



Age of Criminal Responsibility and the Administration of Child Justice System: Implications for Child Protection in Nigeria

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Abstract

The age of criminal responsibility refers to the capacity of an individual to be held liable for criminal behavior. There exist several inconsistencies on this age in Nigeria which may be having implications on child justice administration as well as child protection. This paper examined various stipulations of children's laws on age of criminal responsibility and the administration of child justice with its implications for child protection in Nigeria. The study adopted qualitative method with the use of secondary sources of data. Extant literature was reviewed and analyses drawn to provide the nexus between age of criminal responsibility, the administration of child justice and child protection. Piaget and Kohlberg's theory of social cognition was the theoretical anchor of the study. Findings revealed that, there is lack of uniformity in defining the age of criminal responsibility across States in Nigeria which has continued to raise confusion in the administration of child justice. These inconsistencies have led to a situation where one is a child in one state and an adult in another within the same country. Further revelation of the study was that these controversies surrounding the age of criminal responsibility often led to child maltreatment and vulnerability in the hands of child justice administrators. The study also disclosed that lack of functional database on birth registration is the reason child justice administrators find difficulty in identifying the age of a child even where the age of criminal responsibility is fixed. The paper therefor recommended that the constitution of Nigeria and other child legislations should be amended to include age of criminal responsibility that will guarantee child protection among stakeholders of the child justice system; and that, there should be a functional database on birth registration to aid child justice administrators in ascertaining the age of a child.

Keywords: Age of Criminal Responsibility, Child Justice Administration, Child Maltreatment, Child Protection

Introduction

The age of criminal responsibility has sparked significant debates among scholars, penal reformers, child rights activists, professional caregivers, and criminologists (Snyder & Stickman, 2006). The central argument is that children, who are still in the formative stages of their character development, should not be held criminally responsible. This viewpoint arises from the understanding that children's behavior is heavily influenced by societal factors such as family instability, misappropriation of state resources, material deprivation, and other community conditions. Therefore, it is argued that children should not be held accountable for their actions (Adam, 2013). For penal reformers, children exposed to harmful societal influences should not face the penalties of a child justice

system. Instead, they should be offered rehabilitation within a framework designed to meet their unique developmental needs (Abdulraheem-Mustapha, 2016). According to Abrams (2013), advanced cognitive functions such as reasoning, impulse control, and the ability to resist peer pressure typically develop by the age of eighteen. Consequently, advocates for children's rights assert that the cognitive development of children supports their call for a justice system that addresses their specific psychological, emotional, and developmental needs. This perspective likely influenced the creators of the child justice system, who recognized that children and adolescents possess less developed reasoning, maturity, and impulse control, which further justifies the view that they should not be held criminally responsible (Baum,



2005).

In Nigeria, the age of criminal responsibility has been inconsistent. The Child Rights Act (CRA) of 2003 defines a child as anyone below the age of 18 and states that such individuals should be treated according to the Act when they come into contact with the law (Section 277 of CRA, 2003). However, the Act does not specify the minimum age of criminal responsibility. This confusion is further complicated by the long-standing Children and Young Persons Act (CYPA), which defines a child as someone under the age of 14 and a young person as aged 14 to 16 (Section 6(1) of CYPA, 1990). The CYPA sets the minimum age of criminal responsibility at 7 years, indicating that children below this age who encounter the law must be dealt with by the family court. The Act also includes provisions for young persons under 18 who offend the law, stating that individuals over 16 should be tried as adults (Section 6(1) of CYPA, 1990). Additionally, an examination of older laws in Nigeria highlights the controversies surrounding the age of criminal responsibility. In the southern states, the Criminal Code Act of 1916 set the age of criminal responsibility at 7 years. This was contradicted by the Criminal Procedure Act of 1945, which defined an "infant" as anyone under 7, a "child" as someone under 14, a "young person" as aged 14 to 16, a "juvenile offender" as someone under 17, and an "adult" as anyone above 17. In northern Nigeria, the Penal Code of 1960 also sets the minimum age of criminal responsibility at 7 years while specifying that juvenile offenders are those under 17. This is further complicated by Sharia law, which states that children who commit offenses are liable for had (mandatory prescribed punishment) and qisas (retaliatory punishment) once they reach puberty (Article 175(1) of the Nigerian Constitution).

The age of criminal responsibility in Nigeria varies between states, leading to different thresholds for when a child may be held accountable for criminal actions (Ojo, 2012; Bamgbose, 2014). For instance, Lagos State has set the age of 14 for liability regarding any offenses committed, while other states have

established different age definitions (Alemika & Chukwuma, 2001). These discrepancies in the age of criminal responsibility have significant implications for how child justice is administered, particularly in defining who qualifies as a child and how they are processed within the legal system. Furthermore, even when an age for criminal responsibility is established, accurately determining a child's age can be challenging, as physical appearance may not reliably reflect their true age. Consequently, the determination of a child's criminal responsibility often falls under the discretion of child justice administrators, which can lead to inconsistencies and complications in protecting the rights of children. It is against this backdrop that this research work was conceived.

Objective

The objective of this study was to examine various stipulations of children's laws on age of criminal responsibility, then analyze how such variations may affect the administration of child justice system and child protection in general

Methodology

The study adopted qualitative method with the use of secondary sources. The data were harvested from content analysis of available child protection laws in Nigeria. Extant literatures were reviewed and analyses drawn to provide the nexus between age of criminal responsibility, the administration of child justice and child protection in Nigeria.

Literature review

Child protection and the age of criminal responsibility

The Nigerian child, like all children around the world, is a dependent being and is classified as one of the most vulnerable members of society (Adegoke, 2015). Thus, they deserve special care and attention. This understanding has led to the development of various legal frameworks aimed at defining who a child is and how they should be cared for. Additionally, children are the future of every society, and the success of all human societies relies on how they plan for and nurture their children. This planning and care can only be



achieved with a clear definition of who qualifies as a child or beneficiary of societal support. Generally, a child is defined by age rather than by cognitive ability (Furstenberg, 2000). This is significant because an adult can reason like a child. Therefore, every country should have a legal framework that explicitly defines who a child is and protects young individuals from criminal prosecution and harsh punishment. However, this definition of a child must consider the social, cultural, economic, and political contexts unique to each country (Ogunniran, 2013). The Nigerian constitution does not specifically define a child (Dauda, 2016), but other legislation, such as the Penal Code, the Children and Young Persons Act, and the Child Rights Act, provide various definitions of a child. These laws differentiate between adult offenders and children who come into contact with the law or require care and protection regarding criminal responsibility. For instance, Section 50 of the Penal Code and Section 30 of the Criminal Code specify that a child under the age of seven cannot be held responsible for any criminal activity (Article 175(1) of the Nigerian Constitution). In contrast, Islamic Sharia law defines a child as someone who has not yet reached puberty (Dauda, 2016). This means that once an individual exhibits signs of puberty, they are considered an adult and may be treated as such regarding criminal responsibility.

The Nigerian constitution does not define a child, which is largely due to the fact that issues concerning children fall under concurrent jurisdiction and are not listed exclusively under the federal government's legislative authority (Anyalechi, 2014). As a result, states are responsible for defining and adopting their own child protection laws tailored to their specific circumstances. Although the Child Rights Act (CRA) specifies in Section 277 that a child is defined as a person under the age of 18, it does not establish the age at which a child can be held criminally responsible. Each state has the authority to determine its own age of criminal liability. In general, all state laws agree that a child below the established age of criminal responsibility cannot commit a crime (CRIN,

2017). This means that children in this category are immune to criminal prosecution; they cannot be formally charged with an offense or subjected to criminal law procedures or penalties. The importance of having a minimum age of criminal responsibility lies in the understanding that a child has not yet reached the emotional, mental, and intellectual maturity required to be held accountable for their actions (CRIN, 2017).

International standards and the minimum age of criminal responsibility

Under Article 1 of the United Nations Convention on the Rights of the Child (UNCRC), state parties are encouraged to establish a minimum age of criminal responsibility, as children are presumed not to have the capacity to violate criminal law (Article 1 of UNCRC, 1989). There is considerable debate regarding the appropriate age for criminal responsibility, and no definitive international standards exist on this matter (Bella, Atilola & Onigbodun, 2010). In General Comment No. 10, the Committee on the Rights of the Child concludes that a minimum age of criminal responsibility below 12 years is not considered internationally acceptable (Sections 149 & 150 of CRA, 2013). Furthermore, the committee urges state parties not to lower their age of criminal responsibility to 12, and it strongly encourages states to set a higher minimum age, ideally between 14 and 16 years. States are also free to establish the age of 18 as their age of criminal responsibility.

Under Article 2 of the African Charter on the Rights and Welfare of the Child (ACRWC), when a child is involved in any administrative or judicial proceedings, they have the right to be heard directly or through a representative or an appropriate body, in accordance with national legal procedures (Article 2 of ACRWC, 1990). General Comment No. 10 states that a fair trial requires that a child alleged to have infringed penal law must be able to participate effectively in the trial. This means the child needs to comprehend the charges, potential consequences, and penalties in order to direct their legal representative, challenge witnesses, provide an account of events, and make informed decisions



about evidence and testimonies. Article 14 of the Beijing Rules stipulates that proceedings should be conducted in an atmosphere of understanding, allowing the child to participate and express themselves freely. Considering the child's age and maturity may necessitate modifications to courtroom procedures and practices (Steinberg & Learner, 2004). The implication is that children must be capable of participating effectively in trials, which is not possible if they lack sufficient maturity.

In international criminal law, the issue of the minimum age of criminal responsibility has not been adequately addressed (Steinberg & Lerner, 2004). Some countries set age limits that vary based on the nature or severity of the offense, while in others, the minimum age of criminal responsibility is determined by the relative maturity of the child within certain defined age ranges. The Committee on the Rights of the Child has found that this practice can lead to lower ages of criminal responsibility for more serious offenses, leaving children vulnerable to discriminatory practices (Sections 149 & 150 of CRA, 2013). The Committee on the Rights of the Child emphasizes that children who are below the minimum age of criminal responsibility and are in conflict with the law have lesser culpability than adults.

This difference arises because children differ from adults in their physical and psychological development, as well as in their emotional and educational needs (Sections 149 & 150 of CRA, 2023). States must accommodate these differences by establishing justice procedures for children that guarantee their right to a fair trial and prioritize rehabilitation over punishment or retribution. These procedures must comply fully with all provisions of the Convention on the Rights of the Child (CRC), including the principle that the best interests of the child are a primary consideration in all actions concerning them. Although "best interests" has not been precisely defined, General Comment No. 10 states that protecting the best interests of the child means that traditional objectives of criminal justice, such as repression and retribution, should yield to

rehabilitation and restorative justice in dealing with child offenders (Ijaiya, 2009). This approach can be implemented while ensuring effective public safety. It is the state's obligation to promote the child's reintegration into society so they can assume a constructive role. Furthermore, in most cases, there is an obligation to address children's issues without resorting to judicial proceedings, provided that human rights and legal safeguards are fully respected.

The child justice administration in Nigeria is shaped by international, regional, and national laws. As a signatory to the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of Children, Nigeria is committed to principles that promote fair and humane treatment of child offenders, prioritizing their well-being and rehabilitation (Shajobi-Ibikunle, 2014). The purpose of these provisions is to prevent any issues that may hinder a child's development and to ensure that they are treated with dignity and respect. The core principle of the UNCRC and the African Children's Charter is that the best interests of the child must be the primary consideration. For example, Articles 37 to 40 of the UNCRC emphasize that children cannot be unjustly deprived of their liberty, acknowledge the right of juveniles to rehabilitation and social reintegration, and extend rights to juveniles at all stages of the juvenile justice process. Similarly, Article 17 of the African Charter on the Rights and Welfare of Children (ACRWC) grants juvenile offenders the right to special treatment that respects their dignity and worth (Article 17 of the ACRWC, 1990).

This reinforces the need to respect children's rights and promote fundamental reforms aimed at reintegrating and rehabilitating them into their families and communities. In response to the global rise in child delinquency and the lack of clear provisions for children in conflict with the law or in need of care and protection in the Nigerian Constitution, the concept of child justice administration in Nigeria became formalized with the enactment of the Child and Young Persons Act (CYPA) and later the Child Rights Act (CRA),



following Nigeria's commitment to international and regional agreements (Oninajesin, 2009).

Nigeria currently has two types of legislation concerning children in conflict with the law or beyond parental control (Olayinka, 2013). The Child and Young Persons Act (CYPA) has been in use and is still applied by some states in the administration of child justice. However, the CYPA does not prioritize the principle of the best interests of the child, unlike the Child Rights Act (CRA). Instead, it focuses more on punitive measures rather than the welfare of the child (Shajobi-Ibikunle, 2014). In contrast, the CRA emphasizes the importance of proper care, protection, treatment, and development within the framework of child justice. It seeks to uphold and protect the rights of Nigerian children and addresses related matters (CRIN, 2017). The CRA implements a child-friendly approach in the adjudication and resolution of cases, prioritizing the child's best interests and aiming to secure their ultimate rehabilitation through various institutions established under this law. Nevertheless, the act lacks clarity regarding the age of criminal responsibility.

Theoretical underpinning

Piaget and Kohlberg's theory of social cognition. Piaget and Kohlberg developed theories that address not only cognitive development but also the moral development of children (Abrams, 2013). They argued that children cannot undertake certain tasks until they reach a certain level of psychological maturity at specific ages. Their theory suggests that children around the age of ten are not capable of making moral decisions equivalent to those of adults, as they have yet to fully learn how to do so. The social cognition theory identifies two stages of moral reasoning, which may sometimes overlap: the heteronomous stage and the autonomous stage. During the heteronomous stage, children are egocentric and believe the world revolves around them. Their actions are influenced by the perceived severity of the consequences. This stage can extend beyond the age of ten, meaning that children may not fully understand the implications of their actions prior to progressing to the next stage. In contrast, when children reach the autonomous stage, they begin

to prioritize intentions over the consequences of their actions. It is at this stage that children should be held accountable for their behavior. While the theory does not provide a definitive answer regarding the appropriate age of criminal responsibility, it offers valuable insights into the complexities surrounding the concept. Consequently, the age of criminal responsibility should not remain a contentious issue; it should fall below the age of 18, as children's cognitive and moral faculties are not sufficiently developed to justify the consequences of being classified as criminals, potentially affecting their lives for the long term.

Discussions

FIG 1: Available child protection laws in Nigeria

NAME OF CHILD PROTECTION LAW	AGE OF CRIMINAL RESPONSIBILITY
Children and Young Persons Act (CYPA)	14 years
The Nigeria Penal Code (Section 50)	12 years
The Nigeria Criminal Code (Section 30)	12 years
The Nigerian Constitution	18 year
Immigration Act, laws of the Federation	16 years
Child Rights Act (CRA)	18 years

There are basically six child protection laws in Nigeria as stated in figure 1. The first five are not child specific laws, hence do not place much emphasis on child protection (Ada & Anake, 2018). While the age-long CYPA was promulgated by the colonial masters to protect themselves against juvenile behaviour, the CRA was enacted in 2003 to fill in the gaps and supersede any other legislation that sought to address children's rights (Alemika, 2017). The CRA harmonized all rights and responsibilities of children and incorporated laws that would protect and care for the Nigerian child in a single legislation, as well as stipulate obligations and duties of parents, government and other stakeholders towards the child. Despite the superiority of the CRA, respective states were to adopt and domesticate same. This is because legislative matters relating to the protection of children's rights are not in the exclusive list of the Federal Government, but on the concurrent list,



which empowers states with the jurisdiction and responsibility to make laws peculiar to their environment (Ladan, 2017). However, this situation initially seemed to have created a gap where many States particularly in Northern Nigeria were very reluctant to domesticate and implement the Act. However, and very recently, about 34 states of the federation had domesticated the Act, except Kano and Zamfara (UNICEF-Nigeria Fact Sheet, 2022).

FIG 2: Child Rights Act and age of criminal responsibility across states in Nigeria

NAME OF STATE	YEAR OF DOMESTICATION OF CRA	AGE OF CRIMINAL RESPONSIBILITY
ABIA	2006	18 years
ADAMAWA	2022	18 years
IBOM-AKWA	2008	16 years
ANAMBRA	2004	18 years
BAUCHI	2023	18 years
BAYELSA	2016	18 years
BENUE	2009	18 years
BORNO	2022	12 years
CROSS RIVER	2009	18 years
DELTA	2008	18 years
EBONYI	2010	18 years
EDO	2007	18 years
EKITI	2006	18 years
ENUGU	2016	18 years
GOMBE	2023	14 years
IMO	2004	18 years
JIGAWA	2021	13 years
KADUNA	2018	14 years
KANO		

Age of criminal responsibility and the administration of juvenile justice with its implications on child protection in Nigeria

Determining the age of criminal responsibility is crucial for several reasons. One significant reason is that the court is prohibited from pronouncing or recording a death sentence for any individual who has not reached the age of criminal responsibility as defined by society. According to Section 368(3) of the Nigeria Criminal Procedure Act, if evidence shows that an accused person charged

with a capital offense is under 17 years old, it would be inappropriate for any court to impose a death sentence or even to announce such a sentence, as stated in Article 175(1) of the Nigerian Constitution. Due to the lack of a functional birth registration database in Nigeria, it is often challenging for law enforcement to accurately establish whether a suspect is an adult or a juvenile. As a result, police officers may arbitrarily claim that such individuals are over 17 or 18 years of age to justify legal action against them. Obidimma and Obidimma (2012) noted that police officers sometimes intentionally falsify the ages of juveniles to present them in court as adults, thereby bypassing the legal requirements for their treatment.

Additionally, police tend to quickly transfer these juveniles to court so that the judiciary can remand them to correctional facilities. This practice is especially prevalent when there are no available borstal institutions or remand homes. Their study also revealed that some children in correctional custody reported that police never inquired about their ages, while others stated they were pressured to exaggerate their age. If they refused, the police would assign them an arbitrary age above 20 years. In other instances, law enforcement officials dismissed claims of their true ages and insisted they were over 18, treating them accordingly. This scenario highlights the controversies surrounding the age of criminal responsibility. When detaining a juvenile, police officers have a responsibility to arrange, as much as possible, for the juvenile to avoid association with adults charged with or convicted of a crime (Mboho & Udousoro, 2014).

This provision aims to prevent the criminal contamination or indoctrination of young offenders by adult criminals. Such measures also protect young offenders from potentially harmful influences. However, in practice, this provision is not consistently enforced due to uncertainties regarding the age of criminal responsibility. Nigerian correctional facilities house a high number of young offenders, often failing to separate them from adult inmates based on age or other relevant criteria (Ojo, 2012). For instance,



Obidimma and Obidimma (2012) reported that there are 19 juvenile inmates in the Onitsha correctional facility in Anambra State, with no separate detention facilities for juveniles in Enugu and Awka centers. Consequently, the principles of reforming and protecting juveniles, as well as shielding them from the corrupting influence of adult criminals, are undermined, often leading to youths emerging from these institutions as more hardened and criminal-minded than when they entered.

By the provisions of the law, no child shall be ordered to be incarcerated. If in the opinion of the court, he can suitably be 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 (Bangbose, 2014). But the argument around the age of criminal responsibility has brought a mixed-up to the administration of child justice in Nigeria.

Conclusion

The absence of a clear definition of a child in the Nigerian constitution creates significant challenges in determining the age of criminal responsibility. While other legislations, such as the Child Rights Act (CRA) and the Child and Young Persons Act (CYPA), attempt to address this issue, inconsistencies in defining a child persist across various states of the federation. This lack of clarity often deprives children of opportunities for rehabilitation. Whether intentionally or accidentally, children are frequently placed in overcrowded adult detention facilities, which jeopardizes their development and health while also imposing long-term psychological effects on their well-being. Removing children from their families and communities, along with denying them access to educational or vocational opportunities during critical developmental periods, can exacerbate social and economic disadvantages and lead to marginalization (Obidimma & Obidimma, 2012).

Furthermore, exposure to criminal influences and violent behavior while in detention, and at times, contact with adult offenders, is likely to encourage future criminal behavior (Adegoke,

2015). Consequently, young individuals may accumulate criminal records, increasing the likelihood of custodial sentences in the future. This situation can lead to criminal prosecution becoming a "default" response to offending, diminishing the chances of providing appropriate protective and welfare services to address children's developmental and protective needs (Dauda, 2016). Numerous challenges arise from the inconsistencies surrounding the age of criminal responsibility.

In Nigeria, many children are not registered at birth, and even when they are, there is no effective database or documentation to verify their age. There is substantial evidence that police sometimes exploit this situation by exaggerating a child's age to suggest they are above the age of criminal responsibility. Judges and prosecutors may not take the necessary steps to accurately determine a child's age, often relying solely on subjective assessments of the defendant's age. If a child's age cannot be proven and it remains unclear whether they meet the minimum age of criminal responsibility, the Committee on the Rights of the Child recommends that the child should not be held criminally responsible. The age of criminal responsibility is the age at which individuals can be held liable for criminal behavior, typically set at 18 years. However, in Nigeria, there are considerable variations in how this age is determined. As a result, children are often charged alongside adults as co-defendants (Abdulraheem-Mustapha, 2016). According to Ojo (2012) and Bangbose (2014), transferring children to adult facilities has been shown to increase rates of recidivism.

Recommendations

The constitution of Nigeria and other legislature such as the CRA, CYPA, Penal and criminal code should be amended to include the definition of a child and age of criminal responsibility to create uniformity across states that domesticate these laws. Better still, children-related laws like the CYPA, and penal and criminal code should be set aside by child justice administrators. Children's laws should be removed from the concurrent list and made the exclusive legislative list of the federal government to avert the inconsistencies that exist in the age of criminal responsibility.



Lastly, there should be a functional database on birth registration in Nigeria to assist administrators of the juvenile justice system in determining the age of a child as well as the age of criminal responsibility.

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