



Rights of the Child in Nigeria

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CLEEN
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**The Centre for Law
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The aim of OMCT country reports
are to prevent torture

In its reports on children's rights, OMCT aims to analyse national law in terms of the international commitments that a government has made. For example, in some countries families are not informed when their child is detained and this removes a precious safeguard against abuse. The absence of such safeguards facilitates situations where the torture of children can and does occur.

In other words, the reports aim to point out where, often unknowingly, legislation facilitates grave abuses against children.

The legal analysis is supported, where possible, by urgent appeals on the torture of children documented by OMCT. These urgent appeals (OMCT intervenes almost daily on such cases) are the foundation of all our work.

The reports are not legal semantics for their own sake, but represent, in addition to the urgent actions, another side of our strategy to end torture. The reports include meaningful and feasible recommendations for legal reform aimed at reducing the incidence of child torture.

The reports are presented to the United Nations Committee on the Rights of the Child who use them to analyse how well a country is fulfilling its international commitments with regards to children. Their recommendations on the issue of torture, drawing from OMCT's reports, send a strong message from the international community on the need for action to end the torture of children.

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Report on the implementation
of the Convention
on the Rights of the Child by
Nigeria

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I - PRELIMINARY OBSERVATIONS

1. Preliminary Observations

Nigeria is located on the coast of western Africa and has a surface of 923,768 square km. It is Africa's most populous country with an estimated population of about 120 million¹, with an annual growth rate of 2.9%. The country consists of over 400 ethno-linguistic groups. The major languages spoken include Yoruba, Ibo, Fulani, Hausa, Edo, Ibibio, Tiv, Efik, Nupe and Igala.

Nigeria is a Federal Republic composed of 36 states and one Federal Capital Territory (Abuja)². The states are further subdivided into 589 local government areas. Nigeria operates a presidential system of government with an elected President, who is also Commander-in-chief of the Armed Forces, and a bicameral legislature comprising a Senate and House of Representatives. There are three levels of government in the country with federal, state and local governments. State and local governments are in charge of the implementation of the national policy as defined and monitored by the federal authority. Nonetheless, each state has its own government, laws and judiciary.

The current political structure is based on the 1999 Constitution of the Federal Republic of Nigeria, which was promulgated on May 5th 1999, by the Abubakar Abdulsalami led military government. President Olusegun Obasanjo of the Peoples' Democratic Party (PDP) took office on May 29th 1999 for a four-year term, after 16 years of military rule. He was re-elected on April 19th 2003 for his second (and last) mandate.

For several years Nigeria has been criticised for the human rights and children's rights violations perpetrated on its territory.³ The current government claims to engage itself in the application of international standards and in the elaboration of a national legislature able to provide better conditions for the children.

1 - According to the United Nations Population Fund (UNFPA), cf. http://www.unfpa.org/fistula/docs/fre_nigeria.pdf

2 - It has changed from its original 3 regions at independence in 1960 to the current composition in 1997.

3 - OMCT, *Report on the Human Rights Situation in Nigeria to the Human Rights Committee*, Geneva, October 2002, p.3.

II - International and National Standards

Nigeria ratified the Convention on the Rights of the Child (thereafter the CRC) on April 16th 1991 and has ratified other international instruments that generally affect the rights of the child, such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the International Covenant on Civil

and Political Rights (ICCPR) and to the International Covenant on Economic, Social and Cultural Rights (ICESCR). In addition, Nigeria ratified regional instruments such as the African Charter on Human Rights and People's Rights. Further, it signed but did not ratify the Optional Protocol on children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography and the African Charter on the Rights and Welfare of the Child.

Nigeria's legal system is characterized by three different traditions of law: the English Common Law, the Islamic Shari'ah Law and the Customary Law. "The 1999 Constitution equally allows for the Customary and the Shari'ah courts to cover various issues and jurisdiction. The Shari'ah courts according to section 277 (1) – (2) of the 1999 Constitution have jurisdiction on "civil proceedings involving questions of Islamic personal law [...] regarding marriage concluded in accordance to that law and [...] relating to family relationship or the guardianship of an infant; where all the parties to the proceedings are Muslims [...] or succession".⁴ While the Customary courts'

4 - Section 277 of the Constitution states: "(1) The Sharia Court of Appeal of the State shall, in addition to such other jurisdiction as may be conferred upon it by the law of the State, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal Law which the court is competent to decide in accordance with the provisions of subsection (2) of this section. (2) For the purposes of subsection (1) of this section the Sharia Court of Appeal shall be competent to decide a) any question of Islamic personal Law regarding a marriage concluded in accordance with that Law, including a question relating to the validity or dissolution of such a marriage or a question that depends on such a marriage and relating to the family relationship or the guardianship of an infant; b) where all the parties to the proceedings are Muslims, any question of Islamic personal Law regarding a marriage, including the validity or dissolution of that marriage, or regarding family relationship, a founding or the guarding of an infant; c) any question of Islamic personal Law regarding a wake, gift, will or succession where the endower, donor, testator or deceased person is a Muslim; d) any question of Islamic personal Law regarding an infant, prodigal or person of unsound mind who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally infirm; or e) where all the parties to the proceedings, being Muslims, have requested the court that hears the case in the first instance to determine that the case in accordance with Islamic personal Law, any other question."

jurisdiction as provided for in section 282 (1) – (2) is “civil proceedings involving questions of Customary Law [...] and [...] as may be prescribed by the House of Assembly of the State”.⁵ The states that introduced Shari’ah took advantage of the clause that states that Shari’ah court of appeal may exercise “such other jurisdiction as may be conferred upon it by the law of the State”. This interpretation of the law grants them the right to expand the jurisdiction of existing Shari’ah courts to include criminal issues as defined by the penal codes applicable in northern Nigeria.”⁶

The general framework within which human rights are protected in Nigeria are enshrined in the 1999 Constitution of the Federal Republic of Nigeria. Chapter IV contains an elaborated Bill of Rights. The rights guaranteed include the right to life (Art. 33); the right to personal liberty (Art. 35); the right to fair hearing (Art. 36) and the right to freedom of movement (Art. 41). Article 42 prohibits unjustifiable discrimination on the basis of “ethnic group, place of origin, sex, religion or political opinion.” As for penal infractions, Nigeria has two separate codes, one applying to Southern Nigeria (Criminal Code) and one applying to Northern Nigeria (Penal Code). These provide for offences

against persons, including homicide, assaults and different kinds of sexual and gender-specific violations such as rape.

In 1996, Nigeria submitted its first Report on the Implementation of the CRC to the UN Committee on the Rights of the Child (thereafter the Committee). One of the major recommendations made by the Committee was to finally ensure the domestication of the CRC, as this is necessary for its full implementation under Nigerian law.⁷ A first Bill on Children’s rights had already been elaborated in 1993, but could not be passed into law because of opposition from religious groups and traditionalists. A special committee was subsequently set up to “harmonize the Children’s Bill with Nigerian religious and customary beliefs.”⁸ Currently The Bill, providing for the rights

5 - Section 282 of the Constitution states: “(1) A Customary Court of Appeal of a State shall exercise appellate and supervisory jurisdiction in civil proceedings involving questions of Customary law; (2) For the purpose of this section, a Customary Court of appeal of a State shall exercise such jurisdiction and decide such questions as may be prescribed by the House of Assembly of the State for which it is established.”

6 - OMCT, *Report on the Human Rights Situation in Nigeria to the Human Rights Committee*, Geneva, October 2002, p. 3.

7 - Concluding Observations of the Committee on the Rights of the Child: Nigeria, CRC/C/15/Add.61, 30/10/96, § 26. Available under [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.61.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.61.En?OpenDocument)

8 - UNICEF, quoted in Integrated Regional Information Networks (IRIN), *Nigeria: Focus on the challenge of enforcing children’s rights*, November 2002. Available under <http://www.irin-news.org/print.asp?ReportID=30878>

and the responsibilities of children in Nigeria, as well as and for a renewed system of juvenile justice administration, was rejected by the Parliament in October 2002 - again on grounds of its contents being contrary to Islamic values, traditions and culture. "The main objection targeted a provision setting 18 years as the minimum age for marriage. This was [said to be] incompatible with religious and cultural traditions in various parts of the country, where [girls] are given in marriage at a younger age."⁹ Many national and international NGOs, as well as other sectors of the civil society in Nigeria, criticised this decision and forced the legislator to reconsider its decision to oppose to the Child Rights Bill. Finally, it was adopted in September 2003.¹⁰ OMCT and CLEEN

welcome this decision. Nonetheless, very few states have passed the Child Rights Act into law so far.

The present report covers the same time period as the official report submitted to the Committee by the Nigerian government in January 2002 and will thus mainly analyse the legal situation of children in Nigeria faced before the adoption of the Child Rights Act 2003.

OMCT urges the Nigerian government to pass the draft Bill in line with the 1996 recommendations of the Committee on the Rights of the Child in order to make progress towards full compliance with the provisions of the CRC.

9 - UNICEF, quoted in: *ibid.*

10 - See http://www.unicri.it/notice_board.htm Note also that the 'Trafficking in Persons (prohibition) Law Enforcement and Administration Act' was passed into law on 14 July 2003. It is available on internet: http://www.unicri.it/nigeria_law_trafficking.PDF

III. General Observations on the situation of children in Nigeria

3.1 Overall situation of children in Nigeria

Since the independence of Nigeria, rivalries between different groups of the population have regularly turned into violent conflicts. Despite great hope for an improvement of the overall human rights situation in Nigeria with the election of a new government in May 1999, the political crisis that the country faced in 1999 and continuation of “communal conflicts” severely affected the Nigerian population, including children. Many of them have died, lost their parents, were left disabled or were internally displaced because of these clashes.

The economic crises faced by the country in 1999 have also led to an increase in the number of children living in poverty or extreme poverty. Among dangerous consequences, poverty made more children to live and/or work in the street and has increased their vulnerability to trafficking.

Moreover, there is a severe lack of financial resources allocated to the protection and pro-

motion of children’s rights. Consequently, mechanisms for protection and promotion of children remain “weak, uncoordinated and not in line with Nigeria’s obligations under the [relevant international standards]”¹¹. Although statistics differ somehow depending on the source, “Nigeria has one of the world’s worst rates of maternal and infant mortality”¹². According to the UN Population Fund (UNFPA), “more than 72 children out of every 1000 born alive die before their first birthday,”¹³ while the UNPD places the infant mortality rate at 110/1000¹⁴.

11 - Dr M. Tawfiq Ladan, member of the Expert Working Group on Children’s Rights and Juvenile Justice Administration in Nigeria, quoted in: Amnesty International, *Nigeria: The Death Penalty and Women under the Nigerian Penal System*, February 2004, p. 13. Available under

<http://www.web.amnesty.org/library/print/ENGAFR440012004>

12 - UNFPA, quoted in Integrated Regional Information Networks (IRIN), *Nigeria: UNFPA to spend \$40 million on reproductive health*, May 11th 2004. Available under

<http://www.irinnews.org/print.asp?ReportID=36378>

13 - UNFPA, quoted in: *ibid*.

14 - United Nations Development Programme (UNDP), *Human Development Indicators 2003*. Available under: http://www.undp.org/hdr2003/indicator/indic_290.html

The HIV/AIDS virus has reached tragic dimensions and harmful traditional practices, such as forced marriage, female genital mutilation, widowhood practices and boy preference continued to have a negative effect on the life and welfare of the girl-child. But discrimination also affects other groups of children, such as orphans, street children, disabled children or children born out of wedlock. A large amount of children also continue to be subjected to domestic violence or corporal punishment at school or in detention facilities.

OMCT and CLEEN would recommend that the Committee urge the Nigerian authorities to guarantee concrete investments to improve the plight of the average Nigerian child, which are needed as a matter of urgency. Additional measures and programmes are needed for the most vulnerable groups of children.

3.2 Children in community conflicts and unlawful killings

Nigeria is often affected by bloody conflicts between different groups of the population. Most people simply refer to these clashes as communal and/or ethnic conflicts. But causes are numerous, and although they clearly include ethnic, social and cultural dimensions, a serious analysis shows that external political factors - such as control over resources (land, water, petrol, etc.) - also play an important role.

The State Report submitted by Nigeria recognises that “increased frequency of communal conflicts”¹⁵ has “occasioned the loss of [...] parents, abandonment, disabling injuries and in many more cases, loss of lives [for many children]”¹⁶. It also comments some initiatives taken by NGOs to foster conflict resolution mechanisms and acknowledges the urgent need for “better emergency preparedness”¹⁷ in order to better protect children in this context, but fails to develop and explain in detail campaigns launched by the federal authorities.

A report released by OMCT and CLEEN in 2002¹⁸ notes that, between the inauguration of the elected government in May 1999 and

15 - Second Periodic Report by Nigeria to the CRC, CRC/C/70/Add. 24, 17/09/2004, § 163.

16 - Ibid., § 162.

17 - Ibid., § 163.

18 - OMCT and CLEEN, *Hope betrayed? – A Report on Impunity and State-Sponsored Violence in Nigeria*, Geneva, Lagos, 2002. Available under:

<http://www.omct.org/pdf/Nigeriareport0802.pdf>

2002, the alarmingly high number of “over 50 outbreaks of targeted violence”¹⁹ have taken place in Nigeria. The report analyses the reasons and the consequences, as well as the “role of the State and its security agencies in fuelling and participating in [...]”²⁰ some of these incidents. Serious allegations were established that the government of Nigeria has not only failed to prevent communal conflicts, but that it has even contributed to the disastrous consequences of the conflicts.

OMCT and CLEEN are deeply concerned by the fact that children have not been spared and many of them, including school children, have been killed during the conflicts. These killings cannot be considered as “causalities”, but clearly amount to unlawful killings for which the armed forces and the government of Nigeria must be held accountable. Often, such as in the case of the Odi killings²¹, no difference was made between children and adults and children have routinely been shot to death and burnt. Children from conflict regions also suffer from the loss of their parents, displacement and closure of schools and/or hospitals. Sometimes, such as during the Kaduna 2000 crisis²², most of those arrested were children. They were detained in extremely poor hygienic conditions

and many suffered different forms of ill-treatment.

OMCT and CLEEN would urge the Nigerian authorities to establish comprehensive preventive measures to avoid such violent clashes in general, and – if they nevertheless break out – to protect children against violations of their fundamental human rights. If prevention fails, OMCT and CLEEN would urge the Nigerian authorities to ensure that impartial investigations are launched, in order to identify those responsible for grave children’s human rights abuses. Such acts must be sanctioned according to the law, in order to stop the circle of impunity.

19 - *Ibid*, p.11.

20 - *Ibid*, p.11.

21 - Odi is a town situated in Bayelsa State in the Southern part of Nigeria. The problem in Odi is reported to have started on November 20th 1999, when the might of the Nigerian armed forces invaded the community and occupied it for fourteen days. At the end of their sojourn the town was utterly destroyed and a lot of people, with their lives and property were laid waste. The invasion of Odi was a revenge for the death of 7 policemen who had been killed by a group of rebel boys known as ‘Asawama Boyes’ led by and Odi boy ‘Kenny’. For details see *ibid*, pp.69-82.

22 - After the attempt to introduce Islamic Sharia legal system as part of the criminal law in Kaduna State, demonstrations erupted among Christians in February 2000. They believed that the introduction of Sharia would amount to the Islamisation and that the state resources would be used to promote Islam, which would be in opposition to their interests. These demonstrations provoked a conflict between Muslims and Christians during which hundreds of people were killed, and over 10,000 persons reportedly sustained injuries of different degrees. There was also an unspecified profusion of cases of illegal arrests, torture and maltreatment of detainees and other persons. For details, see *ibid*, pp. 83-104.

IV. Definition of the Child

The Children Right's Act 2003, passed into law in the Federal Capital Territory (Abuja), defines a child as a person who has not attained the age of eighteen years.

However, according to art. 2 of Children and Young Persons Act, enacted in Eastern, Western and Northern regions (hereafter referred to as CYP A, see details chapter 7.2), a “‘child’ means [a] person under the age of fourteen years, while ‘young person’ means a person who has attained the age of fourteen years and is under the age of seventeen years.”

Furthermore, the Immigration Act stipulates that any person below 16 years is a minor, whereas the Matrimonial Causes Act puts the age of maturity at 21²³. The latter act becomes irrelevant in practice, since the individual states state their own age for marriage.²⁴ As for penal responsibility, art. 50 of

the Penal Code (North) states: “No act is an offence which is done by a child under seven years of age; or by a child above seven years of age but under twelve years of age who has not attained sufficient maturity of understanding to judge the nature and consequence of such act.”²⁵

These are only some examples of different ages enshrined in a multitude of legal texts and in customary law all over the country. The State report admits that laws affecting children continue to be “scattered in different legislations”²⁶ and explains that the perception of age as a definition of a Child depends on who is defining and varies depending on cultural background. The report does also provide for a list,²⁷ with different definitions of a child - depending on the purpose, gender, as well as the region of the country. It does, however, fail to present any serious suggestion on how this confusing situation could be changed and a universal definition of a child, valid for boys and girls, effectively implemented. The federal structure of Nigeria, which provides regional (member states) and local

23 - But it allows persons below this age to be married with the consent of the parents.

24 - See chapter 5.1 on Gender Discrimination, p. 17.

25 - See chapter 7 on Children in Conflict with the Law.

26 - Second Periodic Report by Nigeria to the CRC, CRC/C/70/Add. 24, 17/09/2004, § 41.

27 - *Ibid.*, § 41 to 62. According to the actual legislations, the age for being a child ranges from 7 to 21 years.

authorities with great legislative powers, and the application of different interpretations of the law (Common Law, Shari'ah, Customary Law) makes it indeed very difficult to change the situation and a comprehensive strategy is thus essential.

In 1996, the Committee recommended “that the State party, in undertaking a comprehensive review of the national legal framework and its conformity with the principles and provisions of the Convention account, should also take into account the compatibility of the system of customary law and regional and local laws with the articles of the Convention.”²⁸ Although an important step towards this goal has been reached with the adoption of the Child Rights Act, it must be underlined that this Act has still not been adopted by almost all the regional (state) authorities, which continue to refuse a comprehensive definition.

OMCT and CLEEN are concerned by the great disparities in minimum ages in different situations and different areas, which fluctuates between 7 to 21 years and make child protection a challenge. OMCT and CLEEN believe that this may bring interpretations in contrast with the best interest of the child and also lead to severe discrimination of

certain groups of children. This confusing situation may also lead to arbitrary decisions and impunity for abuses of violations of the rights of the child as enshrined in the CRC. OMCT and CLEEN particularly consider the age of penal responsibility (7 years) as too low.

OMCT and CLEEN would urge the Committee to request information on future strategies for change. In this regard, the Child Rights Act 2003 is a positive step. But other legislations – at federal, state and local level – which have not been adapted in this sense since the last session of CRC in 1996, should also be amended or abolished. In particular, OMCT and CLEEN recommend that the age of penal majority, as well as the minimum age for marriage be raised to 18 for both girls and boys.

28 - Concluding Observations of the Committee on the Rights of the Child: Nigeria, CRC/C/15/Add.61, 30/10/96, § 27. Available under [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.61.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.61.En?OpenDocument)

V. Discrimination

Article 42 of the 1999 Constitution provides for freedom from discrimination on the grounds of ethnic group, origin, gender, religion, circumstances of birth, disability, or political opinion.²⁹ However, the practice shows that this legislation is not successfully implemented. This is also recognised in the State Party Report to the Committee of 2002.³⁰ Concerning some forms of discrimination suffered by children, the State Report names programmes aiming at combating it, however without providing any detail infor-

mation on the content or ways of funding of these programmes. Other forms of discrimination – or problems related to it - are considered by the government as not worthy of its intervention: “Problem of prejudice against children leading to social, ethnic tension, racism and xenophobia is perceived as minimal and as such there are no specific programmes designed to combat it.”³¹ This is particularly disturbing in light of the fact that the Committee recommended in 1996 that “as a high priority further measures be undertaken [by Nigeria] to prevent and combat discrimination, especially on the grounds of gender and ethnic origin [...]”³² qualifies this problem as minimal and thus does not design any special programmes to improve the situation.

OMCT and CLEEN recommend to ask for a more comprehensive and detailed explanation of current and planned programmes to combat all forms of discrimination affecting children, indicating the scope of these interventions, the adopted methods of work, the legislative provisions, as well as institutional and budgetary provisions.

29 - Section 42 of the Constitution reads as follows:

(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person: be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

30 - Second Periodic Report by Nigeria to the CRC, CRC/C/ 70/Add. 24, 17/09/2004, § 63 to 72, particularly § 65.

31 - Ibid, § 70.

32 - Concluding Observations of the Committee on the Rights of the Child: Nigeria, CRC/C/15/Add.61, 30/10/96, § 34. Available under

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.61.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.61.En?OpenDocument)

5.1 Gender Discrimination

Although the Constitution provides for gender equality, cases of violations of women's rights and gender discrimination are alarming. Women and girls are subject to violence at domestic and public levels. The situation in 12 Northern States of Nigeria is most worrying since the introduction of the Shari'ah Penal Code in 1999³³. OMCT and CLEEN do not believe that an appeal to culture or religion should excuse the violation of the fundamental rights of the Nigerian child to basic education, good nutrition, essential health care and all other basic needs, as well as protection against abuses, neglect, exploitation and slavery.

5.1.1 Harmful Traditional Practices

Early Marriages

In Nigeria, due to inconsistencies in legislation and the absence of any stipulation of a minimum age for marriage before the adoption of the Child Rights Act 2003, early marriages continue to take place, in many cases as a means to preserve chastity. Section 18 of the Marriage Act allows persons under the age of 21 to get married, provided that

parental consent is given.³⁴ The state report admits that "the age of marriage is a highly controversial issue and varies from place to place. Whereas in the North West and North Central Nigeria, 14 years is the age of marriage, in the North Central part the age of marriage is between the 2nd and 3rd menstruation, while in the Southern States it varies from between 16 to 18 years".³⁵ The federal authorities seek however to make 18 the minimum age of marriage, not only in law, but also in practice.

Nevertheless, customarily positions on that issue differ and important parts of the population are still not aware of the negative effects early marriages can have for the girls. In most cases, it limits the opportunities for girls to accede to education, putting them in a disadvantaged position.³⁶ Indeed, 36 million Nigerian women and girls are not educated. But, even more worrying, early marriage can also be detrimental to girl's physical, mental and emotional health: apart

33 - These 12 States are: Bauchi, Borno, Gombe, Kaduna, Kano, Katsina, Kebbi, Jikawa, Niger, Sokoto, Yobe and Zamfara. The Sharia Penal Code is to be applied to people of Muslim faith.

34 - Order 1, Rule 4 of the Matrimonial Causes Rules defines a child as a person under 21 years.

35 - Second Periodic Report by Nigeria to the CRC, CRC/C/70/Add. 24, 17/09/2004, § 46.

36 - According to a NDHS survey, 19 % of girls cited marriage as a reason for leaving school. NDHS, quoted in: Oxfam: *Women and Poverty in Nigeria*, p. 58. It is available under: http://www.oxfam.org.uk/what_we_do/resources/downloads/wp_nigeria/wp_nigeria_womenpov.pdf

from the fact that it deprives girls from their right to have control over their body and reproductive health, it puts them in a position of complete dependency from their husband. For instance, in Northern Nigeria, where the majority of girls face the prospect of early marriage, “this has resulted over the years in a large number of cases of vesico-vaginal fistula, a condition caused by giving birth when the cervix is not well developed.”³⁷ It “occurs because the pelvic bones have had insufficient time to develop to cope with child-birth. Corrective operations often require the consent of the spouse, and more often than not the sufferers are abandoned or divorced by their husbands and ostracized by their communities.”³⁸

An UNFPA official also argue that “22 percent of all Nigerian teenage girls had at least

one unwanted pregnancy”³⁹. For many girls, this situation is disastrous because it leads to severe discrimination within their own community or even family. They are often punished for being pregnant or are excluded from school.

OMCT and CLEEN would therefore like to reiterate the recommendation made by the CEDAW, urging “Nigeria to ensure full compliance with the UN Convention on the Rights of the Child and the Child Rights Act 2003, which set the statutory minimum age of marriage at 18 years in all parts of the country”⁴⁰, and encourage the Nigerian government to inform the Committee on measures taken to enforce – in legal terms as well as in practice - the minimum legal age for marriage, as well as for sexual consent, which in line with the respect of the principles of non-discrimination and of the best interests of the child.

Female Genital Mutilation

Female Genital Mutilation (FGM) is still practiced in some parts of the country⁴¹ and among all religious groups. The age of mutilation varies from 3 months to 17 years or just about the first pregnancy. Any state

37 - UNICEF, quoted in Integrated Regional Information Networks (IRIN), *Nigeria: Focus on the challenge of enforcing children's rights*, November 2002. Available under <http://www.irinnews.org/print.asp?ReportID=30878>

38 - Oxfam: *Women and Poverty in Nigeria*, p. 58. It is available under http://www.oxfam.org.uk/what_we_do/resources/downloads/wp_nigeria/wp_nigeria_womenpov.pdf

39 - UNFPA, quoted in Integrated Regional Information Networks (IRIN), *UNFPA to spend \$40 million on reproductive health*, May 11th 2004. Available under <http://www.irinnews.org/print.asp?ReportID=36378>

40 - CEDAW, CEDAW/C/2004/1/CRP.3/Add.2: Advanced Unedited Version of the January 2004 Concluding Observation on Nigeria of the CEDAW, Comment n°27. Available under: <http://www.un.org/womenwatch/daw/cedaw/cedaw30/NigeriaCC.PDF>

41 - It is predominant in the southern and eastern zones.

interference into the practice of FGM is considered as a violation of the right to privacy. Yet, many girls face several health risks through this, including of HIV infection due to unhygienic methods that accompany the practice.

The State Report mentions that “the Bill on Female Genital Mutilation has gone through the lower house, and will go through the upper house before the President can sign it into law.”⁴² But to date, the law has not been adopted. It seems that the Bill was lost when the National Assembly stepped down for the 2003 elections, but never re-introduced it after them. Politically, it is a sensitive subject, as is Shari’ah, and many politicians would rather just ignore it.

However, some states passed laws prohibiting female circumcision and genital mutilation.⁴³ In the report of the Nigerian government to the CRC, the ongoing existence of FGM and other harmful traditional practices is recognised and efforts to combat it are reportedly undertaken.⁴⁴ Due to public enlightenment and mobilization efforts by groups of civil society, as well as increased enrolment of girls in schools, reported cases of FGM are diminishing.⁴⁵ Nonetheless, the practice remains widespread in Nigeria and

the proportion of the female population having undergone genital mutilation high.

OMCT and CLEEN would recommend that the Parliament reintroduce and adopt the Bill on FGM at the federal level and encourages further legal changes at the state level. In addition, OMCT and CLEEN would recommend that the government continue to promote and carry out a country-wide campaign on the dangers of FGM.

5.1.2 Other forms of discrimination against girls

Protection from abuse

Regarding the protection of children against abuse, it is of utmost importance to amend Nigeria’s Criminal Code, its Criminal Code so as to adequately protect all under 18 of both genders. Currently, one can note a clear disparity in the severity of sanctions for child abuse, depending on both, the age and the gender of the child victim. This becomes

42 - Second Periodic Report by Nigeria to the CRC, CRC/C/70/Add. 24, 17/09/2004, § 20.

43 - These laws were passed for example in Edo, Delta and Cross River States.

44 - Second Periodic Report by Nigeria to the CRC, CRC/C/70/Add. 24, 17/09/2004, § 113.

45 - OMCT, *Report on the Human Rights Situation in Nigeria to the Human Rights Committee*, Geneva, October 2002, p.19.

clear when one compares art. 216 and art. 222 of the Criminal Code. Art. 216 states that: “Any person who unlawfully and indecently deals with a boy under the age of fourteen years is guilty of a felony, and is liable to imprisonment for seven years”; while art. 222 affirms that: “Any person who unlawfully and indecently deals with a girl under the age of sixteen years is guilty of a misdemeanour, and is liable to imprisonment for two years, with or without caning. If the girl is under the age of thirteen years, he is guilty of a felony and is liable to imprisonment for three years, with or without caning.”

In addition to a clear discriminatory approach, these provisions insufficiently define acts of abuse against which children should be protected. Issues related to gender discrimination were already discussed during the CRC session in 1996.⁴⁶ OMCT and CLEEN regret that the legislation has not been changed accordingly.

OMCT and CLEEN would recommend that the Committee reiterate its recommendation that the Nigerian government undertakes all the efforts necessary to amend legislations in order to guarantee that girls are equally protected against any form of abuse as boys.

Access to Education

Another area of concern with regard to discrimination against girls is their access to education. If the government has officially been more concerned about girls’ schooling for the last few years, the rate of girls attending school is still much lower than that of boys in large parts of the country. This is particularly true for the North of the country, where the highest rate of illiteracy (70%) was registered, and where girls attending schools are very few.⁴⁷ As explained above, this is partly due to harmful traditional practices such as child-marriage. But it also highlights the high degree of boy preference in the Nigerian society and underlines the need for policies promoting girls’ education and status.

46 - Concluding Observations of the Committee on the Rights of the Child: Nigeria, CRC/C/15/Add.61, 30/10/96, §§ 12, 45, 34. Available under [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.61.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.61.En?OpenDocument)

47 - Info taken from UNICEF, quoted in Integrated Regional Information Networks (IRIN), *Nigeria: Focus on the challenge of enforcing children’s rights*, November 2002. Available under <http://www.irinnews.org/print.asp?ReportID=30878>

5.2 Discrimination against children with disabilities

People and children with disability are the least cared for, and discrimination against them - both within the family and in society in general – is widespread in Nigeria: “They live on the margins of society, often ignored, neglected, and mistreated; [they remain] targets for abuse and exploitation [...]”.⁴⁸ As in other African countries, “disabled children are [often] considered taboo, because disability is associated with bad luck”⁴⁹.

The population of people with a disability continues to increase alarmingly, but the country’s social services, including the sector providing assistance to disabled children, remain poor. There are few specialised institutions for disabled persons, but most of them are run by NGOs and lack appropriate facilities, in spite of some governmental funding.

Reasons for disability in Nigeria do not only include birth defects - which can be caused by poor living conditions or malnutrition - but also accidents and the environment in which people are living. According to reliable sources, oil-pipeline explosions, road accidents as a result of street vending or

begging, communal and military violence, but also early pregnancy or female genital mutilation are causes for disability.⁵⁰

The State report to the Committee notes that “some efforts are being made in Nigeria to provide for the full realisation of full development and enjoyment of life by disabled children.”⁵¹ But it also recognises that these efforts are inadequate and that “awareness in the situation and plight of disabled children is lacking [...]”. It also admits that “[...] financial allocation for this special group of children is low”, and that “training of professionals/caregivers has not been encouraged”⁵² by the government over the last years. However, the report does not provide information on how the government intends to tackle the problem since the Committee already expressed concern about the “absence of pro-active measures to combat

48 - Oxfam, *Women and poverty in Nigeria*, p.61. Available under: http://www.oxfam.org.uk/what_we_do/resources/downloads/wp_nigeria/wp_nigeria_womenpov.pdf

49 - OMCT, *Rights of the Child in Kenya: Report on the implementation of the Convention on the Rights of the Child by the Republic of Kenya*, Geneva, June 2001, p.7.

50 - Oxfam, *Women and poverty in Nigeria*, p.61. Available under: http://www.oxfam.org.uk/what_we_do/resources/downloads/wp_nigeria/wp_nigeria_womenpov.pdf

51 - Second Periodic Report by Nigeria to the CRC, CRC/C/70/Add. 24, 17/09/2004, § 101.

52 - *Ibid.*, § 102.

discrimination against disabled children [...]”⁵³ in 1996. The Committee also recommended the government to review “the effectiveness of policy implementation for disabled children [...] to ensure that it reflects the general principles of the Convention, particularly as regards preventing and combating discrimination against disabled children”.⁵⁴

OMCT and CLEEN deeply regret that Nigeria did not give the necessary attention to the Committee’s previous recommenda-

tions and failed to implement better policies in favour of disabled children. Hence, the Nigerian Government should be urged again to implement policies to eradicate discrimination against children with disabilities, including a policy of integration in formal schools and the construction of appropriate facilities in all public buildings. It should also be urged to launch national awareness raising campaigns for the respect of the rights of disabled children and to engage more resources into prevention strategies of disability.

53 - CRC, Concluding Observations of the Committee on the Rights of the Child: Nigeria, CRC/C/15/Add.61, 30/10/96, § 12. Available under [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.61.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.61.En?OpenDocument)

54 - Ibid, § 35.

VI. Protection from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

6.1 Nigeria's legal framework

The issue of torture is covered by several instruments applicable in Nigeria.⁵⁵ The Constitution of the Federal Republic of Nigeria states in its art. 34 (1) that: “Every individual is entitled to respect for the dignity of his person, and accordingly (a) no person shall be subject to torture or to inhuman degrading treatment.” Art. 17 (2)(b) further says that “[...] human dignity shall be maintained and enhanced”. Torture is also prohibited under the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act⁵⁶: While art. 4 recognises the inviolability of human life and the right of everyone to respect for his life and person, Art. 5 states that “[...] all forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.” Nigeria signed the Convention against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment (CAT) on July 28th 1988 and ratified it on June 28th 2001. However, it has still not been turned into domestic law.

Yet, OMCT and CLEEN would urge the Government to supply additional information regarding torture in Nigeria, including all relevant legal provisions, policy guidelines and practical measures relevant to the elimination of the practice of torture and other cruel, inhuman and degrading treatment or punishment of children and the definition of torture in criminal law. OMCT would request that the Government enact specific sanctions and procedures in cases where children are victims of torture.

6.2. Corporal Punishment

According to article 19 (1) of the CRC, “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual

55 - OMCT, *Report to the United Nations Committee against Torture on the Situation of the Application of CAT in Nigeria*, Geneva, November 2002, p. 3.

56 - Cap.10, LFN 1990.

abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

The Committee has consistently stated that legal and social acceptance of physical punishment of children, in the home and in institutions, is not compatible with the Convention. Since 1993, in its recommendations following examination of reports from various States Parties to the Convention, the Committee has recommended prohibition of physical punishment in the family and institutions, and education campaigns to encourage positive, non-violent child-rearing and education. In examining States Parties’ reports, the Committee has singled out for particular criticism legislation, existing in many countries, that allows some level of violent punishment - “reasonable chastise-

ment”, “moderate correction”, and so on.⁵⁷ The UN Human Rights Committee had also repeatedly expressed concern about the acceptance of legislation prescribing corporal punishment.⁵⁸ The Committee Against Torture has also noted that corporal punishment “could constitute in itself a violation of the [Torture] Convention.”⁵⁹

In addition, the UN Commission on Human Rights resolution 1998/38 “remind[ed] governments that corporal punishment can amount to cruel, inhuman or degrading punishment or even to torture.” It is indeed OMCT’s position that flogging, stoning and amputation are punishments of severe brutality, and as such they belong within the parameters of the legal definition of torture. In particular, OMCT believes that states must assume a higher degree of responsibility when punishments of flogging, stoning and amputation are carried out against children, because they are internationally recognised as a vulnerable group in need of greater legal protection.⁶⁰

Yet, as described below, the current Nigerian legislation allows corporal punishment to be used as a punitive measure against children in the penal system, at home, and in the schools.

57 - For further details, see: Global Initiative to End All Corporal Punishment of Children: <http://www.endcorporalpunishment.org>

58 - Human Rights Committee, General Comment 20, HRI/GEN/1/Rev.2, p. 30; It has indicated that the prohibition on torture extends to corporal punishment in its General Comment on article 7 of the ICCPR: “The prohibition must extend to corporal punishment, including excessive chastisement for a crime or as an educative or disciplinary measure.”

59 - Report of the CAT, GA Official Records, 50th session, Supp. No. 44, A/50/44, §§ 169 and 177.

60 - OMCT’s Position on Flogging, Stoning and Amputation, presented to the Committee on the Rights of the Child, August 20th 2002, Geneva. Available under <http://www.omct.org/base.cfm?page=article&num=2329&consol=close&kwrld=OMCT&grp=Documents&cfid=1010957&cftoken=30549660>

6.2.1 Corporal Punishment as a legal sentence

Art. 9 of the Children and Young Persons Law states that: “Where a juvenile charged with any offence is tried by a court, and the court is satisfied of his guilt, the court may (f) order the offender to be whipped;” Art. 11 (2) of the same law stipulates: “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.” Furthermore, art. 18 of the Criminal Code (South) states: “Wherever a male person who in the opinion of the court has not attained seventeen years of age has been found guilty of any offence the court may, in its discretion, order him to be whipped in addition to or in substitution for any other punishments to which he is liable.”

OMCT and CLEEN are concerned by the content of these provisions, which in their opinion are contrary to art.19 and art. 37 (a) of the CRC. In addition, OMCT and CLEEN recall that §17.3 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)⁶¹ states

that “juveniles shall not be subject to corporal punishment.”

Notwithstanding international opposition and concerns expressed by all human rights NGOs, the Shari’ah legal code has been implemented in the northern states of Nigeria. This has added another dimension to the problem. Legislative interpretations in line with Islamic Shari’ah law prescribes penalties and corporal punishment taken literally from the Koran such as flogging, whipping, stoning and amputation.

OMCT and CLEEN recommend that the Committee strongly condemns practices of corporal punishment and requests the Nigerian government to immediately abolish all legislation prescribing corporal punishment as a legal penal sentence and to undertake all efforts necessary in order to eradicate these practices all over the country and promote non-violent alternatives both to corporal punishment and to imprisonment.

6.2.2 Corporal Punishment in Penal Institutions

In Nigeria, corporal punishment and other forms of torture and ill-treatment are inflicted

to children deprived of their liberty on a dangerously large scale. Chapter 7.3 of this report analyses their situation and shows that urgent measures are needed at all levels in order to fight corporal punishment used as a disciplinary measure in penal institutions.

As will be shown in chapter VII on juvenile justice, corporal punishment is common in penal institutions. “The high frequency of the use of corporal punishment may be attributed to traditional attitudes in the country that favour its use and reflected in the statutory provisions for whipping (flogging) in the Children and Young Persons Act and the Penal Code (of Northern States). Provisions on discipline in juvenile custodial institutions can also engender inmate-on-inmate violence. For example, section 18 of the Approved Institutions Regulations provided that: “Where possible the principal shall arrange that inmates themselves shall be responsible for the maintenance of discipline and obedience to rules and for the punishment of offending inmates by other inmates.” This provision is subject to abuse, especially in the light of what is known of the ‘inmate social system’ with its reproduction of the authoritarian system in society and penal system. It should be understood that the

provision is not synonymous with inmate self-governance or inmates participation in the management of their institution, but rather the devise of ‘divide and rule’ to cause mistrust among inmates and thereby break down their cohesion and bonding.”⁶²

OMCT and CLEEN would recommend that the Government enact an amendment to the Children and Young Persons Act, prohibiting all forms of corporal punishment. Any other law providing for corporal punishment in penal institutions should also be abolished or amended.

6.2.3 Corporal Punishment and Violence at home

Similarly as for corporal punishment at school, legal provisions concerning violence, ill-treatment and corporal punishment at home, are far too vague and leave children without protection. Art. 55 (1)(a) of the Penal Code (North) stipulates that: “Nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done: by a parent or guardian for the purpose of correcting his child or ward such child or ward being under eighteen years of age”. Art. 295 of the Criminal Code (South)

62 - Alemika E.E.O. and Chukwuma I.C., *Juvenile Justice Administration in Nigeria: Philosophy and practice*, CLEEN, Lagos, 2001, p. 61. It is available under <http://www.cleen.org/ja.pdf>

also admits corporal punishment as a measure for the education of a child: “A blow or other force, not in any case extending to a wound or grievous harm⁶³, may be justified for the purpose of correction as follows: (1) a father or mother may correct his or her legitimate or illegitimate child, being under sixteen years of age, or any guardian or person acting as a guardian, his ward, being under sixteen years of age, for misconduct or disobedience to any lawful command”. The article goes on reading: (2) “a master may correct his servant or apprentice, being under sixteen years of age, for misconduct or default in his duty as such servant or apprentice” and (4) “a father or mother or guardian, or a person acting as a guardian, may delegate to any person whom he or she entrusts permanently or temporarily with the governance or custody of his or her child or ward all his or her own authority for correction, including the power to determine in what cases correction ought to be inflicted; and such a delegation shall be presumed, except in so far as it may be expressly withheld, in the case of a schoolmaster or a person acting as a schoolmaster, in respect of a child or ward.”

OMCT and CLEEN are concerned about the fact that no progress has been mentioned in

the Nigeria State Report of January 2002, since the same point had already been raised by the Committee in 1996.⁶⁴ This is particularly disturbing in light of numerous reports explaining that “law enforcement officers do not take cases of domestic violence seriously, which explains why many such cases are never prosecuted. Rather, they are seen as family matters.”⁶⁵

OMCT and CLEEN recommend to the Committee to ask Nigeria for more information on this issue. OMCT and CLEEN also urge the government to abolish the existing legislation regarding parents’ right to use a corporal punishment. OMCT and CLEEN would request the government to conduct a study analysing the scope and consequences

63 - For the purpose of the Criminal Code, ‘grievous harm’ means “any harm which amounts to a main or dangerous harm as defined in this section, or which seriously or permanently injures health, or which is likely to injure health, or which extend to permanent disfigurement or to any permanent or serious injury to an external or internal organ, member, or sense.” Art. 295 Criminal Code.

64 - Concluding Observations of the Committee on the Rights of the Child: Nigeria, CRC/C/15/Add.61, 30/10/96, § 15. Available under [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.61.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.61.En?OpenDocument)

65 - Center for Reproductive Rights, *Women’s Reproductive Rights in Nigeria: A Shadow Report*, New York, 1998, p.15. Although this reports analyses the situation of women and girls, the above quoted finding is also true for boys suffering domestic violence. The report is available under: http://www.reproductiverights.org/pdf/sr_nig_0698_eng.pdf

of domestic violence against children, in collaboration with specialised mechanisms and institutions. Finally, the government must launch a national programme aiming at prevention of violence against children at home.

6.2.4 Corporal Punishment in schools

Physical punishment is still practiced in schools and current legislations allow such acts by the following provisions: Art. 55 of the Penal Code (North), reads: “Nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done by a schoolmaster for the purpose of correcting a child under eighteen years of age entrusted to his charge; or by a master for the purpose of correcting his servant or apprentice such servant or apprentice being under eighteen years of age”.

OMCT and CLEEN find the definition of the term ‘*grievous hurt*’ far too vague and limited. In addition, these legal provisions leave too much scope to any person in charge of the education of children and/or in a position to correct the child in an educational institution. Additionally, this definition considers only the physical dimension of corporal punishment and fails to take the mental and

emotional damage which corporal punishment has, into account.

Nevertheless, the Nigerian authorities seem to be satisfied by the actual situation when they say: “Corporal punishment in Nigeria can only be carried out with the permission of the school head and must also be recorded”⁶⁶. OMCT and CLEEN are concerned by this attitude and wish to reemphasize that the actual laws are contrary to universally recognised principles and to international Conventions, notably the CRC, ratified by Nigeria.

OMCT and CLEEN emphasize that physical punishment used as a corrective measure is unacceptable in any case and urge the Nigerian authorities to change all legislation allowing corporal punishment, as well as to launch a strong campaign in order to eradicate it in practice.

Death penalty

Art. 12 of the Child and Young Persons Act (of 1958, as adopted in Lagos, see details chapter 7.2) reads as follows: “Sentence of death shall not be pronounced or recorded against an offender who had not attained

66 - Second Periodic Report by Nigeria to the CRC, CRC/C/70/Add. 24, 17/09/2004, § 138.

the age of seventeen years at the time the offence was committed, but in lieu thereof the court shall order the offender to be detained during the President's pleasure [...]" (emphasis added). Art. 319 (2) of the Criminal Code (South), which is dealing with murder committed by a juvenile offender, foresees an identical provision.

Moreover, the age of adulthood – at which one can face death penalty under the CYPA - is state/region determined and the Shari'ah Penal Codes in 12 northern States of Nigeria may allow Shari'ah Courts to impose death penalty on juvenile offenders. This is due to the fact that, under Shari'ah penal legislation, the age of adulthood is defined as the age at which a person becomes responsible for his or her acts. Very often this is considered the age of puberty. If found guilty under the Shari'ah penal legislation, Nigerians under 18 could thus face the death penalty.

Several reports accused Nigeria of having used capital punishment against a juvenile offender in the 1990s.⁶⁷ Chiebere Onuoha was reportedly sentenced to death in 1997 for a crime committed when he was 15 years old. Nigeria denied that he had been under 18 at the time he committed the offence.⁶⁸ In

addition, "following a visit by the Nigerian Special Rapporteur on Children to the Nigerian Human Rights Commission to the Ikoyi prison, Lagos state, in March 2003, five cases of juvenile offenders who were detained and charged with capital offences were reported to Amnesty International"⁶⁹.

OMCT and CLEEN are deeply concerned over the fact that the Nigerian legislation does not comply with the principle that capital punishment cannot be applied to children under the age of 18. Furthermore, the provisions of CYPA create a danger of abuses expressed by the term '*during the President's pleasure*' that enable the unlimited detention of children. OMCT and CLEEN emphasize that despite the fact that this very concern

67 - For instance HRW (go to <http://www.hrw.org/campaigns/deathpenalty/docs/update030404.htm>), Amnesty International (see footnote 71) or the International Justice Project (go to <http://www.internationaljusticeproject.org/juveniles.cfm>).

68 - Amnesty International, *United States of America Indecent and internationally illegal, The death penalty against child offenders*. Available under <http://web.amnesty.org/library/Index/engAMR511432002?OpenDocument&of=COUNTRIES%5CUSA>

69 - Amnesty International, *The Death Penalty and Women under the Nigeria Penal Systems*, 10 February 2004 Available under <http://web.amnesty.org/library/print/ENGARF440012004>

was already evoked in the Committee's 1996 final suggestions and recommendations⁷⁰, the Nigerian authorities did not undertake any steps to abolish the existing legislation.

OMCT and CLEEN would recommend that, in order to outlaw death penalty for juvenile offenders, the Nigerian government imme-

diately amend art 12 of the Child and Young Persons Act, art. 319(2) of the Criminal Code and any other law that may contain the same or similar provisions and ensure that the Shari'ah Penal Codes in 12 northern states are amended in order to comply with art. 37 and 40 of the CRC, and art. 6 (5) of the IC-CPR.

70 - Concluding Observations of the Committee on the Rights of the Child: Nigeria, CRC/C/15/Add.61, 30/10/96, § 21. Available under [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.61.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.61.En?OpenDocument)

VII. Children in Conflict with the Law

CLEEN presented a comprehensive analysis of the administration of juvenile justice in Nigeria in 2001⁷¹ - before the adoption of the Child Rights Act in 2003, but during the same period Nigerian authorities were working on their report for the Committee. The following chapter is taken from this report and shows the disastrous situation children in conflict with the law have been facing over the last years.

7.1 General Comments

Juvenile justice administration in the country is undertaken within and by three core criminal justice institutions - police, courts and prisons. In addition, the social welfare departments of the state and local governments also play important roles in juvenile justice administration. However, for very long, Nigerian laws on juvenile justice have not been reviewed and coordinated to reflect international rules and standards.

The following discussion of the Children and

Young Persons Act (CYPA) and the description of the living conditions of children deprived of liberty will reveal the gap in the juvenile justice laws and administration in Nigeria.

Despite the recent adoption of the Child Rights Bill 2003, the CYPA remains the most important legislation in the country dealing with the treatment of juvenile offenders. It was enacted to make provision for the welfare of young persons, the treatment of young offenders and for the establishment of juvenile courts. In its official report, the Nigerian Government claims that “the Children and Young person Law [...] provides adequately for the needs of children deprived of their liberty [...].”⁷² However, concern by OMCT and CLEEN about many of its articles has already been expressed above. This section will analyse other important sections of the law.

71 - Alemika E.E.O. and Chukwuma I.C., *Juvenile Justice Administration in Nigeria: Philosophy and practice*, CLEEN, Lagos, 2001. It is available under <http://www.cleen.org/ja.pdf>

72 - Second Periodic Report by Nigeria to the CRC, CRC/C/70/Add. 24, 17/09/2004, § 50.

7.2 The Children and Young Persons Act (CYPA)

The Children and Young Persons Act was initially enacted as an ordinance in 1943. It has been subsequently amended through several legislations.⁷³ Intended as a national law (Cap 32 laws of the Federation of Nigeria and Lagos 1958), provisions were made for their adoption as Regional laws and subsequently as state laws. As a result, the law was extended to the Eastern and Western Regions of Nigeria in 1946 by Order-in-Council, N° 22 of 1946. The law was enacted for the Northern Region in 1958 and constituted the Children and Young Persons Law (Cap 21 of the Laws of Northern Nigeria 1963). Lagos state also adopted the law in 1970 - Children and Young Persons Law (Cap 26 of the Laws of Lagos state). The CYPA remains the most important legislation in the country pertaining to the treatment of juvenile offenders. Subsequent discussion relies on the CYPA of 1958 as adopted in Lagos. The law was enacted to make “provision for the welfare of the young person and the treatment of young offenders and for the establishment of juvenile courts”. A child was defined by the law as “a person under the age of fourteen

years”. The law defines a young person as “a person who has attained the age of fourteen years”. However, as used in the legislation, it refers to both the child and young person, that is, a person who has not attained the age of seventeen years.

Age of criminal responsibility

Section 30 of the Criminal Code (South) and section 50 of the Penal Code (North) establish that a child under the age of seven years does not have criminal responsibility. From 7 to 12 a child can only be found responsible if it can be proven that he/she had the capacity to know that the act or omission should not have been carried out. Above the age of 12, the person is deemed as fully responsible for the act or omission. However, as mentioned above, CYPA defines a child in section 2 as “a person under the age of fourteen years” and a young person as “a person who has attained the age of fourteen years and is under the age of seventeen years”.

In addition, “the recent introduction of Islamic or Shari’ah law in parts of northern Nigeria has created new deficiencies in the administration of juvenile justice. Under Shari’ah, the age of criminal responsibility

73 - i.e. Ordinances 44 of 1945; 27 of 1947; 16 of 1950 as well as the Laws of Nigeria 131 of 1954; 47 of 1955 and Order in Council 22 of 1946.

is taken to be either 18 years or puberty. In cases involving fornication or adultery, which may attract flogging or the death penalty respectively, the age of responsibility is set at 15. The implication is that, in cases where children reach puberty earlier than 18 years, no distinction is made between them and adults in dispensing Shari'ah punishments.⁷⁴ But this understanding of the age of criminal responsibility also allows for discrimination against girls because they often achieve puberty earlier than boys, as well as among Muslim and non-Muslim children⁷⁵. It additionally creates discriminatory treatment among girls, as the first menstruation is often considered as the achievement of "maturity" or "puberty". Hence, onset of menstruation is not the same for all. For all these reasons, OMCT and CLEEN are concerned about the definitions of criminal responsibility enshrined in the Shari'ah Penal Codes of some northern states.

OMCT and CLEEN would strongly urge the Nigerian authorities to amend the Penal (North) and the Criminal (South) codes so as to increase the minimum age of criminal responsibility from 7 years to 14 years and to set the age of penal majority at 18. The government should amend CYPA and all other current legislation accordingly and en-

sure that the Shari'ah law is implemented in compliance with the CRC.

7.2.1 Bail of Juvenile Offenders

Section 3 of CYPA provided for the release of a juvenile offender, apprehended with or without warrant by a police officer. Such release may be on "a recognisance entered into by him or by his parents or guardian, with or without sureties, for such an amount as will in the opinion of the officer, secure the attendance of such person upon the hearing of the charge". This bail condition, however, does not apply to a person: (a) accused of homicide or other grave crime or (b) to situation where "it is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute" or (c) to a situation where "the officer has reason to believe that the release of such person would defeat the ends of justice". The last condition (c) appears too vague and may be abused to unnecessarily deny bail to young offenders.

74 - Integrated Regional Information Networks (IRIN), *Nigeria: Focus on the administration of juvenile justice*, August 26th 2002. Available under <http://www.irinnews.org/report.asp?ReportID=29531>

75 - The Sharia Penal Code only applies to persons of Muslim faith.

OMCT and CLEEN would recommend amending Section 3 of the CYPA in order to establish unambiguous conditions under which a juvenile offender can, or can not, be released on bail.

7.2.2 Pre-Trial Custody or Detention

Section 5 of CYPA enjoins “the Inspector General of Police to make arrangements for preventing so far as practicable, a child or young person (until the age of 17) while in custody, from associating with an adult charged with an offence”, in line with art. 37 (c) of the CRC.

However, in reality, this provision is not always enforced, especially in police cells. Similarly, Nigerian prisons contain a large number of young offenders,⁷⁶ who are often not separated from adult inmates.

Section 7 deals with the remand or committal to custody of juvenile offenders, and specifies the conditions of custody or remand. It provides that:

A court on remanding or committing for trial a child or young person who is not released on bail, shall instead of committing him to prison, commit him to custody in place of detention provided under this Ordinance and named in the commitment, to be there detained for the period for which he is remanded or until he is thence delivered in due course of law: (2) provided that in case of a young person it shall not be obligatory on the court so to commit him if the court certifies that he is of so unruly a character that he cannot be safely so committed, or that he is of so depraved a character that he is not a fit person to be so detained.

It will appear that the intent of the law is to ensure that young offenders are not detained in prisons, except in exceptional circumstances. However, in reality, inadequate remand centres, approved schools and Borstal institution led to the detention and imprisonment of young offenders in the prisons. Also, the law makes a distinction between the child and young person. For example, the detention of a child in prison is prohibited, while that of a young person is excused under exceptional circumstances.

76 - See the tables on age composition of the prisoners in Nigerian prisons published in *Annual Abstract of Statistics* published by the Federal Office of Statistics.

The places of detention referred to in many sections of CYPA are remand homes, approved institutions including Borstal institutions and prisons. A native or local authority or a local government council with prior approval of competent authority “may establish remand homes and may make rules for the management, upkeep and inspection of such homes” (section 15 (1)).

Section 15 (3) provides that:

Where no remand home is conveniently situated a child or young person ordered to be detained in a custody may in the discretion of the officer or the court, as the case may be, be detained in an approved institution or in a prison: provided that if a child or young person be detained in a prison he shall not be allowed to associate with adult prisoners.

OMCT and CLEEN would request the Nigerian authorities to immediately ensure that every child deprived of liberty is separated from adult inmates, in line with art. 37 (c) of the CRC. Existing specialised institutions for juvenile offenders must be improved and new ones established as a matter of urgency in all states of Nigeria.

7.2.3 Constitution and Procedure of Juvenile Court

In order to ensure that only juvenile courts deal with children and young persons, section 29 of CYPA provided that:

Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence and it appears to the court that he is a child or young person, the court shall make due inquiry as to the age of that person, and for that purpose shall require the production of a birth certificate or other direct evidence as to the date of birth and in the absence of such certificate or evidence, a certificate signed by a medical officer in the service of the government giving his opinion as to such age.

But this provision, which appears to be aimed at preventing anyone who has not attained the age of seventeen years from not being tried by juvenile courts, was negated by the provision in section 6 (3) which states that:

Where in the course of any proceedings in a juvenile court it appears to the court that a person charged or to whom the

proceedings relate is of the age of seventeen years or upwards, or where in the course of any proceedings in any court other than a juvenile court it appears that the person charged or to whom the proceeding relate is under the age of seventeen years, nothing in this section shall be construed as preventing the court if it thinks it undesirable to adjourn the case, from proceeding with the hearing and determination of the case.

The provision thereby created the possibility of a person who had attained seventeen years of age or older to be tried by a juvenile court and also a person who has not attained the age of seventeen years to be tried by other courts.

However, the constitution of juvenile courts has been regulated in section 6 of the law, which states:

A juvenile court for the purpose of hearing and determination of cases relating to children or young persons shall be constituted by a magistrate sitting with such other persons, if any, as the Chief Justice of the region shall appoint.

The different states of the Federation have

adopted two approaches to the establishment and operations of juvenile courts. In a few states (especially Lagos state), a visible structure of juvenile justice administration is on the ground. But in most states, such structures are not readily visible. Instead of a permanent juvenile court, magistrates hear cases involving juveniles outside the normal courtrooms or outside normal court sessions either in the courtrooms or in their chambers. This is to protect the privacy of the young offenders and also to protect him or her from the effects of stigmatization that may result from public trial, in line with Section 6 (2) of the CYPA:

A court when hearing charges against children or young persons shall, unless the child or young person is charged jointly with any person not being a child or young person, sit 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.

Nevertheless, in spite of these provisions relating to the constitution of juvenile courts, international standards enshrined in the CRC and other important instruments such as the

Standard Minimum Rules for the Administration of Juvenile Justice are not reflected in the Nigerian system of juvenile justice. For instance, OMCT and CLEEN are gravely concerned about the absence of specialised judges, police and other personal handling cases involving juvenile offenders.⁷⁷ In Nigeria, female police officers are often deployed to juvenile welfare departments in divisional and state police command headquarters. However, they are not given specialised training, assignment to the unit is considered a general duty posting and officers are frequently transferred in and out of the unit. Judges frequently switch between trials of adult offenders and juvenile delinquents, are not specialised in the work with children and are thus often not aware of the special vulnerability and needs of children.

Section 8 of the CYPA regulates the trial procedure of juvenile courts, including the right of juvenile offenders to due process. The provisions satisfy the requirements of art. 40 of the CRC and section 36 the Nigerian constitution to a very large extent. But notwithstanding these provisions, widespread derogation by the police, judges and parents have been reported.⁷⁸

OMCT and CLEEN are deeply concerned by such allegations and would urge the Nigerian authorities to launch immediate and impartial investigations, every time that such allegations are raised. Persons violating the provisions of Section 8 of the CYPA should always be identified, and administrative and/or legal sanctions applied to them. Moreover, children who had their procedural right negated during their process should be released and receive adequate reparation.

OMCT and CLEEN would urge the Nigerian authorities to immediately review section 29 of the CYPA, as it is contradictory and does not unmistakably establish that juvenile offenders have to be tried by special juvenile courts.

OMCT and CLEEN would urge the Nigerian authorities to immediately improve existing and establish new training programmes for police, courts, remand homes, approved institutions, Borstal and prison personal, as well as for every other person involved in the handling of children in conflict with the law, in order to make sure they are aware of children's rights and special needs.

77 - Rule 12 of the UN Standard Minimum Rules provides that: In order to best fulfill their functions, 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 large cities, special police units should be established for that purpose.

78 - Human Rights Monitor, *Administration of Juvenile Justice: the Example of The Borstal Training Institution Kaduna*, 1997.

OMCT and CLEEN would urge the Nigerian authorities to create a special unit of the Police, as foreseen under section 207 of the Child Rights Act, which provides that specially trained police officers deal exclusively with prevention, apprehension and investigation of alleged child offenders and use their discretionary powers to divert children from the formal justice system to community based programmes wherever possible.

7.2.4 Criminalisation of Destitution and Deprivation

Part five of the CYPA contains provisions that for practical purposes constitute the criminalisation and punishment of destitution and deprivation and the conviction and institutionalization of the disadvantaged children in need of care and protection.

Section 26 (1) provides that:

Any local authority or any local government council, any police officer or any authorized officer, having reasonable ground for believing that a child or young person comes within any of the descriptions hereinafter mentioned-

(a) who is an orphan or is deserted by his/her relatives; or

(b) who has been neglected or ill-treated by the person having the care and custody of such child; or

(c) who has a parent or guardian who does not exercise proper guardianship; or

(d) who is found destitute, and has both parents or his surviving parent undergoing imprisonment; or

(e) who is under the care of a parent or guardian who, by reason of criminal or drunken habits is unfit to have the care of the child; or

(f) who is the daughter of a father who has been convicted of an offence under section 218 of the criminal code in respect of any of his daughters; or

(g) who is found wandering and has no home or settled place of abode or visible means of subsistence; or

(h) who is found begging or receiving alms, whether or not there is any

pretence of singing, playing, performing, offering anything for sale or otherwise, or is found in any street, premises, or place for the purpose of so begging or receiving alms; or

(i) who accompanies any person when that person is begging or receiving alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise; or

(j) who frequents the company of any reputed thief or common or reputed prostitute; or

(k) who is lodging or residing in a house or part of a house used by any prostitute for the purpose of prostitution, or is otherwise living in circumstances calculated to cause, encourage or favour the seduction or prostitution of a child, or

(l) in relation to when the offence under chapter xxi of the criminal code has been committed or attempted; or

(m) who having been born or brought within a protectorate would, but for the provisions of the law relating to the legal status of slavery be a slave; or

(n) who is otherwise exposed to moral danger,

may bring that child or young person before a juvenile court. (emphasis added)

OMCT and CLEEN are very concerned about these provisions, which aim at bringing problems that should fall under social welfare within the jurisdiction of the juvenile court, as if the child or young person had committed a crime. The dispositions provided further illustrate the punitive and non-welfare nature of this article and the system of juvenile justice in Nigeria as a whole: section 26 (2) states:

The court, if satisfied that the child or young person comes within any of the paragraph in subsection (1) may:

(a) make a corrective order (i) sending him to an approved institution, (ii) committing him to the care of a fit person whether a relative or not, who is willing to undertake the care of him; or

(b) order his parent or guardian to enter into a recognisance to exercise proper care and guardianship; or

(c) Without making any other order, or in addition to making an order under either of the two last preceding paragraphs, make an order placing him for a specified period, not exceeding three years, under the supervision of a probation officer, or some other person appointed for the purpose by the court.

The social welfare departments exist at the federal, state and local levels. But they are not organized to meaningfully deal with or handle children who are destitute and deprived, because appropriate legal policy and institutional frameworks as well as necessary facilities have not been established or implemented by successive governments since the colonial era.

Section 27 contains provisions for handling juveniles beyond parental control:

Where the parent or guardian of a child or young persons proves to a juvenile court that he is unable to control the child or young person, the court [...] may make a corrective order in respect of such child or young person or may order him to be placed for a specified period, not exceeding three years, under the supervision of a probation officer or

some other person appointed for the purpose by the court.

The provision has been abused by parents who commit their children to institutions, on account of being ‘beyond parental control’.⁷⁹

OMCT and CLEEN are concerned by the punitive nature of these provisions and fear that, instead of helping children out of difficult situations, they rather criminalise them and deal with them as if they were criminals.

OMCT and CLEEN would call upon the Nigerian authorities to immediately withdraw section 26 and 27 of the CYPA and to assist children in difficult situations through social assistance and measures aiming at effective integration into community, rather than criminalising them.

OMCT and CLEEN would recommend withdrawing all provisions allowing for remand or detention of children ‘beyond parental control’. This leads to the committal of children to custody without fair process of adjudication, through conspiracy between parents and the judicial officer. Moreover, in line with the UN Riyadh Guideline n° 56,

the legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.

OMCT and CLEEN would call upon the Nigerian authorities to work with the judiciary to develop progressive sentencing guidelines ensuring that alternatives to custodial sentencing, that are provided for in the CRA, and to a lesser extent the CYP A, are used with greater regularity and that custodial sentencing is used only as a measure of last resort.

OMCT and CLEEN would call upon the Nigerian authorities to pursue awareness raising programmes aimed at reducing the stigma attached to child offenders and develop programmes to encourage and assist reintegration of child offenders into their communities.

7.2.5 Juvenile Custodial Institutions

Beyond a general political rhetoric and declarations in governmental publications about correction, reformation and rehabilitation of juvenile offenders, there have been no ex-

PLICIT legal and/or institutional framework and commitment towards the realisation of the goals. The colonial government established the first juvenile justice custodial institution in 1937 as a wing of the Enugu Prison. For several years it received inmates from the various Regions. The Children and Young Persons Act empowered native or local authority and local government council to establish remand homes (section 15) and state governments to establish approved institutions (section 18).

In a different law, provisions were made for the establishment of Borstal institutions. The law, Borstal Institutions and Remand Centre Act (No 32 of 1960) establishes Borstal and Remand Centre as federal juvenile correctional institutions. According to the legislation, the purpose of the institution is to “bring to bear upon the inmates every good influence which may establish in them the will to lead a good and useful life on release, and to fit him to do so by fullest development of his character, capacities, and sense of personal responsibilities”.

These facilities were fairly well managed in the 1970's.⁸⁰ In order to realise the goal of

80 - Alemika, E.E.O., *A Study of Socio-Cultural and Economic Factors in Delinquency Among Kaduna Borstal Inmates*, Unpublished B.Sc. Sociology Original Essay, University of Ibadan, Ibadan Nigeria, 1978.

effective reintegration of juveniles into community after release, there were provisions for vocational training in tailoring, photography, welding, building (masonry or brick-laying), electrical installation, etc, as well as formal educational instruction, up to General Certificate of Education (ordinary level). However, by the 1980's, facilities and training had deteriorated⁸² and were virtually non-existent in the 1990's.⁸³

Borstal Institution law provides for vocational and educational training and the reformation of juvenile offenders. The law provides that a Borstal institution, will be a place where “offenders who were not less than sixteen but under twenty one years of age on the day of conviction may be detained and given such training and instruction as will conduce to their reformation and the prevention of crime”. The law also declares a Borstal Remand Centre as a place for the detention of persons not less than sixteen but under twenty one years of age who are remanded or committed in custody for trial or sentence”. Furthermore, the Borstal Institution and Remand Centre Act specifies a maximum of

three years of institutionalization in the Borstal Institution, and with a possible additional one year of after care supervision.

However, the laudable goals of the institution are not realised due to lack of proper policy, legal and institutional framework for juvenile offender correction and juvenile delinquency prevention. Furthermore, the objectives of the institution are also compromised by the lack of proper planning and implementation, gross under funding; inadequate staff in qualitative and quantitative terms, and lack of necessary training facilities in the workshops and educational programmes.

7.3 Data Analysis and Interpretation

7.3.1 Conditions and Perceptions of Juvenile Justice

The study analyses the conditions in the juvenile justice system, and investigates the perceptions and experiences of officials and inmates within the system. Empirical data collected in these respects are analysed in this chapter.

81 - Ahire, P.T., “Juvenile Delinquency and the Handling of Young Prisoners in Nigerian Borstal Institutions” in *The Nigerian Prisons Service and the Public*, Nigerian Prisons Service, Abuja, 1987, S.12.

82 - Human Rights Monitor, *Administration of Juvenile Justice: the Example of The Borstal Training Institution Kaduna*, 1997.

7.3.2 Sources of Data

The data analysed in this chapter were obtained through interviews and questionnaires carried out in August and September 2000 and administered to:

- judicial officers;
- police;
- prison officials;
- officials and inmates of remand homes and approved institutions;
- officials and inmates of Borstal training institution Kaduna; and
- officials and inmates of Borstal remand centre Abeokuta.

Accordingly, information was obtained from judicial officers, police, prison officials and inmates of remand homes and approved institutions in fifteen states, at least two institutions from each of the geo-political zones of Nigeria. The states covered are: Abia, Adamawa, Bauchi, Benue, Delta, Ebonyi, Edo, Enugu, Imo, Kaduna, Kano, Lagos, Ogun, Plateau and Rivers. The responses/respondents are distributed as follows:

- (1) Juvenile offenders in detention at police stations, remand homes, approved institutions, prison and Borstal training institution/remand centre (502), dis-

tributed thus: police (40), remand homes (291), approved schools (21), Borstal (100), Prisons (23), others (27).

- (2) Officials (119) distributed as follows: police (32), remand homes (44), approved schools (11), Borstal (21), prison (4), others (7).

- (3) Judicial officers (156).

The total responses/respondents from the interviews and questionnaires were 767.

7.3.3 Judicial Officers and Juvenile Justice Administration

One hundred and fifty six judicial officers responded to questionnaires. 19.9% of them were 29 years old or younger, 58.9% (86) were in the 30 to 44 years bracket, and 21.2% (31) were 45 years and older. Nearly two thirds (62.8%) of them had a university law degree and another 30.3% had post secondary diploma in law. More than one half (55.6) were magistrates, 21.4% were area/customary judges. More than two thirds (45.9%) of the judicial officers had ten or more years experience as legal practitioners, 39.8% had four or less years of experience.

Also, only 18.4% of them claimed to have “very much” experience in handling juvenile offenders while 36.1 had little or no experience in dealing with juvenile offenders.

The judicial officers were asked of their understanding of the most important objectives of juvenile justice system. Most of them (88.4% of 129 respondents) identified correction, reformation and rehabilitation of juvenile offenders, while 5.4% identified

isolation and incapacitation. But a significant 64.1% reported that the objectives were poorly or very poorly realised.

Juvenile offenders are entitled to due process rights, and when committed to institutions, they are entitled to various rights. The judicial officers were asked the extent to which the following rights and conditions prevailed within the juvenile justice system. Table 1 presents their responses.

Table 1: Rights and Conditions in Juvenile Justice System

Realisation of rights and conditions	Very well	Well	Poorly	Very poorly
1. Presumption of innocence	16.9 (24)	44.4 (63)	26.1 (37)	12.7 (18)
2. Prompt trial	13.4 (19)	30.3 (43)	38.7 (55)	17.6 (25)
3. Protection against forced confession	11.3 (16)	36.9 (52)	39.7 (56)	12.1 (17)
4. Protection against torture and brutality	5.8 (8)	33.6 (46)	43.1 (59)	17.5 (24)
5. Protection against threats of being beaten, tortured and imprisoned	8.1 (11)	28.9 (39)	44.4 (60)	18.5 (24)
6. Adequate legal representation	8.5 (12)	26.1 (37)	42.3 (60)	23.2 (33)
7. Understanding legal process by juvenile offenders	4.3 (6)	18.4 (26)	53.9 (76)	23.4 (33)
8. Educational and vocational training programmes	8.5 (12)	17.6 (25)	51.4 (73)	22.5 (32)
9. Protection of the rights of juveniles within the criminal justice system.	9.2 (13)	11.3 (16)	57.7 (82)	21.8 (31)

The data in the table reveal that judicial officers perceive that the promotion and protection of the rights of children and young persons are not adequately promoted within the Nigerian juvenile justice system. This pattern of response is very important given the critical role and position of judicial officials within the system.

The judicial officials were asked about the common complaints against police by juvenile offenders brought before them for trial. Table 2 presents their responses.

Table 2: Common Complaints against Police by Juveniles

Complaints	% (N)
Verbal abuse	10.0 (8)
Physical assault	30.0 (24)
Sexual abuse	2.5 (2)
Poor conditions of police cells	28.7 (23)
Threat of beating	8.8 (7)
Threat of long detention	11.3 (9)
Poor feeding	5.0 (4)
Others	3.8 (3)

Their responses show that physical assault and poor conditions in police cells were the most common complaints against the police by juvenile offenders. In a similar study by

the Nigerian Institute of Advanced Legal Study reported that: “42% of the [juvenile inmate] sample stated that their arrest involved verbal abuse while 40% reported that

their arrest involved the use or threat of physical abuse”.⁸³

Asked about the adequacy of the provisions of the Children and Young Persons Act (CYPA) for dealing with juvenile crimes, 7.1% (9) responded that they are ‘very adequate’, 35.4% (45) considered them adequate. But the majority, 57.5% (73), of the respondents considered the provisions either inadequate or very inadequate. The data described above indicate the gross inadequacy of the laws and conditions of juvenile justice, as perceived by the judicial officials, who play important roles within the criminal justice system.

7.3.4 Custodial Officers and the Juvenile Justice Administration

One hundred and nineteen custodial officials from various institutions across the country were interviewed. The distribution is as follows: police (32); remand homes (44); ap-

proved schools (11), Borstal (21) and prisons (4). More than two thirds (71.8%) of the officials were in the 30-44 years age bracket. Also, 69.6% were males and the remaining 30.4% were females. Their educational attainments were as follows: primary (5.9%), secondary (30.5%), post secondary diploma and certificate (37.3%), university degree and equivalents (26.3%). The distribution of the rank of officials was junior (20.9%), intermediate (24.5%), senior (46.4%) and management (8.2%)⁸⁴. As regards their work experience within the criminal justice system, 47.8% reported having worked for 9 years or less, while the rest had working experience of ten years and more. Most of them (92.6%) believe that youths are getting more involved in crimes than in the past.

The study also investigates the officials’ perception of the extent and adequacy of provisions for children by society in basic areas of health care, education, moral and psychological development, food and shelter. Their responses are presented in table 3.

83 - Ayua, I.A. and Okagbue, I.E., *The Rights of the Child in Nigeria*, Nigerian Institute of Advanced Legal Studies, Nigeria, 1996, p.254.

84 - The classification of the ranks are junior (levels 01-05), intermediate (levels 06-07), senior (levels 08-13) and management (levels 14-17).

Table 3: Adequacy of Society’s Protection of the Welfare of Juveniles

Has Nigerian society made adequate provision:	Yes	No
1. For health care of children?	23.0 (23)	77.0 (77)
2. For education of children?	18.8 (18)	73.8 (76)
3. For moral development of children?	15.5 (15)	81.3 (78)
4. For psychological development of children?	15.5 (15)	84.5 (82)
5. For food and nourishment of children?	17.3 (17)	82.7 (81)
6. For shelter of children	15.3 (15)	84.7 (83)

More than 70% of the officers felt that the Nigerian society has failed to make adequate provisions for health care, education, moral development and shelter of the child. The introduction of Structural Adjustment Programmes (SAP) in 1986, its implementation and the festering corruption under successive regimes led to unprecedented economic crisis, deterioration of social services, high cost of education, health, food and shelter in the country. It is therefore not

surprising that the vast majority of the officials perceive these inadequacies. The responses show that the Nigerian society has not adequately promoted and protected the rights of the child.⁸⁵

The study investigates the adequacy of funding, facilities and services in the nations juvenile justice institutions, which the officials manage. Their responses are summarized in table 4.

85 - Alemika, E.E.O, “Child Welfare” in: Ayua, I.A. and Okagbue I.E., *The Rights of the Child in Nigeria*, Nigerian Institute of Advanced Legal Studies, Nigeria, 1996, pp. 142-173.

Table 4: Adequacy of Facilities and Protection of Children in Juvenile Justice Institutions

Nature of facilities for juvenile inmates	Very adequate	Adequate	Inadequate	Very inadequate.
1. Funding	15.0(16)	15.9 (17)	68.2 (73)	0.9 (1)
2. Accommodation	11.7 (13)	32.4 (36)	43.2 (48)	12.6 (14)
3. Food and feeding	10.8 (12)	32.4 (36)	44.1 (49)	12.6 (14)
4. Sleeping materials	4.5 (5)	25.9 (29)	52.7 (59)	17.0 (19)
5. Medical care	7.3 (8)	15.5 (17)	54.5 (60)	22.7 (25)
6. Personal hygiene (i.e. bathing soap)	1.8 (2)	18.8 (21)	56.3 (63)	23.2 (26)
7. Toilet facilities	7.0 (8)	39.5 (45)	37.5 (43)	15.8 (18)
8 Protection from verbal abuse from officials	8.5 (10)	56.4 (66)	25.6 (30)	9.4 (11)
9. Protection from physical abuse	18.1 (21)	50.9 (59)	25.0 (29)	6.0 (7)
10. Protection from verbal abuse by fellow inmates	10.4 (12)	50.4 (58)	26.1 (30)	13.0 (12)
11. Protection from physical abuse	12.9 (15)	54.3 (63)	22.4 (26)	10.3 (12)
12. Counselling services for juveniles	22.2 (26)	48.7 (57)	20.5 (24)	8.5 (10)
13. Access to parents.	27.2 (31)	49.1 (56)	18.4 (21)	5.3 (6)
14. Access to formal education	13.9 (16)	26.1 (30)	36.5 (42)	23.5 (27)
15. Access to vocational training	13.9 (16)	21.7 (25)	42.6 (49)	21.7 (25)
16. Moral and religious training	26.7 (31)	40.5 (47)	24.1 (28)	8.6 (10)
17. Interaction between staff and inmates.	26.5 (31)	56.4 (66)	11.1 (13)	6.0 (7)
18. Interaction among inmates	23.1 (27)	56.4 (66)	13.7 (16)	6.8 (8)
19. Recreation and leisure.	12.1 (14)	31.9 (37)	40.5 (47)	15.5 (18)

Due to small inmate population in majority of the juvenile institutions, it was not possible to examine these responses by types of institutions, e.g. Borstal institutions, approved schools and remand homes. However, observations during the fieldwork as well as responses of the officials to unstructured interviews, clearly indicate that facilities are barely available in the Borstal and approved institutions, and almost non-existent in remand homes.

The information summarized in the table reveal important patterns. First, majority of them reported that funding for implementing the objectives of the institutions, and for providing needed services to the juveniles was grossly inadequate. Second, majority of the officials consider the level and quality of accommodation, food, sleeping materials, medical care, hygiene, education, vocational training, recreation and leisure to be inadequate. Third, the officials however, reported that adequate provisions exist for the protection of inmates against physical and verbal abuse by officials and fellow inmates.

The findings of gross inadequacies of facilities are consistent with those reported in previous researches by Ahire (1987) and Human Rights Monitor (1997). A field

officer for this project summarized his observations of facilities in the juvenile justice institution he visited as follows: “ there was near complete absence of medical and educational facilities at both the Yola and Bauchi remand homes”⁸⁶. Another field officer reported that:

The so-called objectives of the institutions- correction, rehabilitation and reformation of young offenders are not being realised. There are numerous factors militating against proper and efficient functioning of the institutions. They include shortage of personnel, lack of fund, inadequate facilities... It is noteworthy as well that due to the poor conditions of those institutions, juvenile offenders are now kept in prisons with adult criminals and under the same facilities. For instance, at Owerri Prison there are many young offenders in their custody.⁸⁷

The judicial officers and custodial officers agreed on the inadequacy of the conditions and facilities in Nigerian juvenile custodial institutions. They also reported that these inadequacies militate against the realisation of

86 - Okey Ndiribe, “Field Report”.

87 - Chidi Ogbonna, “Field Notes and Report”.

the objectives of the institutions. These also confirm reports of various researches on those institutions.⁸⁸ A serious danger to the rights and welfare of children and young persons is the arrest and detention of juveniles for possession, use and sale of drugs – especially Indian hemp and manufactured psychotropic drugs, by officials of the National Drug Law Enforcement Agency (NDLEA). Juvenile suspects are kept for long periods in company of adult suspects without trial. They are denied access to legal representation, and in many cases their parents and significant others are not notified by drug law enforcement officials. The detention centres and arrest practices of the NDLEA need to be properly regulated and monitored, and subjected to public scrutiny.

7.3.5 Conditions and Perceptions of Institutionalized Juvenile Offenders

Five hundred and two juveniles detained in several police cells, prisons, remand homes and approved institutions in various states and the Borstal Training Institution Kaduna were interviewed with a view to obtaining information on their conditions in and perceptions of the juvenile justice system in Nigeria. Among the 502 respondents, 8.4% (40) were in police cells, 61.3 (291) in remand homes, 4.4% (21) in approved schools; 21.1% (100) in Borstal and 4.8% (in prisons). Most of the respondents (87.0%) were males and the remaining 13% were females. The average age of the juveniles was 16.04 years, the youngest was 9 years old, and the oldest inmate was 26 years old instead of the statutory maximum of 21 years. This anomaly is due to the age declaration racket in committal of young persons to juvenile institutions.⁸⁹ In some cases age is under-declared by parents and offenders at sentencing stage to avoid imprisonment in adult prisons. The average number of children in their parent's family was 7.2.

The socioeconomic backgrounds of the inmates are presented in table 5. The data in table 6 and 7 reveal the following patterns:

88 - See Ayua I.A. and Okagbue I.E., *The Rights of the Child in Nigeria*, Nigerian Institute of Advanced Legal Studies, Nigeria, 1996; Ahire, P.T., "Juvenile Delinquency and the Handling of Young Prisoners in Nigerian Borstal Institutions" in *The Nigerian Prisons Service and the Public*, Nigerian Prisons Service, Abuja, 1987, S.12; Alemika, E.E.O., "Professionalism in the Nigerian Prisons Service" in *The Nigerian Prisons Service and the Public*, Nigerian Prisons Service, Abuja, 1987; Alemika, E.E.O., "Policing and Perception of Police in Nigeria" in *Police Studies: International Review of Police Development*, Vol. 11 (4), 1988, pp. 161-176; Alemika, E.E.O., "Socio-Economic and Criminological Attributes of Convicts in Two Nigerian Prisons" in: *Journal of Criminal Justice*, Vol. 16 (3), 1988, pp. 197-207.

89 - Human Rights Monitor, *Administration of Juvenile Justice: the Example of The Borstal Training Institution Kaduna*, 1997.

- The inmates of juvenile custodial institutions are predominantly male, and reflect the pattern of gender distribution and criminal statistics, widely published in criminology.

- The parents of nearly two third (65.3%) of the juvenile offenders were married, (37.4%) monogamous, and (27.9%) polygamous. This is contrary to the postulations of a model of criminology that blames broken home for delinquency. Majority of the institutionalized juvenile offenders in the study were not from broken homes. However, data on residence prior to arrest show that only 38% of the juveniles were living with both parents, while 10.9% and 16.8% respectively were living with their father and mother. Thus, more than marital status of parents, residence of juveniles prior to arrest may indicate family disorganization and alienation factors in delinquency and decision to institutionalize juvenile offenders. Nearly one tenth of the ju-

veniles were living with either stepfather (2.8%) or stepmother (6.3%), another indicator of separation (either by divorce or death) and re-marriage.

- The parents of institutionalized offenders were concentrated in unskilled self-employed occupations. Thus 48.6% and 66.0% of the fathers and mothers of the juveniles respectively belong to the category. But more than 20% of the male parents belonged to the intermediate and professional staff category.

- More than two fifths (42.2%) of the inmates had secondary (40.1%) and post secondary (2.7%) education, which is not poor by standard or level of literacy in the wider population. The socioeconomic background of the juveniles, rather than being distinct, reflect the distribution in the population, characterized by poverty and low literacy rates.

Table 5: Socio-Economic Background of Juvenile Offenders

Socio-economic background	% (N)
1. Sex	
Male	87.0 (402)
Female	13.0 (60)
2. Marital status of parents	
Married (monogamous)	37.4 (157)
Married (polygamous)	27.9 (117)
Separated	14.0 (59)
Divorced	8.1 (34)
Mother deceased	6.0 (25)
Father deceased	6.7 (28)
3. Occupation of father	
Unskilled, self employed (petty trading, farming etc)	48.6 (203)
Semi-skilled, self employed (mechanics, drivers etc)	19.9 (83)
Junior employees in government and companies	6.0 (25)
Intermediate employees in government companies	9.8 (41)
Professionals	10.8 (45)
Others (unemployed, retiree etc)	5.0 (21)
4. Occupation of mother	
Unskilled self-employed (petty trading farming etc)	66.0 (282)
Semi-skilled self –employed (tailoring, hair dressing etc)	6.3 (27)
Junior employees in government and companies	4.0 (17)
Intermediate employees in government and companies	5.6 (24)
Professionals	3.3 (14)
Others (unemployed, full time house wife, retiree etc.)	14.8 (63)

Table 6: Residence, Education, Vocation and Age of Juvenile Offenders

1. Residence prior to present arrest/ committal	% (N)
With both parents	38.0 (174)
Father alone	10.9 (50)
Mother alone	16.8 (77)
Father and step mother	6.3 (29)
Mother and step father	2.8 (13)
Relatives	14.0 (64)
Non relatives	5.9 (27)
Alone	5.2 (24)
2. Level of education prior to arrest and committal	
None	14.6 (71)
Primary school	38.5 (187)
Secondary school	40.1 (195)
Post secondary	2.7 (13)
Other	4.1 (20)
3. Vocation prior to arrest and committal	
None	24.4 (115)
Schooling	41.5 (196)
Apprenticeship	21.0 (99)
Self employed	5.5 (26)
Employed in family enterprise	1.5 (7)
Employed in government or company	0.6 (3)
Others	5.5 (26)
4. Age	
Average	16.04 years
Minimum age/ maximum age of offenders	9/26 years
5. Parents family size	
Average number of children in family	7.2
Maximum/minimum number of children in family	36.0/1.0
Average number of mothers children	5.0
Average number of fathers children	7.1a

The juveniles were overwhelmingly committed for property offences (table 6). More than three-fifths (63.2%) of the inmates were committed for property offences.

7.3.6 Criminal Records of Juvenile Offenders

Criminological literature indicates that juvenile delinquency peaks between 16 and 18 years. The average age of 16 years among the institutionalized juvenile offenders confirms this trend. Moral and status offences, which in most cases do not count as crimes for adults, were grounds for the committal of 20.6% juveniles to juvenile penal institutions (table 7). Table 7 presents information on prior arrest and committal record. More than two thirds (68.7%) had no prior arrest record and 81.8% had not been previously remanded or committed to any juvenile penal institution or police custody. The juveniles were, therefore, largely 'first offenders', who in most cases were involved in minor misconduct, which under a regime of humane juvenile justice would not have led to institutionalization, especially in view of its costs and adverse consequences.

About three fifths of the juveniles were arrested by law enforcement agents. However, 15.7% and 3.0% respectively were handed over by their father and mother for arrest and committal. Observations show that elites are commonly involved in this way of handling their "unruly children" ostensibly under the "beyond parental control" provisions in the Children and Young Persons Act. This practice among the elites (especially public office holders) is to save them from public embarrassment, by pushing their "unruly children" behind the wall and beyond visibility and scrutiny of the public.⁹⁰ In doing so, however, the elites prefer the Borstal institution which is better equipped and staffed.

90 - Ibid. See also Alemika, E.E.O., *A Study of Socio-Cultural and Economic Factors in Delinquency Among Kaduna Borstal Inmates*, Unpublished B.Sc. Sociology Original Essay, University of Ibadan, Ibadan Nigeria, 1978.

Table 7: Criminal Records of Juvenile Offenders

Criminal records	% (N)
1. Present offence:	
Property (theft, fraud, robbery, burglary, etc)	63.2 (285)
Personal (assault, fighting, rape, etc)	13.3 (60)
Public order (demonstration, rioting etc)	2.9 (13)
Moral and status offences (i.e. beyond parental control)	20.6 (93)
2. Number of previous arrests	
None	68.7 (318)
Once	19.7 (91)
Twice	6.5 (30)
Thrice and more	5.2 (24)
3. Number of previous remands and committals	
None	81.8 (364)
Once	15.1 (67)
Twice	2.2 (10)
Thrice and more	4 (0.9)
4. Source of arrests and committal	
Father	15.7 (68)
Mother	3.0 (13)
Both parents	6.7 (29)
Relative	8.1 (35)
Law enforcement agents	59.7 (258)
Parents and police	2.3 (10)
Others	4.4 (19)

7.3.7 Treatment of Juveniles during Arrest and Detention by Police

There is a wide consensus among police researchers, human rights advocacy organizations, government officials and the public that Nigerian policemen and women exhibit brutality and incivility in their relationship with citizens and offenders.⁹¹

Table 8 presents the responses of the juveniles to the question on how they were treated by the police during arrest and detention. About two-thirds of the juveniles reported being verbally abused (66.5%), physically assaulted (64.7%) and threatened

with beating (68.5%). They were therefore, overwhelmingly subjected to verbal, physical and psychological abuse by police. They were also subjected to mental torture, by means of threat of denial of food and long detention.

Another dimension of the experience of juveniles within the juvenile system, especially the police, which priority is dealing with adult offenders, is the poor state of facilities and funding in the system. For example, only 13.7% reported being well fed in police cells; and only 12.9% were provided with adequate materials for personal hygiene (i.e. washing soap, bath and toilet). These failures must be attributed more to the attitude of society and government inconsistency to the rights, plight and welfare of suspects and offenders. The Nigerian government (supported by IMF and the World Bank) since 1986 when the Structural Adjustment Programme (SAP) was introduced has been notorious in the abdication of its responsibility to protect and promote the welfare of citizens.

The poor and inhumane conditions in the country's police, prisons and juvenile custodial institutions has a longer history in colonial oppression, repressive attitudes to-

91 - Ahire, P. T., "Native Authority Police in Northern Nigeria: End of an era?" in Tamuno T. N. and Bashir I. L. and Alemika E. E. O. and Akano A. O. *Policing Nigeria: Past, Present and Future*, Malthouse Press Ltd., Lagos, 1993; Ahire, P.T., *Imperial Policing*, Milton Keynes, Open University Press, 1991; Alemika, E.E.O., "Policing and Perception of Police in Nigeria" in *Police Studies: International Review of Police Development*, Vol. 11 (4), 1988, pp. 161-176; Alemika, E.E.O., "Socio-Economic and Criminological Attributes of Convicts in Two Nigerian Prisons" in *Journal of Criminal Justice*, Vol. 16 (3), 1988, pp. 197-207; Alemika E.E.O. and Chukwuma I., *Police-Community Violence in Nigeria*, Center for Law Enforcement Education (CLEEN), Lagos, 2000; Odekunle, F., "The Nigeria Police Force: A Preliminary Assessment of Functional Performance" in *International Journal of Sociology of Law*, Vol. 6, 1979, pp. 73-78; Ohonbamu, O., "The Dilemma of Police Organization under a Federal System: the Nigerian Example" in *The Nigerian Law Journal*, Vol. 6, 1972, pp. 73-78; Tamuno, T.N., *The Police in Modern Nigeria*, Ibadan University, Ibadan, 1970; Ayua, I.A. and Okagbue I.E., *The Rights of the Child in Nigeria*, Nigerian Institute of Advanced Legal Studies, Nigeria, 1996; CLO Annual Reports 1988 and 1996.

wards suspects and offenders; and a governmental culture that does not give due premium to human rights. More than three fifths of the juveniles reported being denied access to parents and friends (61.1%) and opportunity to defend themselves (64.0%). They

also reported that they were forced to confess to a crime and were ill-treated by police (table 8). Overall, the interests, rights and welfare of juvenile suspects and offenders are not adequately protected within the Nigerian juvenile justice system.

Table 8: Treatment of Juveniles during Arrest and Detention by Police

Type of treatment	Yes - % (N)	No - % (N)
1. Verbal abuse	66.5 (234)	33.5 (118)
2. Physical abuse	64.7 (225)	35.3 (123)
3. Threatened with beating	68.5 (233)	31.5 (107)
4. Threatened with denial of food	40.8 (138)	59.2 (200)
5. Threatened with long detention	48.5 (163)	51.5 (173)
6. Counselling and advised by police	33.1 (112)	66.9 (226)
7. Properly fed by the police	13.7 (47)	86.3 (295)
8. Provided with adequate facilities for sleeping	12.9 (44)	87.1 (296)
9. Provided with adequate facilities for personal hygiene	14.0 (45)	86.0 (276)
10. Granted access to parents and friends	38.9 (128)	61.1 (201)
11. Granted opportunity to defend self	36.0 (118)	64.0 (210)
12. Forced to confess to crime	36.4 (121)	63.6 (211)
13. Well treated by the police	18.1 (60)	81.9 (272)

7.3.8 The Treatment of Juveniles by Custodial Officers

It is misleading or wrong to assume that maltreatment of juvenile suspects and offenders are limited to the police. Nonetheless, variations in the degree and type of violations and maltreatment should be expected and investigated. The institutionalized juvenile respondents were interviewed regarding their treatment in the various institutions. Table 9 presents their responses. About 40% of the respondents stated that they had been verbally abused (43.5%), physically assaulted (39.1%) and threatened with beating. Although, these rates are lower than those reported for the police, they are nonetheless very high. It is remarkable to observe that less than a quarter of the juveniles claimed that either the police or the court admitted them to bail.

The custodial officers in remand homes, approved institutions and Borstal are expected to adopt measures that will reform and rehabilitate the juveniles. In this light, it is noteworthy that 85.9% of the juveniles reported that they received advice and coun-

selling from the custodial officers while 68.2% state that they have been well treated. A high proportion of juvenile offenders were subjected to mental or psychological torture by means of threat of beating (45.9%), denial of food (30.0%) and long detention (31.7%). However, more than one half reported having adequate facilities for sleeping (58.5%); and materials for proper hygiene (51.0%), and (47.5%) claimed that they were properly fed. Certainly, the conditions reported in these institutions were better than those in police cells, but they are far from satisfactory, by international standards, or even by declared objectives of the relevant institutions and other youth and correctional development policies in the country.⁹²

The provision of educational, vocational and religious or moral training for inmates are considered by officials as measures for the correction, reformation and rehabilitation of offenders. In essence, the provision of education, vocational training, and moral/religious education along with the safe custody of the offenders are considered the primary responsibilities of juvenile correctional and penal institutions in the country. But in reality, these facilities and opportunities are grossly inadequate both in quantitative and

92 - See for instance, Social Development Policies for Nigeria, 1988.

qualitative terms, within the Nigerian juvenile institutions⁹³ and the wider criminal justice system.⁹⁴

Less than one-half (48.3%) of the juveniles had access to educational opportunities and 52.8% had access to vocational training. But these figures do not indicate the quality of training provided. However, workshop facilities in the nation's juvenile institutions and prisons are in a state of obsolescence and unserviceability.⁹⁵ Observations during the field work for this study in August and September 2000 showed that the workshops lacked serviceable equipment, and those available are obsolete and often cannot be used because of poor maintenance and under-funding.

The problem of inadequate staff to teach as well as overcrowding also militated against the effective utilization of the even obsolete facilities in the workshops.⁹⁶ In some cases, inmates were allowed to continue their education through attendance at any nearby school, or if not, through non-formal classes organized within the institutions. These are clearly inadequate and unsatisfactory arrangements through which the children/ juveniles can receive and acquire proper education. Sections 10, 11 and 12 of the

Approved Institutions Regulations provided for the education, vocational training and religious training of inmates respectively. Of particular note is the provision in section 10, which states that:

Every inmate shall receive education according to his age and development and such education shall be at least the equivalent of that which he would receive in his own special circumstances, were he attending school in the usual way of education (emphasis added).

93 - Ahire, P.T., "Juvenile Delinquency and the Handling of Young Prisoners in Nigerian Borstal Institutions" in *The Nigerian Prisons Service and the Public*, Nigerian Prisons Service, Abuja, 1987, S.12; Human Rights Monitor, *Administration of Juvenile Justice: the Example of The Borstal Training Institution Kaduna*, 1997.

94 - Alemika, E.E.O., "Policing and Perception of Police in Nigeria" in *Police Studies: International Review of Police Development*, Vol. 11 (4), 1988, pp. 161-176; Alemika, E.E.O., "Socio-Economic and Criminological Attributes of Convicts in Two Nigerian Prisons" in: *Journal of Criminal Justice*, Vol. 16 (3), 1988, pp. 197-207; Alemika E.E.O. and Alemika E. I., "Penal Crisis and Prison Management in Nigeria" in *Lawyer's Bi-Annual*, Vol 1 (2), 1994, pp. 62-80.

95 - Ahire, P.T., "Juvenile Delinquency and the Handling of Young Prisoners in Nigerian Borstal Institutions" in *The Nigerian Prisons Service and the Public*, Nigerian Prisons Service, Abuja, 1987, S.12; Human Rights Monitor, *Administration of Juvenile Justice: the Example of The Borstal Training Institution Kaduna*, 1997.

96 - Ahire, P.T., "Juvenile Delinquency and the Handling of Young Prisoners in Nigerian Borstal Institutions" in *The Nigerian Prisons Service and the Public*, Nigerian Prisons Service, Abuja, 1987, S.12.

This provision is not observed in the few approved schools in the country where the education of inmates is dictated more by convenience or accessibility or availability of facilities. The conditions for training and reformation in juvenile custodial institutions are similar to those in the adult prisons. The Nigerian Law Reform Commission, in its study of several Nigerian prisons observed that:

- Pragmatic measures are yet to be taken to enable the prison system to involve prison inmates throughout the country in beneficial training programmes capable of enabling them acquire useful educational and professional skills that could make them become gainfully employed on discharge.
- Training programmes for prison inmates are disorganized. Facilities including qualified teachers and relevant books ... are most inadequate ... prison inmates in the tailoring, welding and carpentry sections had no equipment to work with, and not enough sewing machines. Invariably, prison inmates interested in acquiring pro-

fessional skills while in prison, with the hope of setting up their own business on discharge, end up becoming frustrated and dejected... [because of] poor conditions of service, lack of adequate equipment and meaningful programmes, the warders have resorted to being aggressive toward the prisoner.⁹⁷

The conditions are similar to that observed in the Borstal Training Institution, a federal juvenile custodial institution expected to be a model of juvenile custodial correction, reformation and rehabilitation. Phillip Ahire, in his study of Borstal Training Institution, Kaduna, observed that:

- Although the workshops for vocational training are well organized, and the enthusiasm of the inmates visible and transparent, there is a marked shortage of basic workshop equipment. It is not uncommon to find an entire workshop with only one, or even non-functioning piece of equipment. For instance at the time of our investigation, the welding and plumbing workshop was out of welding gas. In such situation, the instructions are compelled to improvise and operate the functioning equipment while the inmates merely watch. Even then, it is difficult for each in-

97 - Nigerian Law Reform Commission, *Report and Draft Bill for Reform of Prisons in Nigeria*, S.3, Lagos, 1983.

mate to catch a glimpse of the demonstration because of acute overcrowding in each of the workshops.

- Educational training at the Borstal is a pitifully lackluster affair. There is hardly any conscientious effort made to provide any meaningful educational training at the Borstal, and a visitor can observe the highly enthusiastic inmates struggling to tutor themselves with little or no material. There is such an acute shortage of accommodation facilities that many inmates use cardboard papers to sleep on the floor... it is hardly surprising to see many inmates going about with one form of skin infection or another... The diet of the inmates at the Borstal lacks needed variety to ensure a healthy body...⁹⁸

The conditions in the prisons and juvenile custodial institutions have deteriorated since they were studied by Ahire (1987) and the Nigerian Law Reform Commission (1983). These inadequacies led the Nigerian Law reform Commission to observe that:

From all indications, the Nigerian prison system as at present, is not geared towards the reformation of prisoners to enable them live a more useful life ...

instead our prison system appears more punitive and retributive... (emphasis added).⁹⁹

Majority of the juveniles reported that the institutions adequately protected them from physical abuse by officials (69.7%) and from sexual abuse by fellow inmates (68.4%). A very large percentage also reported that they had opportunity for interaction with staff (71.9%), with fellow inmates (90.7%) and also opportunity to express grievances and complaints (77.1%). These responses are noteworthy because they suggest a high level of interaction between staff and inmates and among inmates in an atmosphere where protection against sexual and physical abuse is relatively secured. But the response of over 30% inmates who felt protection against physical and sexual abuse in the institution is inadequate is high and should elicit concern from the public and government.

98 - Ahire, P.T., "Juvenile Delinquency and the Handling of Young Prisoners in Nigerian Borstal Institutions" in *The Nigerian Prisons Service and the Public*, Nigerian Prisons Service, Abuja, 1987, S.12.

99 - Nigerian Law Reform Commission, *Report and Draft Bill for Reform of Prisons in Nigeria*, S.2, Lagos, 1983.

Table 9: Treatment of Juveniles by Juvenile Justice Custodial Officers

Type of treatment	Yes - % (N)	No - % (N)
1. Verbal abuse	43.5 (170)	56.5 (221)
2. Physical assault	39.1 (149)	60.9 (232)
3. Threatened with beating	45.9 (177)	54.1 (209)
4. Threatened with denied of food	30.0 (115)	70.0 (268)
5. Threatened with long detention	31.7 (122)	68.3 (263)
6. Counselling	85.9 (329)	14.1 (54)
7. Well treated by officials	62.2 (260)	31.8 (121)
8. Properly fed	47.5 (179)	52.5 (198)
9. Adequate facilities for sleeping provided	58.5 (220)	41.5 (156)
10. Materials for personal hygiene adequately provided	51.0 (183)	49.0 (176)
11. Access to parents and relatives	77.0 (288)	23.0 (86)
12. Access to recreational facilities	76.0 (285)	24.0 (90)
13. Access to educational facilities	48.3 (180)	51.7 (193)
14. Adequate protection against physical abuse	69.7 (264)	30.3 (115)
15. Adequate protection from sexual abuse	68.4 (258)	31.6 (119)
16. Access to vocational training	52.8 (197)	47.2 (176)
17. Access to moral and religious training	82.1 (307)	17.9 (67)
18. Adequate opportunity for interaction with staff	71.9 (269)	28.1 (105)
19. Adequate opportunity for interaction with fellow inmates	90.7 (343)	9.3 (35)
20. Opportunities for expressing grievances and complaints.	77.1 (283)	22.9 (84)
21. Admitted to bail by police prior to trial	23.3 (75)	76.7 (247)
22. Admitted to bail by court prior and during trial.	23.2 (66)	76.8 (218)

7.3.9 Adequacy of Facilities and Services

Empirical studies of Nigerian prisons have identified various inadequacies in services and facilities.¹⁰⁰ The inmates were asked to evaluate the level of adequacy of services and facilities in the police cells and in the remand, approved institutions, and the Borstal. Provisions for sanitation, personal hygiene; feeding, bed and sleeping, medical care, personal security and protection of human rights were reported to be inadequate in police cells (table 10).

The juvenile inmates also considered provisions for feeding, bed and sleeping, medical care, educational and vocational training in remand homes, approved institutions, and Borstal to be either inadequate or very inadequate. These evaluations confirm the observations on gross material, financial and personnel inadequacies in the Nigerian law enforcement, criminal justice and penal institutions.¹⁰¹

100 - Alemika E.E.O., "The Smoke Screen, Rhetoric and Reality of Penal Incarceration In Nigeria" in *International Journal of Comparative and Applied Criminal Justice*, Vol. 7 (1), 1983, pp. 138-149; Alemika, E.E.O., "Policing and Perception of Police in Nigeria" in *Police Studies: International Review of Police Development*, Vol. 11 (4), 1988, pp. 161-176; Alemika, E.E.O., "Socio-Economic and Criminological Attributes of Convicts in Two Nigerian Prisons" in: *Journal of Criminal Justice*, Vol. 16 (3), 1988, pp. 197-207; Alemika E.E.O. and Alemika E. I., "Penal Crisis and Prison Management in Nigeria" in *Lawyer's Bi-Annual*, Vol. 1 (2), 1994, pp. 62-80.

101 - Ahire, P.T., "Juvenile Delinquency and the Handling of Young Prisoners in Nigerian Borstal Institutions" in *The Nigerian Prisons Service and the Public*, Nigerian Prisons Service, Abuja, 1987, S.12; Alemika E.E.O., "The Smoke Screen, Rhetoric and Reality of Penal Incarceration In Nigeria" in *International Journal of Comparative and Applied Criminal Justice*, Vol. 7 (1), 1983, pp. 138-149; Alemika, E. I., "Pre-Trial Detention and Prison Congestion in Nigeria", 1986-1990, in *University of Jos Law Journal*, vol. 3, pp. 120 – 128; Nigerian Law Reform Commission, *Report and Draft Bill for Reform of Prisons in Nigeria*, Lagos, 1983.

Table 10: Level of Adequacy of Services and Facilities in Custody

Types of service and facilities	Very inadequate	Adequate	Inadequate	Very inadequate
A. Police				
1. Personal security	16.2 (56)	25.2 (87)	25.5 (88)	33.0 (114)
2. Sanitation and personal hygiene	8.2 (281)	10.6 (36)	36.2 (123)	45.0 (153)
3. Feeding	7.6 (26)	8.8 (30)	33.7 (115)	49.9 (170)
4. Bed and sleeping materials	7.0 (24)	7.9 (27)	30.5 (104)	54.5 (186)
5. Respect for human rights	9.9 (34)	11.7 (40)	35.4 (121)	43.0 (147)
6. Medical facilities	7.4 (25)	8.0 (27)	28.3 (96)	56.3 (191)
B. Remand homes and approved institutions and Borstal				
7. Personal security	25.6 (105)	38.5 (158)	18.0 (74)	17.8 (73)
8. Sanitation and personal hygiene	26.2 (107)	32.8 (134)	18.4 (75)	22.5 (92)
9. Feeding	16.5 (68)	24.6 (101)	29.7 (122)	29.2 (120)
10. Bed and sleeping material	17.6 (73)	34.3 (142)	24.2 (100)	23.9 (99)
11. Medical facilities	11.9 (49)	24.8 (102)	34.8 (143)	28.5 (117)
12. Educational training	11.1 (45)	22.2 (90)	36.2 (147)	30.5 (124)
13. Vocational training	17.2 (68)	27.8 (110)	31.3 (124)	23.7 (94)
14. Respect for human rights.	15.0 (58)	50.0 (193)	24.4 (94)	10.6 (41)

The inadequacies in juvenile custodial institutions reflect the insensitivity and priority of Nigerian government towards human rights and dignity, and in particular to the welfare of suspects and convicts. Those in-

adequacies are extension of conditions in the adult prisons that have been documented.¹⁰² The Nigerian Law Reform Commission reported that:

Nigerian Prisons are too congested, and poor ventilation is one of their glaring features. Prisoners and detainees are cramped together in cells with no adequate accommodation facilities... hardened criminals are made to live together with first offenders.... Prisoners sleep in double decker beds with no mattresses and pillows provided. In these congested cells, not all prisoners are fortunate to be provided with beds.

The unlucky ones are made to sleep on the dirty, bare floor...¹⁰³

7.3.10 Frequency and Types of Punishments in Custody

The United Nations Minimum Rules on the Treatment of Offenders forbids corporal punishment. However, the Penal Code and the Children and Young Persons permit its use.

Table 11: Frequency and Types of Punishment in Custodial Institutions

	Very frequent	Frequent	Sometimes	Never
1. Flogging	25.7 (115)	12.8 (57)	44.1 (197)	17.4 (78)
2. Kneeling	25.9 (113)	13.8 (60)	33.0 (144)	27.3 (119)
3. Frog jumping	26.3 (114)	9.4 (41)	33.9 (147)	30.4 (132)
4. Tough physical drill	14.1 (60)	20.6 (88)	30.4 (130)	

Table 11, shows that corporal and other punishments are frequently used in the various juvenile custodial institutions. Indeed the high frequencies of various types of punishment – flogging or beating, kneeling, frog jumping and tough physical drill- indicate that those institutions are oriented more towards punishment than correction,

102 - Alemika E.E.O., “Trends and Conditions of Imprisonment in Nigeria” in *International Journal of Offenders Therapy and Comparative Criminology*, Vol. 37 (2), 1993, pp. 147-162; Alemika, E.E.O., “Policing and Perception of Police in Nigeria” in *Police Studies: International Review of Police Development*, Vol. 11 (4), 1988, pp. 161-176; Alemika, E.E.O., “ Socio-Economic and Criminological Attributes of Convicts in Two Nigerian Prisons” in: *Journal of Criminal Justice*, Vol. 16 (3), 1988, pp. 197-207; Alemika E.E.O. and Alemika E. I., “ Penal Crisis and Prison Management in Nigeria” in *Lawyer’s Bi-Annual*, Vol 1 (2), 1994, pp. 62-80; Ehonwa, O.L., *Prisoners in the Shadows*, Civil Liberties Organization, Lagos, 1993; Ehonwa O.L., *Behind the Wall*, Civil Liberties Organization, Lagos, 1996; Nigerian Law Reform Commission.

103 - Nigerian Law Reform Commission, *Report and Draft Bill for Reform of Prisons in Nigeria*, Lagos, 1983, S.12.

reformation and rehabilitation of juvenile offenders through the impartation of skills and positive attitudes.¹⁰⁴

7.3.11 Rule of Law and Due Process

Any citizen accused or charged of crimes has certain rights. These rights are guaranteed through due process and rule of law enshrined in the nation's constitution and statutes. Such rights include proper and prompt notification of charges, public trial (in the case of juveniles-trial in privacy), im-

partial adjudication, adequate defence, examination of prosecution witnesses etc. Table 12 presents information on the extent to which these rights were protected during the arrest and trial of the juvenile offenders.

The responses show that the police and the courts, to a very large extent, respected the right of juveniles to proper and prompt notification of charge. The court, also in large majority of cases, took the plea of the young offenders. Nearly two thirds of the juveniles were not represented by a lawyer. Only 54.4% of the respondents were tried in pri-

Table 12: Protection of Juvenile Offenders' Due Process Rights

Elements of due process	Yes - % (N)	No - % (N)
1. Offence explained by the police at the time of arrest.	68.8 (232)	31.2 (105)
2. Offence explained by court at the time of trial	75.1 (256)	24.9 (85)
3. Represented by a lawyer	35.4 (116)	64.6 (212)
4. Parents or guardian in court during trial	45.7 (150)	54.3 (178)
5. Plea of guilt or innocence taken	75.6 (257)	24.4 (83)
6. Adequate opportunity to defend self in court	48.5 (160)	51.5 (170)
7. Trial in privacy or public		
Privacy	54.4 (173)	
Open court	44.3 (141)	
Other place	1.3 (4)	

104 - See chapter 6.2.2 on Corporal Punishment in Penal Institutions for further information.

vacy. As a result 44.3% claimed they were tried in open courts, which may in some cases violate the United Nations Minimum Standard (Beijing Rule) or the provisions of the Children and Young Persons Act.

7.3.12 Conclusions

The data presented in this chapter reveal the range of facilities and services in the Nigerian juvenile justice system. They also reveal that facilities and services in the system are grossly inadequate in quantitative and qualitative terms. These inadequacies impair the capacity of the institutions to meet the obligations under the CRC, the United Nations Rules and Guidelines, as well as other international standards on the treatment of juvenile offenders. The inadequacies, which are due to policy defects, inadequate funding, incoherent and punitive programmes, etc, - reduced these institutions to warehouses, or human cages and fortresses of punishment instead of correctional and rehabilitation institutions.

Overall, concerning the administration of juvenile justice, OMCT and CLEEN would recommend that the Committee urge the Nigerian government to:

- embark upon a thorough reform of the juvenile justice system in accordance with the provisions of the CRC. In particular, it should develop a system of non-custodial educational measures and alternatives to imprisonment for children, adequately chosen and monitored by specialised personnel, trained in children's rights and restorative justice practice and principles. Juvenile detention facilities should take into account the specific needs of children and focus on strategies aiming at their effective and long-term reintegration into the community.
- promote, enshrine and enforce the principle that the best interests and welfare of the child should be the guiding factor in all aspects of the child justice system.
- collaborate with specialised international organizations and their special mechanisms, as well as with national and international NGOs in the establishment, monitoring and the implementation of a comprehensive system of administration of juvenile justice in Nigeria. They should also be granted access to detention facilities all over the country, in order to monitor the conditions in these institutions.

VIII. Conclusions and Recommendations

OMCT and CLEEN are deeply concerned about the situation of children in Nigeria, in particular, that children are at a high risk to be subject to various forms of abuse and cruel, inhuman, or degrading treatment and punishment. OMCT and CLEEN are aware that many of the structural causes of the violations of children's rights require economic and social change at a structural level. We nevertheless feel that some fundamental legislative and administrative changes in the country would enable a better implementation of children's rights that could lead to a considerable improvement in the lot of children. Therefore, OMCT and CLEEN would like to make several conclusions and recommendations, both legislative and practical.

OMCT and CLEEN would recommend that the Committee on the Rights of the Child urge the Nigerian Government to:

1) Regarding the legal system:

- engage all efforts and resources necessary for the effective adoption and implementation of the rights and principles en-

shrined in the Child Rights Act 2003 in all states;

- ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, as well as the African Charter on the Rights and Welfare of the Child. OMCT urges the Nigerian government to pass the draft Bill in line with the 1996 recommendations of the Committee on the Rights of the Child in order to make progress towards full compliance with the provisions of the CRC.

2) Regarding the general situation of children in Nigeria:

- guarantee concrete investments to improve the plight of the average Nigerian child, which are needed as a matter of urgency. Additional measures and programmes are needed for most vulnerable groups of children.

3) Concerning the context of communal and/or ethnic conflicts and its effect on children:

- establish comprehensive preventive measures to avoid violent communal and/or ethnic clashes in general, and – if they nevertheless break out – to protect children against violations of their fundamental human rights;
- ensure that - if prevention fails - impartial investigations are launched, in order to identify those responsible for grave children's human rights abuses. Such acts must be sanctioned according to the law, in order to stop the circle of impunity;
- provide more information on children in communal and/or ethnic conflicts.

4) Regarding the definition of the child

- provide information on future strategies for change. In this regard, the Child Rights Act 2003 is a positive step. But other legislations – at federal, state and local level – which have not been adapted in this sense since the last session of CRC in

1996, should also be amended or abolished. In particular, OMCT and CLEEN recommend that the age of penal majority, as well as the minimum age for marriage be raised to 18 for both girls and boys;

5) As for discrimination against and amongst children:

- ask for a more comprehensive and detailed explanation of current and planned programmes to combat all forms of discrimination affecting children, indicating the scope of these interventions, the adopted methods of work, the legislative provisions, as well as institutional and budgetary provisions;
- to reiterate the recommendation made by the CEDAW, urging Nigeria “to ensure full compliance with the Child Rights Act 2003, which set the statutory minimum age of marriage at 18 years in all parts of the country”¹⁰⁵, and encourage the Nigerian government to inform the Committee on measures taken to enforce – in legal terms as well as in practice - the minimum legal age for marriage , as well

as for sexual consent, which in line with the respect of the principles of non-discrimination and of the best interests of the child;

- the Parliament reintroduce and adopt the Bill on FGM at the federal level and encourages further legal changes at the State level. In addition, OMCT and CLEEN would recommend that the government continue to promote and carry out a countrywide campaign on the dangers of FGM.
- undertake all the efforts necessary to amend legislations in order to guarantee that girls are equally protected against any form of abuse as boys;
- implement policies to eradicate discrimination against children with disabilities, including a policy of integration in formal schools and the construction of appropriate facilities in all public buildings. It should also be urged to launch national awareness raising campaigns for the respect of the rights of disabled children and to engage more resources into prevention strategies of disability.

6) Concerning torture and other cruel, inhuman or degrading treatment or punishment of children:

- supply additional information regarding torture in Nigeria, including all relevant legal provisions, policy guidelines and practical measures relevant to the elimination of the practice of torture and other cruel, inhuman and degrading treatment or punishment of children. In particular, OMCT would request that the Government provide information regarding the definition of torture in the criminal law and enact specific sanctions and procedures in cases where children are victims of torture;
- immediately abolish all legislation prescribing corporal punishment as a legal penal sentence and to undertake all efforts necessary in order to eradicate these practices all over the country and promote non-violent alternatives both to corporal punishment and to imprisonment;
- enact an amendment to the Children and Young Persons Act, prohibiting all forms of corporal punishment in penal institutions;

- change all legislation allowing corporal punishment, including corporal punishment in schools, as well as to launch a strong campaign in order to eradicate it in practice;
- provide more information on the issue of corporal punishment and violence against children at home and abolish the existing legislation regarding parents' right to use a corporal punishment; conduct a study analysing the scope and consequences of domestic violence against children, in collaboration with specialised mechanisms and institutions, and launch a national programme aiming at prevention of violence against children at home;
- outlaw death penalty for juvenile offenders by immediately amending art 12 of the Child and Young Persons Act, art. 319(2) of the Criminal Code and any other law that may contain the same or similar provisions, and ensuring that the Shari'ah Penal Codes in 12 northern states are amended in order to comply with Art. 37 and 40 of the CRC, and Art. 6 (5) of the ICCPR.

7) Concerning children in conflict with the law:

- embark upon a thorough reform of the juvenile justice system in accordance with the provisions of the CRC. In particular, it should develop a system of non-custodial educational measures and alternatives to imprisonment for children, adequately chosen and monitored by specialised personnel, trained in children's rights and restorative justice practice and principles. Juvenile detention facilities should take into account the specific needs of children and focus on strategies aiming at the effective and long-term reintegration into the community;
- immediately ensure that every child deprived of liberty is separated from adult inmates, in line with art.37 (c) of the CRC. Existing specialised institutions for juvenile offenders must be improved and new ones established as a matter of urgency in all states of Nigeria;
- immediately improve existing training programmes and establish new ones for the personnel of the police, courts, remand homes, approved institutions, Borstals and prisons, as well as for every other person

involved in the handling of children in conflict with the law, in order to make sure they are aware of children's rights and special needs;

- create a special unit of the Police, as foreseen under section 207 of the Child Rights Act, which provides that specially trained police officers deal exclusively with prevention, apprehension and investigation of alleged child offenders and use their discretionary powers to divert children from the formal justice system to community based programmes, wherever possible
- immediately review section 29 of the CYPA, as it is contradictory and does not unmistakably establish that juvenile offenders have to be tried by special juvenile courts;
- amend Section 3 of the CYPA in order to establish unambiguous conditions under which a juvenile offender can, or can not, be released on bail;
- launch immediate and impartial investigations, every time that allegations of denial of procedural rights of a child in conflict with the law are raised. Persons violating the provisions of Section 8 of the

CYPA should always be identified, and administrative and/or legal provisions sanctions applied to them. Moreover, children who had their procedural rights denied during their process should be released and receive adequate reparation;

- amend the Penal (North) and the Criminal (South) codes so as to increase the minimum age of criminal responsibility from 7 years to 14 years and to set the age of penal majority at 18. The government should amend CYPA and all other current legislation accordingly and ensure that the Shari'ah law is implemented in compliance with the CRC.
- immediately withdraw section 26 and 27 of the CYPA and to assist children in difficult situations through social assistance and measures aiming at effective integration into community, rather than to criminalise them;
- withdraw all provisions allowing for remand or detention of children 'beyond parental control' and to enact legislation in order to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an

offence and not penalized if committed by a young person;

- amend the Children and Young Persons Act and laws of the various states, in order to outlaw flogging, whipping and other forms of corporal punishment. Any other law providing for corporal punishment in penal institutions should also be abolished or amended;
- develop a strong campaign aiming at the improvement of provisions for non-custodial treatment of juvenile offenders. Similarly, the emphasis on fines, compensation and other forms of punishment in the law should be reduced;
- to work with the judiciary to develop progressive sentencing guidelines ensuring that alternatives to custodial sentencing, that are provided for in the CRA, and to a lesser extent the CYP A, are used with greater regularity and that custodial sentencing are used only as a measure of last resort.
- launch a national programme to establish structures ensuring adequate educational services to children deprived of liberty. Education in juvenile detention facilities

should take the specific needs of children into account and focus on strategies aiming at the effective and long-term reintegration into community;

- pursue awareness raising programmes aimed at reducing the stigma attached to child offenders and develop programmes to encourage and assist reintegration of child offenders into their communities;
- promote, enshrine and enforce the principle that the best interests and welfare of the child should be the guiding factor in all aspects of the child justice system;
- collaborate with specialised international organizations and their special mechanisms, as well as with national and international NGOs in the establishment, monitoring and the implementation of a comprehensive system of administration of juvenile justice in Nigeria. They should also be granted access to detention facilities all over the country, in order to monitor the conditions in these institutions.



COMMITTEE ON THE RIGHTS OF THE CHILD
38th Session - Geneva, January 2005

Concluding observations
of the Committee
on the Rights of the Child:
Nigeria

Consideration of reports submitted by states parties under article 44 of the Convention on the Rights of the Child

1. The Committee considered the second periodic report of Nigeria (CRC/C/70/Add. 24) at its 1023rd and 1024th meetings held on 26 January 2005, and adopted at the 1025th meeting held on 28 January 2005, the following concluding observations.

A. Introduction

2. The Committee welcomes the State party's second periodic report, although it was submitted with considerable delay, and the written replies to its list of issues (CRC/C/Q/NGA/2). The Committee notes with appreciation the high-level inter-ministerial delegation sent by the State party and welcomes the open and frank dialogue that took place, as well as the participation of the speaker of the Children's Parliament which gave a clearer understanding of the situation of children in the State party.

B. Follow-up measures undertaken and progress achieved by the State party

3. The Committee welcomes the initiatives taken by the State party to reform its laws relating to children to bring them in line with the requirements of the Convention, in particular the adoption of the Child Rights Act in May 2003.
4. In addition, the Committee notes the adoption of the following laws aimed at enhancing the implementation of the Convention:
 - (a) The Anti-human Trafficking Law, in July 2003; and
 - (b) Various State legislation addressing child rights, including the Ebonyi State Law on the Abolition of Harmful Traditional Practices Affecting the Health of Women and Children (2001); Edo State Female Genital Mutilation Prohibition Law (2000); Edo State Criminal Code (Amendment) Law (1999); Cross River State Girl-Child

Marriages and Female Circumcision (Prohibition) Law (2000).

5. The Committee welcomes the establishment of the Children's Parliament in Nigeria both at the State and national level and of the Child Rights Information Bureau (CRIB) in the Ministry of Information.
6. The Committee welcomes the ratification of the 1973 ILO Convention No. 138 concerning Minimum Age for Admission to Employment and the 1999 ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour by the State party in October 2002.
7. The Committee notes with appreciation the ratification of the African Charter on the Rights and Welfare of the Child by the State party in July 2001.

C. Factors and difficulties impeding the implementation of the Convention

8. The Committee acknowledges challenges faced by the State party, namely the long-standing ethnic, religious and

civil strife, economic constraints including poverty, unemployment and the heavy debt burden, which may have impeded progress to the full realization of children's rights enshrined in the Convention.

D. Principal areas of concern and recommendations

1. General measures of implementation (arts. 4, 42 and 44 (para. 6) of the Convention)

The Committee's previous recommendations

9. The Committee regrets that many of the concerns and recommendations (CRC/C/15/Add.61) it made upon consideration of the State party's initial report (CRC/C/8/Add.26) have been insufficiently addressed, especially those regarding the mainstreaming of customary law and regional and local legislation (para. 27), allocation of resources (paras. 28 and 33), training and awareness-raising on children's rights (para. 30), data collection (para. 31), non-discrimination (para. 34), children with disabilities (para. 35), harmful traditional practices (para. 36),

health-care services (para. 37), education (para. 38), juvenile justice (para. 39), abuse and neglect (paras. 40 and 43), economic exploitation (para. 41) and sexual exploitation (para. 42).

10. The Committee urges the State party to make every effort to address those recommendations contained in its concluding observations on the initial report that have not yet been implemented, and to address the list of concerns contained in the present concluding observations on the second periodic report.

Legislation

11. The Committee, while noting that 20 states are in the process of enacting the 2003 Child Rights Act (CRA), remains concerned that, to date, only 4 out of 36 states have enacted the CRA. The Committee is also concerned that many of the existing legislation at federal, State and local level in the State party, in particular the religious and customary laws, do not fully comply with the principles and provisions of the Convention.
12. The Committee recommends that the State party engage all efforts and resources necessary for the effective im-

plementation of the rights and principles enshrined in the Child Rights Act, and ensure as a matter of priority that the Act is duly adopted in all states. The Committee further urges the State party to take all necessary measures to ensure that all of its domestic and customary legislation conform fully with the principles and provisions of the Convention, and ensure its implementation.

Coordination

13. While noting the existence of the Department of Child Development in the Ministry of Women's Affairs and Social Development and the National Child Rights Implementation Committee (NCRIC) as bodies entrusted with the responsibility of monitoring compliance with the Convention, the Committee is seriously concerned about the apparent lack of coordination among national and State level authorities on strategies, policies and programmes affecting children.
14. The Committee is also concerned by the serious lack of resources allocated to the Department of Child Development in the Ministry of Women's Affairs and Social Development and the National Child

Rights Implementation Committee, as well as the lack of authority vested in these bodies.

15. The Committee recommends that the State party take all necessary measures to establish an effective body or structure for the coordination of the implementation of the Convention with adequate resources and appropriate authority, strategy and plans.
16. The Committee also recommends that the Department of Child Development in the Ministry of Women's Affairs and Social Development and the National Child Rights Implementation Committee are strengthened and given adequate financial support, so as to ensure their effectiveness.

National Plan of Action

17. The Committee welcomes the development of a National Plan of Action, but is concerned that it is limited and does not cover all areas of the Convention.
18. The Committee recommends the State party to develop a more comprehensive, rights-based National Plan of Action with the time frame up to 2015, which covers all areas of the Convention and

incorporates the objectives and goals of the outcome document entitled: "A World Fit for Children" of the 2002 United Nations General Assembly Special Session for Children, as well as the Millennium Development Goals. In this exercise, the Committee urges the State party to allocate sufficient human and economic resources for its implementation and to use a participatory approach, involving NGOs and children.

Independent monitoring

19. The Committee welcomes the existence of the National Human Rights Commission (NHRC) in Nigeria and its regional offices and the appointment of a Special Rapporteur on Child Rights within the NHRC. However, the Committee remains concerned that the mandate of the NHRC does not provide for sufficient resources to deal with children's rights and individual complaints. The Committee also appreciates the efforts undertaken by the State party to inform the general public and children in particular about the NHRC and the Special Rapporteur on Child Rights, but is concerned that the number of cases involving children is quite limited.

20. The Committee recommends the State party to further strengthen the activities of the NHRC and the Special Rapporteur on Child Rights in accordance with the Committee's general comment No. 2 on national human rights institutions and the Paris Principles (General Assembly resolution 48/134, annex), by, inter alia, providing it with adequate human and financial resources and by enhancing the Special Rapporteur's capacity to deal with complaints from children in a child-sensitive and expeditious manner, as well as ensuring his/her accessibility, e.g. through establishment of a special toll-free telephone hotline for children.

Resources for children

21. The Committee, aware of the economic difficulties facing the State party due in part to the widespread corruption, and the generally uneven distribution of resources, remains concerned that its welfare system is under a tremendous resource strain. In particular, the Committee is seriously concerned that there is a severe lack of financial resources allocated to the protection and promotion of children's rights.

22. With a view to strengthening its implementation of article 4 of the Convention and in the light of articles 2, 3 and 6, the Committee recommends that the State party prioritize, as a matter of urgency, budgetary allocations and efficient budget management, to ensure the implementation of the rights of children to the maximum extent of available resources, where needed, within the framework of international cooperation.

Data collection

23. While noting that some data-collection efforts have been made by the State party, in particular, the new initiative to develop databases on children in need of special protection, the Committee remains concerned at the absence of comprehensive and up-to-date statistical data in the State party's report and the lack of an adequate national data collection system on all areas covered by the Convention that allows for disaggregated data analysis. The Committee reiterates that such analysis is crucial for the formulation, monitoring and evaluation of progress achieved and impact assessment of policies with respect to children.

24. The Committee recommends that the State party develop a system of data collection and indicators consistent with the Convention and disaggregated by gender, age, urban/rural area and by regions/states. This system should cover all children up to the age of 18 years, with specific emphasis on those who are particularly vulnerable. It further encourages the State party to use these indicators and data in the formulation of laws, policies and programmes for the effective implementation of the Convention. The Committee recommends that the State party seek technical assistance from, inter alia, UNICEF and ILO in this regard.

Dissemination

25. While taking note of the efforts made by the State party to disseminate the principles and provisions of the Convention, including the work of the Child Rights Information Bureau (CRIB), the Committee is of the view that these measures need to be strengthened. The Committee is also concerned at the lack of a systematic plan to introduce training and awareness among professional groups working for and with children.

26. The Committee recommends that the State party:

(a) Strengthen its efforts to ensure that the provisions of the Convention are widely known and understood by adults and children alike;

(b) Systematically involve community leaders in sensitization programmes to combat certain harmful traditional practices and customs which may have negative bearings on the full implementation of the Convention;

(c) Undertake systematic education and training on the provisions of the Convention for all professional groups working for and with children, in particular parliamentarians, judges, lawyers, law enforcement officials, civil servants, municipal and local workers, personnel working in institutions and places of detention for children, teachers, health personnel, including psychologists, and social workers;

(d) Introduce human rights education including the rights of the child, into the school curricula, beginning in primary schools; and

(e) Seek technical assistance from, among others, the Office of the High Commissioner for Human Rights and UNICEF.

2. Definition of the child (art. 1 of the Convention)

27. While noting that the Child Rights Act provides a clear definition of the child, the Committee remains concerned at the wide variety of minimum ages that exist in the states of the State party, including unclear definitions of the child, and that many of these minimum ages are too low.
28. In order to improve the situation the Committee reiterates its recommendation (para. 12) that the State party should undertake all possible measures to have the Child Rights Act enacted in all states of the State party, and urges the State party to continue and strengthen its efforts to further harmonize the various minimum ages and/or definitions in its domestic legislation and set them at an internationally acceptable level.

3. General principles (arts. 2, 3, 6 and 12 of the Convention)

Non-discrimination

29. While noting that discrimination is prohibited under the Constitution, and that the drafting of an Anti-Discrimination Bill is under way, the Committee regrets the absence of concrete information on the actual enjoyment of the principle of non-discrimination by children in Nigeria. The Committee reiterates its previous concern that children belonging to vulnerable groups, including girls, children living in poverty, children born out of wedlock, children with disabilities and children belonging to minority groups continue to face serious and widespread discrimination. The Committee is also concerned that the State party regards unnecessary any initiatives to prevent and combat racial discrimination given its position that social and ethnic tension, racism and xenophobia are minimal in the State party (para. 40, periodic report).
30. The Committee recommends that the State party increase its efforts to ensure implementation of existing laws

guaranteeing the principle of non-discrimination, and to adopt appropriate legislation, where necessary, to ensure that all children within its jurisdiction enjoy all rights set out in the Convention without discrimination, in accordance with article 2.

31. The Committee requests that specific information be included, in the next periodic report, on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and taking account of general comment No. 1 on article 29 (1) of the Convention (aims of education).

Right to life

32. In the context of the respect for the inherent right to life of a person under 18, the Committee is seriously concerned about the applicability of the death penalty to persons below 18 under the Shariah law, and emphasizes that such a penalty is a violation of articles 6 and 37 (a) of the Convention.

33. The Committee urges the State party to abolish by law the imposition of the death penalty for crimes committed by persons under 18 years of age and replace the already issued death sentences for persons under 18 with a sanction in accordance with the Convention.

Best interests of the child and respect for the views of the child

34. While noting the existence of institutional structures whose objectives are to ensure the best interests of the child and respect for the views of the child such as Children's Clubs in schools and the Children's Parliament at the national level, the Committee is concerned that two general principles of the Convention, as laid down in articles 3 and 12 are not fully applied and duly integrated into the implementation of the policies and programmes of the State party. Given the prevalence of the traditional views on the place of children in the hierarchical social order, the Committee is concerned that children's opinions are not given sufficient consideration and that respect for the views of the child remains limited within the family, at schools, in the

courts and before administrative authorities and in the society at large.

35. The Committee encourages the State party to pursue its efforts to ensure the implementation of the principles of the best interests of the child and respect for the views of the child. In this connection, the Committee recommends the State party to fully support the functioning and further development of the Children's Parliament, both at the national and State level, and to promote the full implementation of the right of the child to participate actively in the family, at school, within other institutions and bodies, and generally in society. The general principles should also be incorporated in all policies and programmes relating to children. Awareness-raising among the public at large as well as educational programmes on the implementation of these principles should be reinforced.

4. Civil rights and freedoms (arts. 7, 8, 13-17 and 37 (a) of the Convention)

Birth registration

36. While acknowledging the work of the National Population Commission and the African Refugee Commission whose mandate includes birth registration, the Committee is concerned that the alarmingly low rate of birth registration, in particular in rural areas, is a reflection of the generally low awareness among parents of the importance of birth registration and its consequences on the full enjoyment of fundamental rights and freedoms by children, in particular, access to education and health, the right to know and be cared for by parents. The Committee also notes that the birth registration of children of foreign parents and refugee parents can be problematic.
37. In the light of article 7 of the Convention, the Committee urges the State party to adopt a short-term as well as a long-term approach in its strengthened efforts to ensure the registration of all children at birth, including through the development of mobile registration units and

increased outreach activities and awareness-raising campaigns for families, birth attendants and traditional leaders. The Committee further recommends that the State party ensures coordination between relevant ministries and institutions involved in birth registration processes, and provide necessary social infrastructure to facilitate birth registration in rural communities. Meanwhile, children who have no birth registration should be allowed to access basic services, such as health and education, while preparing to be registered properly.

Corporal punishment

38. The Committee takes note that article 221 of the Child Rights Act prohibits corporal punishment in judicial settings, and that a ministerial note has been sent to schools notifying them of the prohibition of corporal punishment in schools. Nevertheless, in light of article 19 of the Convention, the Committee remains concerned that corporal punishment is still widely practised in the penal system as a sanction, as well as in the family, in schools and in other institutions. In particular, the Committee is concerned about:

(a) Articles 9 and 11 (2) of the Children and Young Persons Law which provides for the sentencing of juvenile offenders to whipping and corporal punishment;

(b) Article 18 of the Criminal Code which provides for whipping;

(c) Article 55 of the Penal Code which provides for the use of physical corrective measures;

(d) Shariah legal code to children prescribing penalties and corporal punishment such as flogging, whipping, stoning and amputation, which are sometimes applied to children; and

(e) Legal provisions that tolerate, if not promote, corporal punishment at home, in particular article 55 (1) (a) of the Penal Code and article 295 of the Criminal Code.

39. The Committee recommends that the State party:

(a) Abolish or amend all legislation prescribing corporal punishment as a penal sentence, in particular the Children and Young Persons Act;

(b) Expressly prohibit corporal punishment by law in all settings, in

particular in the family, schools and other institutions; and

(c) Conduct awareness-raising campaigns to ensure that positive, participatory, non-violent forms of discipline are administered in a manner consistent with the child's human dignity and in conformity with the Convention, especially article 28 (2) as an alternative to corporal punishment at all levels of society.

5. Family environment and alternative care (arts. 5, 18 (paras. 1-2), 9-11, 19-21, 25, 27 (para. 4) and 39 of the Convention)

Childcare services

40. Given the large number of working mothers who require childcare in the State party, the Committee is concerned with the quality of childcare provided in private and public day-care facilities. The Committee also notes with concern that there are no measures in place to support single parents. The Committee is also concerned by the lack of resources in these facilities to enable full

physical, mental and intellectual development of children.

41. The Committee recommends that the State party adopt a programme to strengthen and increase capacities of childcare facilities in the State party, inter alia, through the strengthening of existing structures including childcare centres and extended families. The Committee recommends that appropriate training be given to all professionals working with children in childcare facilities and that sufficient resources are allocated to public childcare facilities. The Committee further urges the State party to establish standards and procedures, guaranteed in legislation, for alternative care, including in the areas of health, education and safety and in accordance with the principles and provisions of the Convention. The Committee recommends that the State party seek assistance from UNICEF in this regard.

Children deprived of a family environment and alternative care

42. In view of the information that cases of abandoned children are common and that the number of HIV/AIDS orphans is

rapidly increasing, the Committee is concerned that the State party does not have a comprehensive and well-resourced policy programme in place for the protection of orphans, and that current facilities available for the alternative care of children deprived of their family environment are qualitatively and quantitatively insufficient and many children do not have access to such assistance. In addition, the Committee expresses concern at the lack of appropriate training of staff and of a clear policy regarding the review of placements of children in alternative care. In addition, the Committee is concerned that children themselves are not heard prior to and during their placement.

43. The Committee recommends that the State party:

- (a) Urgently adopt a programme to strengthen and increase alternative care opportunities for children including, inter alia, introduction of effective legislation, reinforcement of existing structures like the extended family, improved training of staff and allocation of increased resources to relevant bodies;
- (b) Establish standards and procedures, guaranteed in legislation, for

alternative care, including in the areas of health, education and safety and in accordance with the principles and provisions of the Convention;

- (c) Systematize the hearing of the views of the child concerning his/her placement;
- (d) Provide for regular periodic review of the placement of children in institutions;
- (e) Ratify the Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption adopted in 1993 at The Hague; and
- (f) Seek assistance from UNICEF in this regard.

Violence, abuse and neglect

44. The Committee is deeply concerned about:

- (a) Traditional and discriminatory attitudes and behaviour towards women and children, contributing to violence, abuse, including sexual abuse, neglect, killing, torture and extortion;
- (b) Generally high level of acceptance

of domestic violence among law enforcement officials and court personnel; and

(c) Lack of adequate measures taken by the State party to prevent and combat violence, abuse and neglect against women and children.

45. The Committee urges the State party to strengthen considerably its efforts to prevent and combat violence in society, including violence against women and children, in the context of the family, as well as in schools and other environments. In this regard, the Committee recommends the State party to take the following specific actions:

(a) Carry out public education campaigns about the negative consequences of violence and ill-treatment of children and promote positive, non-violent forms of conflict resolution and discipline, especially within the family and in the educational system and in institutions;

(b) Take all legislative measures to prohibit all forms of physical and mental violence, including sexual abuse, against children in all contexts in society, as well as take effective measures for the prevention of violent acts committed

within the family, in schools and by the police and other State agents, making sure that perpetrators of these violent acts are brought to justice, putting an end to the practice of impunity;

(c) Give attention to addressing and overcoming socio-cultural barriers, especially the submission and acceptance of maltreatment on the part of girls and women, which inhibit them from seeking assistance;

(d) Provide care, recovery and reintegration for child victims of direct or indirect violence and ensuring that the child victim is not re-victimized in legal proceedings and that his/her privacy is protected;

(e) Train parents, teachers, law enforcement officials, care workers, judges and health professionals in identification, reporting and management of ill-treatment cases, using a multidisciplinary approach;

(f) Use as a guidance for further actions the recommendations of the Committee adopted on its days of general discussion (CRC/C/100, para. 688 and CRC/C/111, paras. 701-745); and

(g) Seek assistance from, among others, UNICEF and WHO.

6. Basic health and welfare (arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) of the Convention)

Children with disabilities

46. The Committee reiterates its previous concern at the widespread discrimination against children with disabilities, both within the family and in society in general, especially in rural areas, and notes that many of the causes of disability in Nigeria are preventable. The Committee is particularly concerned at the lack of comprehensive government policy specifically addressing the rights of disabled children. The Committee is further concerned at the poor quality in the delivery and management of services for children with disabilities and the lack of sufficient funding for such services. The Committee is particularly concerned at the limited number of trained teachers and professionals working with children with disabilities, as well as the insufficient efforts made to facilitate their inclusion in the education system and the society in general.

47. In the light of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the Committee's recommendations adopted at its day of general discussion on the rights of children with disabilities (CRC/C/69, paras. 310-339), the Committee recommends that the State party:

- (a) Undertake a comprehensive study to assess the situation of children with disabilities in terms of their access to suitable health care, education services and employment opportunities;
- (b) Establish a comprehensive policy for children with disabilities and allocate adequate resources to strengthen services for them, support their families and train professionals in the field;
- (c) Reinforce its efforts to develop early detection programmes to prevent disabilities;
- (d) Encourage the integration of children with disabilities into the regular educational system and their inclusion into society, inter alia by giving more attention to special training for teachers and making the physical environment, including schools, sports and leisure

facilities and all other public areas, accessible for children with disabilities;

(e) Undertake awareness-raising campaigns to sensitize the public about the rights and special needs of children with disabilities, as well as children with mental health concerns; and

(f) Seek technical cooperation for the training of professional staff, including teachers, working with and for children with disabilities from, among others, UNICEF and WHO.

Basic health and health services

48. The Committee takes note of efforts made by the State party to improve its health system, including the Baby Friendly Hospital Initiative and the Integrated Management for Childhood Illness, as well as the establishment of the National Programme on Immunization Agency. Nevertheless, the Committee remains gravely concerned at the alarmingly high rate of infant, child and maternal mortality, and the high incidence of major illnesses affecting children, including polio, malaria and diarrhoea as well as the low rate of immunization coverage in the country,

particularly in the northern regions, and of malnutrition and the low rates of exclusive breastfeeding. The Committee is also concerned at the very low level of knowledge among mothers on basic health issues, such as about the use of oral rehydration solutions (ORS) for diarrhoea. The Committee, while acknowledging the adoption of a new National Water Supply and Sanitation Policy, also remains concerned over the access to safe drinking water and sanitation, particularly in rural areas.

49. The Committee recommends that the State party:

(a) Address, as a matter of urgency, the very high mortality rates among infants, children and mothers, by, inter alia, stepping up the immunization programmes and improving ante- and post-natal care;

(b) Continue taking all appropriate measures to improve the health infrastructure, particularly in rural areas, including through international cooperation, in order to ensure access to basic health care and services which are adequately staffed and stocked with appropriate resources, including basic medicines for all children;

(c) Take measures to introduce awareness-raising programmes for women, on the importance of, inter alia, prenatal and post-natal health care, preventive measures and treatment for common illnesses; immunization and balanced diet for the healthy development of children;

(d) Strengthen their data collection system, inter alia, with regard to important health indicators, ensuring timeliness and reliability of both quantitative and qualitative data and using it for the formulation of coordinated policies and programmes for the effective implementation of the Convention; and

(e) Ensure universal access to drinking water and sanitation services.

Adolescent health

50. The Committee is concerned that insufficient attention has been given to adolescent health issues by the State party, including developmental, mental and reproductive health concerns. The Committee is also concerned by the high proportion of teenage pregnancies in the State party.

51. The Committee recommends that the State party:

(a) Undertake a comprehensive study to assess the nature and extent of adolescent health problems and, with the full participation of adolescents, use this as a basis to formulate adolescent health policies and programmes with a particular focus on the prevention of sexually transmitted infections (STIs), especially through reproductive health education and child-sensitive counselling services, and take into account the Committee's general comment No. 4 (2003) on adolescent health and development (CRC/GC/2003/4) in this regard;

(b) Further strengthen developmental and mental health counselling services as well as reproductive health counselling and make them known and accessible to adolescents; and

(c) Continue to work with international agencies with expertise in health issues relating to adolescents, inter alia, UNFPA and UNICEF.

HIV/AIDS

52. The Committee welcomes the efforts made by the State party to prevent and

control HIV/AIDS including the establishment of the National Action Committee on AIDS, as well as the recent introduction of testing, counselling and PMTCT (Preventing Mother-to-Child Transmission) in some areas. However, it remains concerned about the high incidence of the infection and its wide prevalence in Nigeria, as well as the lack of knowledge especially among women on modes of transmission and prevention of HIV/AIDS. The Committee is deeply concerned at the very serious impact of HIV/AIDS on the cultural, economic, political, social and civil rights and freedoms of children infected with or affected by HIV/AIDS, including the Convention's general principles and with particular reference to the rights to non-discrimination, health care, education, food and housing, as well as to information and freedom of expression. The Committee is also particularly concerned that according to UNAIDS estimates, there are over 1 million AIDS orphans, making Nigeria the country with the highest number of AIDS orphans worldwide.

53. The Committee recommends that the State party continue its efforts in preventing the spread of HIV/AIDS and

providing treatment, and further integrate respect for the rights of the child into the development and implementation of its HIV/AIDS policies and strategies on behalf of children infected with and affected by HIV/AIDS, as well as their families, taking into consideration the recommendations the Committee adopted at its day of general discussion on children living in a world with HIV/AIDS (CRC/C/80, para. 243), and involve children and traditional leaders when implementing this strategy.

Forced and/or early marriages

54. While acknowledging that the minimum age of marriage is set federally at 18 years, the Committee notes with concern that the legislation of most states and the customary law allows for early marriages and girls can be forced into marriage as soon as they reach puberty. The Committee is particularly concerned at the reports of a large number of young women suffering cases of vesico-vaginal fistula, a condition caused by giving birth when the cervix is not well developed. The Committee is further concerned that such girls, once married, are not afforded protection and that the enjoyment of their rights as children is not

ensured as enshrined in the Convention.

55. The Committee recommends that the State party amend existing legislation to prevent early marriages. It also recommends to the State party that it take measures to ensure that when underage girls are married, they continue fully enjoying their rights as set out in the Convention. The Committee also recommends that the State party develop sensitization programmes, involving community and religious leaders and society at large, including children themselves, to curb the practice of early marriages.

Harmful traditional practices

56. The Committee welcomes the introduction of a bill on violence against women in Parliament in May 2003, aimed to prohibit forms of violence such as harmful traditional practices and domestic violence, including marital rape. However, it reiterates its concern at the widespread and continuing existence of harmful traditional practices in the State party, most notably the practice of female genital mutilation, as well as scarification and ritual killing of children which

pose very serious threats to children, in particular the girl children.

57. The Committee is concerned at the lack of legal prohibition and sufficient interventions on the part of the State party to address harmful traditional practices. The Committee is also concerned at the lack of support services available to protect girls who refuse to undergo FGM and of services to rehabilitate girl victims of the practice.
58. The Committee recommends that the State party, as a matter of urgency, take all necessary measures to eradicate all traditional practices harmful to the physical and psychological well-being of children, by strengthening awareness-raising programmes. The Committee further recommends the State party to adopt federal legislation prohibiting such practices and encourage further legal changes at the State level, in particular, female genital mutilation, as well as measures to provide support for girls at risk and girls who refuse to undergo FGM, and provide recovery services for victims of this harmful traditional practice.

Social security

59. In view of the high proportion of children living in poverty in the State party, the Committee notes with concern the lack of reliable information regarding the coverage of the social security plans in place vis-à-vis the needs of children and their families. The Committee reiterates that such data is crucial for the monitoring and evaluation of progress achieved and impact assessment of policies with respect to children. The Committee is also concerned that the social security system currently in place in the State party is not in full compliance with article 26 of the Convention.
60. The Committee recommends that the State party:
- (a) Upgrade its system of data collection on the coverage of the social security plans currently in place, and ensure that all data and indicators are used to evaluate and revise these plans whenever necessary; and
 - (b) Make efforts to revise or/and establish a social security policy along with a clear and coherent family policy in the framework of poverty reduction strategy, as well as effective strategies for using

the social safety net benefits to further the rights of children.

7. Education, leisure and cultural activities (arts. 28, 29 and 31 of the Convention)

61. The Committee welcomes that education was given the highest priority in the State party's annual budget. It also notes with appreciation the initiatives of some State Governments to facilitate children's access to education and to increase school enrolment, including the school meal plus programme and the development of the Strategy for Acceleration of Girls' Education in Nigeria (SAGEN). The Committee also welcomes efforts made by the State party, in cooperation with the civil society, to implement early childhood education programmes. However, in the light of the Committee's general comment No. 1 on article 29 (1) of the Convention (aims of education), the Committee remains concerned about the various number of problems in the State party's education system, including:

(a) Unavailability in many parts of Nigeria of free, compulsory and universal primary education, despite the constitutional guarantee;

(b) High illiteracy, particularly among girls and women;

(c) Generally low level of, and regional disparities in, the quality of education in the State party, especially with regard to resources, facilities and the level of teaching;

(d) Gender and regional disparities in school enrolment;

(e) High levels of absenteeism and school dropout rates, in part due to school fees which constitute a burden to parents in sending children to schools;

(f) Mandatory requirement by law in some states of segregation of boys and girls in schools; and

(g) Segregation of refugees and displaced children in separate schools from other children.

62. The Committee recommends that the State party:

(a) Take appropriate measures, in order

to ensure that at the least, primary education is compulsory, free and universal for all children;

(b) Prioritize equal accessibility to educational opportunities for girls and boys from urban and rural areas;

(c) Take necessary measures to remedy the low quality of education and to ensure better internal efficiency in the management of education;

(d) Build better infrastructure for schools and provide quality training for teachers;

(e) Seek to further implement participatory measures to encourage children to stay in school during the period of compulsory education;

(f) Take additional steps, including non-formal education programmes, to address the high illiteracy rates;

(g) Ensure that children who drop out of school and pregnant teenagers are provided with the opportunity to resume their studies;

(h) Ensure that education opportunities are provided for children suffering from HIV/AIDS;

(i) Ensure that refugee and asylum-seeking children are placed in schools in the local community, to facilitate their integration;

(j) Increase availability of vocational training programmes for young people, in particular, for girls, with the view to facilitate their access to the labour market, and in this connection, ratify the 1989 UNESCO Convention on Technical and Vocational Education; and

(k) Seek further technical assistance from UNICEF and UNESCO, among others.

8. Special protection measures (arts. 22, 38, 39, 40, 37 (b)-(d), 32-36 of the Convention)

Refugee/internally displaced children

63. The Committee notes that communal clashes linked to political, religious and ethnic differences have led to a large population of internally displaced persons in the State party, and that Nigeria is a host to a large group of refugees from neighbouring countries such as Chad, Sierra Leone and Liberia. The

Committee is concerned about the situation of refugee and internally displaced children living in refugee camps, and regrets the paucity of information with regard to these children in the State party report and the State party's position that the issue of asylum-seeking children do not arise in Nigeria. The Committee is particularly concerned about reports of sexual exploitation of refugee girls and women within and outside of the camps, including female teenagers who are forced into prostitution. The Committee is also concerned that incidence of teenage pregnancy is high in the camp.

64. The Committee recommends that the State party:

(a) Seek to ensure, as a matter of priority, that all displaced and refugee children and their families have access to health and education services, and that all their rights contained in the Convention are protected, including the right to be registered at birth;

(b) Take measures to ensure that appropriate reproductive health education and child-sensitive counselling services are provided to adolescents living in camps;

(c) Take immediate measures to ensure that all displaced and refugee women and children are protected from all forms of sexual abuse and exploitation and that perpetrators are duly prosecuted;

(d) Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;

(e) Include in its next periodic report detailed information pertaining to the situation of refugee and internally displaced children, including unaccompanied minors; and

(f) Continue its collaboration with, among others, UNHCR.

Children affected by communal conflict

65. The Committee is deeply concerned by the impact of communal conflicts on children in Nigeria. The Committee is alarmed by the reports of indiscriminate extrajudicial killings in these conflicts, where children as well as adults are routinely killed, shot to death and burnt. The Committee is seriously concerned at the direct effects of this violence on child victims, including child combatants, and about the severe physical and psycho-

logical trauma inflicted upon them. The Committee notes that the State party has signed but not yet ratified the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict.

66. The Committee recommends the State party to take all possible measures to prevent the occurrence of communal conflicts, and to develop a comprehensive policy and programme for implementing the rights of children who have been affected by conflict, and allocate human, technical and financial resources accordingly. In particular, the Committee recommends that the State party:

(a) Develop, in collaboration with NGOs and international organizations, a comprehensive system of psychosocial support and assistance for children affected by conflict, in particular child combatants, unaccompanied IDPs and refugees, returnees;

(b) Take effective measures to ensure that children affected by conflict can be reintegrated into the education system, including through the provision of non-formal education programmes and by prioritizing the restoration of school

buildings and facilities and provision of water, sanitation and electricity in conflict-affected areas; and

(c) Ratify the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict as a matter of priority.

Drug abuse

67. While acknowledging the efforts made by the State party to combat drug abuse, trafficking and drug-related violence, the Committee remains concerned at the high incidence of substance abuse by children in Nigeria, including the use of cannabis, psychotropic substances, heroin, cocaine and volatile organic solvents, as well as abuse of local plants. The Committee is also concerned by the reports of the increasing involvement of young people in drug-related crimes. It is also concerned at the lack of specific legislation prohibiting the sale, the use and the trafficking of controlled substances applying children, and also of treatment programmes in this regard.
68. The Committee recommends that the State party undertake a comprehensive study to assess the nature and extent of

drug abuse by children, and to take action to combat the phenomenon, including through general poverty reduction strategies and public education awareness campaigns. The Committee further encourages the State party to ensure that children who abuse drug and substance have access to effective structures and procedures for treatment, counselling, recovery and reintegration. The Committee further recommends that the State party seek cooperation with, and assistance from, WHO and UNICEF.

Street children

69. In view of the increasing number of children living and working on the street and street families, the Committee regrets the lack of information about specific mechanisms and measures to address their situation.
70. The Committee recommends that the State party:
- (a) Undertake a comprehensive study on the causes and scope of this phenomenon and establish a comprehensive strategy to address the high and increasing number of street children with

the aim of preventing and reducing this phenomenon;

(b) Ensure that street children are provided with adequate nutrition, clothing, housing, health care and educational opportunities, including vocational and life-skills training, in order to support their full development;

(c) Ensure that these children are provided with recovery and reintegration services when victims of physical, sexual and substance abuse; protection from police brutality; and services for reconciliation with their families and community; and

(d) Undertake a study on the causes and scope of this phenomenon and establish a comprehensive strategy to address the high and increasing number of street children with the aim of preventing and reducing this phenomenon.

Sexual exploitation and child pornography

71. The Committee is of the view that implementation of the existing legislation is not effective, and is deeply concerned that the number of children who fall victim to sexual exploitation is on the in-

crease in the State party. The Committee also notes with concern that reports of sexual assaults and rape of young girls are on the increase, especially in the north. The Committee is concerned that children victims of sexual exploitation often do not receive adequate protection and/or recovery assistance, but may even be treated as perpetrators of a crime.

72. The Committee recommends that the State party:

(a) Undertake a comprehensive study to examine the sexual exploitation of children and child pornography, gathering accurate data on its prevalence;

(b) Take appropriate legislative measures and develop an effective and comprehensive policy to prevent and combat sexual exploitation of children and child pornography, including the factors that place children at risk of such exploitation;

(c) Train law enforcement officials, social workers and prosecutors on how to receive, monitor, investigate and prosecute cases, in a child-sensitive manner that protects children and respects the privacy of the victim;

(d) Prioritize recovery assistance and ensure that education and training as well as psychosocial assistance and counselling are provided to victims, and that victims that cannot return to their families are provided with adequate alternative solutions and are institutionalized only as a last resort;

(e) Avoid criminalizing child victims of sexual exploitation in all circumstances; and

(f) Implement appropriate policies and programmes for the prevention, recovery and reintegration of child victims, in accordance with the Declaration and Agenda for Action and the Global Commitment adopted at the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children.

Economic exploitation

73. The Committee notes with appreciation the State party's ratification of the ILO Convention No. 138 concerning Minimum Age for Admission to Employment and the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of

the Worst Forms of Child Labour in October 2002. However, it remains concerned at the significant number of children in Nigeria working as domestic servants, in plantations, in the mining and quarrying sector, and as beggars on the streets. The Committee is also concerned that exploitation and abuse commonly take place in the context of extended family fostering and apprenticeship.

74. The Committee is also gravely concerned by the reports of forced child labour taking place in the State party. While acknowledging efforts made by the State party and United Nations agencies to reduce this phenomenon, the Committee regrets that the outcomes of such efforts have been poor.

75. The Committee recommends that the State party:

(a) Continue and strengthen its efforts to eliminate child labour, in particular by addressing the root causes of child economic exploitation through poverty eradication and to develop a comprehensive child labour monitoring system in collaboration with NGOs, community-based organizations, law enforcement personnel, labour inspectors and ILO-IPEC;

(b) Make every effort, including preventive measures, to ensure that those children who do work do so in accordance with international standards, do not work under conditions which are harmful to them, receive appropriate wages and other work-related benefits and continue to have access to formal education and other developmental opportunities; and

(c) Take action to implement all policies and legislation relevant to child labour, inter alia, through awareness-raising and educational campaigns for the public on the protection of the rights of children.

Sale, trafficking and abduction

76. The Committee notes with appreciation the serious and exemplary efforts undertaken by the State party to combat child trafficking, including establishment of bilateral anti-trafficking agreements and introduction of joint border controls. The Committee further welcomes the enactment of the law prohibiting human trafficking in July 2003, the creation of the National Agency for Prohibition of Trafficking in Persons (NAPTIP), and the Presidential ap-

pointment of the Special Assistant for Human Trafficking and Child Labour in June 2003. The Committee also notes the signature of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others in 2003, and the ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime in 2002, by the State party.

77. The Committee recommends the State party to continue and strengthen its efforts to prevent and combat child trafficking. In this regard, the Committee encourages the State party to:

(a) Improve its system of data collection on the sale, trafficking and abduction of children, and ensure that all data and indicators are used for the formulation, monitoring and evaluation of policies, programmes and projects;

(b) Seek to establish further bilateral agreements and subregional multilateral agreements with countries concerned, including neighbouring countries, to prevent the sale, trafficking and abduction

of children, and develop joint plans of action between and among the countries involved;

(c) Continue to take measures to facilitate children's protection, safe return to their families and reintegration in society, through inter alia, recovery and reintegration programmes;

(d) Strengthen the NAPTIP and allocate sufficient resources to ensure that it is able to perform these functions effectively;

(e) Ratify the 1980 Hague Convention No. 28 on the Civil Aspects of International Child Abduction; and

(f) Continue its cooperation with, inter alia, UNICEF and IOM.

Juvenile justice

78. The Committee notes with appreciation the efforts made by the State party to reform the Juvenile Justice Administration (JIA), including the establishment of a National Working Group on Juvenile Justice Administration in 2002 and the introduction of the draft National Policy on Child Justice Administration in Nigeria for discussion.

However, the Committee remains gravely concerned that the juvenile justice system in the State party, in particular, the Shariah court system, does not conform to international norms and standards, in particular that:

(a) Until the enactment of the Child Rights Act in all states, wide disparities remain in the minimum age of criminal responsibility, some much too low by international standards;

(b) Juvenile offenders are frequently subjected to physical assaults by the police and custodial officers;

(c) Placement of persons below 18 in the same detention and prison facilities with adults;

(d) Excessive length of detention, which in some cases can last as long as eight years;

(e) Excessive length of time before the hearing of cases;

(f) Persons below 18 are often tried in adult courts;

(g) Persons below 18 are often not legally represented during their trials;

(h) Some children are detained for “status offences” such as vagrancy, truancy or wandering, or at the request of parents for “stubbornness or for being beyond parental control”;

(i) Serious overcrowding and the poor conditions of homes and juvenile centres for persons below 18 in conflict with the law, as well as prisons in which they are placed;

(j) Lack of trained professionals working in such institutions;

(k) Absence of assistance towards the rehabilitation and reintegration of persons below 18 following judicial proceedings; and

(l) Article 12 of the Child and Young Persons Act and article 319 (2) of the Criminal Code, as well as the Shariah Penal Codes in 12 northern states which allow for imposition of death penalty on persons below 18.

79. Despite the State party’s claim that there are no discrepancies between the provisions of the Convention and the Shariah laws with regard to the rights of children, the Committee remains deeply concerned by the sentencing of

persons below 18 years to cruel, inhuman and degrading treatment such as stoning, flogging, whipping and amputation by Shariah courts. The Committee is further concerned that under section 95 of the Shariah Penal Code, persons aged 7-18 years can be subjected to the punishment of confinement in a reform institution, or 20 strokes of cane, or with fine, or both.

80. The Committee recommends the State party to review its legislation, policies and budgets to ensure the full implementation of juvenile justice standards, in particular article 37 (b) and article 40, paragraph 2 (b) (ii)-(iv) and (vii) of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System and in the light of the Committee’s 1995 Day of General Discussion on the Administration of Juvenile Justice.

81. In this respect, the Committee urges the State party to, in particular:

(a) Ensure that the minimum age for criminal responsibility is applicable in all 36 states forming the State party by taking measures and actions as recommended in paragraph 12 of this document;

(b) Guarantee that all persons below 18 have the right to appropriate legal assistance and defence and ensure speedier fair trials for them;

(c) Develop and implement alternative measures for deprivation of liberty in order to really make detention a measure of last resort for the shortest possible time;

(d) In cases where deprivation of liberty is unavoidable, ensure that the conditions of detention are in full compliance with, in particular, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty;

(e) Amend, as a matter of urgency, the Child and Young Persons Act and the Criminal Code, as well as the Shariah Penal Codes to abolish death penalty as well as cruel, inhuman and degrading

treatment on juvenile offenders, and in the meantime take measures, as a matter of priority, to ensure that persons under 18 are not sentenced to torture, cruel, inhuman and degrading forms of sanction such as flogging and amputation by Shariah courts;

(f) Introduce, as a matter of priority, training programmes on relevant international standards for all professionals involved in the system of juvenile justice and establish special units within the police for the handling of cases of persons below 18 in conflict with the law;

(g) Make every effort to establish a programme of rehabilitation and reintegration of juveniles following judicial proceedings;

(h) Enact an amendment to the Children and Young Persons Act, prohibiting all forms of corporal punishment in penal institutions; and

(i) Seek technical assistance from, among others, OHCHR and UNICEF.

9. Optional Protocols to the Convention on the Rights of the Child

82. The Committee notes that the State party has signed but not yet ratified the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution, child pornography, and on the involvement of children in armed conflict.
83. The Committee recommends that the State party immediately ratify and implement the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution, child pornography, and on the involvement of children in armed conflict.

10. Follow-up and dissemination

Follow-up

84. The Committee recommends the State party to take all appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to the members of the Council of Ministers or the Cabinet or a similar body, the Parliament, and to

provincial or State Governments and Parliaments, when applicable, for appropriate consideration and further action.

Dissemination

85. The Committee further recommends that the initial report and written replies submitted by the State party and related recommendations (concluding observations) it adopted be made widely available, including through Internet (but not exclusively), to the public at large, civil society organizations, youth groups, professional groups, and children in order to generate debate and awareness of the Convention, its implementation and monitoring.

11. Next report

86. In light of the recommendation on reporting periodicity adopted by the Committee and described in the report on its twenty-ninth session (CRC/C/114), the Committee underlines the importance of a reporting practice that is in full compliance with the provisions of article 44 of the Convention. An important aspect of States parties' responsibilities

to children under the Convention is ensuring that the Committee on the Rights of the Child has regular opportunities to examine the progress made in the Convention's implementation. In this regard, regular and timely reporting by States parties is crucial. The Committee invites the State party to sub-

mit its third and fourth periodic reports in one consolidated report by 18 May 2008, i.e. the due date of the fourth periodic report. This consolidated report should not exceed 120 pages (see CRC/C/118). The Committee expects the State party to report thereafter every five years, as foreseen by the Convention.