law, University of Ado- Ekiti.

Alemika, E.E.O. and Chukwuma, I.C. (2001). *Juvenile Justice Administration in Nigeria: Philosophy and Practice* Lagos: Centre for Law Enforcement Education.

An-Na'im, A. A. (2002). *Islamic Family Law in a Changing World: A Global resource Book* London: Zed Books Ltd.

Babb, B. A. (1998). Where we stand: an analysis of America's family law adjudicatory systems and the mandate to establish unified family courts. *Family Law Quarterly*, Vol. 32 (1), pp. 30-60.

Berhman, R. E. et al. (1996). The juvenile court: analysis and recommendations. *The Future of Children*, Vol. 6 (3), pp. 4-28.

Clarke, C. A. (2004-2005). The baby and the bathwater: adolescent offending and punitive juvenile justice reform. U. Kan. L. Rev. Vol. 53, pp. 659-726.

Conward, C. (1998-1999). The juvenile justice system: not necessarily in the best interests of children. *New. Eng. L. Rev*., Vol. 33, pp. 39-80.

Davis, K. C. (1979). *Discretionary Justice, a Preliminary Inquiry.* Chicago: University of Illinois Press.

Dryden, W.; Charles –Edwards, D. & Woolfe, R. (eds) (1989). *Handbook of Counselling in Great Britain.* London: Rouledge.

Fabamise, S. (2004). The introduction of sharia legal system in Nigeria: problem and prospects. In Ibidapo-Obe, A. & Yerima, T.F. (Eds.). *International Law, Human Rights and Development, Essays in Honour of Professor Akindele BabatundeOyebode,*pp.375-387, Faculty of Law, University of Ado-Ekiti.

Feld, B. C. (1999). The transformation of the juvenile court-part II: race and the crack-down on youth crime. *Minn. L. Rev*., Vol. 84, pp. 327-396.

Galadima, H. (2003). The shadows of sharia over Nigerian federalism. Publius: *The Journal of Federalism*, Vol. 33 (3), pp. 123-144.

Garoupa, N.; Jorgensen, N. & Vazquez, P. (2010). Assessing the argument for specialized courts: evidence from the family courts in Spain. *International Journal of Law, Policy and the Family*, Vol. 24 (1), pp. 54-66.

Geldard, K. & Geldard, D. (2005). *Counselling Children A Practical Introduction.* London: Sage publications Ltd.

Gordon, W.C. (1977). Establishing a family court system. *Juvenile Justice*, Vol. 28(4), pp. 9-14.

*** History of the family Court Movement and Literature Review. Ohio family Court Feasibility Study. Retrieved from http://www.supremecourt.ohio.gov/Boards/familycourts/fcfeas.pdf. (last visited 20 April 2013).

Holland, P. & Mlyniec, W.J. (1995). Whatever happened to the right to treatment?: the modern quest for a historical promise. Temple L. Rev., Vol. 68, pp. 1791-1838. *Human Rights and the Administration of Criminal Justice in Nigeria* (1991). In Ajomo, M.A. and Okagbue, I.E. (Eds.), (pp. 133-174) Lagos: Nigerian Institute of Advanced Legal Studies.

Junaid, M. O. (2005). The sharia legal system in Nigeria: a historical survey. In Momoh, C.S. & Awonusi, S. (Eds.). *Nigerian integrative Discourses Volume 1, Sharia*, pp. 233-245. University of Lagos, Nigeria.

Klaus, J. F. (1998). *Handbook on Probation Services Guidelines for Probation Practitioners and Managers.* United Nations Interregional Crime and Justice Research Institute.

McGoldrick, D. (1991). The United Nations convention on the rights of the child. *International Journal of Law and the Family*, pp. 5132-169.

McNamee, G. H. (1999a). Introduction: who is the criminal- the state or child? In McNamee, G. H. (Ed.), *A Noble Social Experiment? The First 100 Years of the Cook County Juvenile Court 1899-1999*, pp.8-12. Chicago Bar Association.

McNamee, G. H. (1999b). The origin of the Cook County juvenile court. In McNamee, G. H. (Ed.), *A Noble Social Experiment? The First 100 Years of the Cook County Juvenile Court 1899-1999*, pp. 14-23. Chicago Bar Association.

Nwanna, C. R. & Akpan, E. N. (2003). *Research Findings of Juvenile Justice Administration in Nigeria* (Constitutional Rights Project (CRP) in partnership with Penal Reform International (PRI) and the European Union (EU).

Obilade, A. O. (2005). *The Nigerian Legal System* Ibadan: Spectrum Books Limited.

Ogunniran, I. (2010). The child rights act versus sharia law in Nigeria: issues, challenges and a way forward. *Children Legal Rts J*, Vol. 30 (1), pp. 62-80.

Ogunniran, I. (2013). The lock and key phenomenon: reforming the penal policy for child offenders in Nigeria. *Justice Policy Journal*, Vol. 10 (1), pp. 1-19.

Okagbue, I. E. (1996). The treatment of juvenile offenders and the rights of the child. In Ayua, I. A. and Okagbue, I. E. (Eds.). *The Rights of the Child in Nigeria*, pp. 242-285. Lagos: Nigerian Institute of Advanced Legal Studies.

Reuters, T. (2003). Unified family court and the child protection dilemna. Harv. L. Rev., Vol. 116, pp. 2099-2019.

Schabas, W. & Sax H. (2006). *A Commentary on the United Nations Convention on the Rights of the Child, Article 37 Prohibition of Torture, Death Penalty, Life Imprisonment and Deprivation of Liberty* Leiden: Martinus Nijhoff Publishers.

Schwatzz, I. M., Weiner, N. A. & Enosh, G. (1999). Myopic justice? The juvenile court and child welfare systems. *Annals of the American Academy of Political and Social Science*, Vol. 564, pp. 126-141.

Solebo, S. (2004). The juvenile court system in Lagos State the trial and processing of children in the justice system. In Owasanoye, B. and Wernham, M. (Eds.). *Street Children and the Juvenile Justice System in Lagos State*, pp. 35-44. Lagos: Human Development Initiative.

Van Bueren, G. (1992). Child-oriented justice-an international challenge for Europe. *International Journal of Law and the Family*, Vol. 6, pp. 381-399.

Woodlard, J. L.; Odgers, C.; Lanza-Kaduce, L. & Daglis, H. (2005). Juvenile within the adult correctional settings: legal pathways and development considerations. *International Journal of Forensic Mental Health*, Vol. 4(1), pp. 1-18.